

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA-1042/95

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New Delhi this the 4th day of September, 1997.

Hon'ble Sh. S.P. Biswas, Member(A)

Smt. Kiran Bala,
W/o late Sh. Mehendra Pratap,
R/o 3-C B.B. Block,
Shalimar Bagh,
Delhi.

.... Applicant

(through Sh. B.S. Mainee, advocate)

versus

Union of India through

1. The General Manager,
Northern Railway,
Baroda House,
New Delhi.

2. The Chief Administrative Officer (Constn.)
Northern Railway,
Kashmeri Gate,
Delhi.

.... Respondents

(through Sh. R.L. Dhawan, advocatte)

ORDER(ORAL)

The short question for determination in this case is the eligibility of the applicant herein for appointment on compassionate grounds following the death of her husband (Sh. Mahendra Pratap) on 27.9.1991. This is not in dispute that Sh. Mahendra Pratap died in harness. Under the instructions issued by the Government of India (DOP&T O.M.No.14014/6/86-Estt.(D) dated 30.6.87) a set of pre-requisites are to be complied with before an appointment on compassionate grounds can be granted. They include. inter alia, the eligibility of members of the family of the deceased, namely, widow/son/daughter (unmarried) or legally adopted son etc. Those instructions also include details of documents to

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establish the claim, namely, (i) the family is in immediate need of succor; (ii) the family does not have any other source of income; (iii) the family does not have any other member gainfully occupied and (iv) an affidavit of there being no income from movable or immovable property etc.

2. In the instant case, the eligibility of the applicant itself is in doubt. The learned counsel for the applicant has sought to establish the eligibility on several criteria as mentioned in paras 4.5, 4.6, 4.9, 4.11 and 4.12 of the O.A. Unfortunately, none of the documents can prove that Mrs. Kiran Bala is the legally wedded wife of the deceased. Even the certificate given by the Addl. Session Judge Delhi says that certain records have been seized from the Railway Department which "mentions" that Kiran Bala complainant of this case was the wife of the deceased. This by itself does not establish the plea of applicant's eligibility in the facts and circumstances of the case. We asked the learned counsel for the applicant to show us any document given by the temple authorities who arranged the second marriage of the deceased with the applicant herein. That is not available. Against the applicant's contention that Sh. Mahendra Pratap did really have separation with his former wife, the relevant divorce papers were also not placed before us. The learned counsel pleaded that this Tribunal may direct the respondents to offer the appointment and in case she fails to establish eligibility, her services could be dispensed with later on.

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In support of his claim, learned counsel relied heavily on the decisions of Hon'ble Supreme Court in cases of Sushma Gosain (Smt.) Vs. UOI (1989(4) SCC 468) and Phoolwati (Smt.) Vs. U.O.I. (1991 Supp.(2) SCC) It was mentioned that in Smt. Phoolwati's case, the Apex Court had even directed the respondents to create supernumerary post for granting necessary relief.

4. In the counter, the learned counsel for the respondents opposed the claim on the basis of the fact that she was asked to obtain the required succession certificate vide A8 dated 7.1.92. In the absence of which the answering respondents are helpless to grant her any relief including the one pertaining to her appointment. It has been mentioned in the applicant's A10 appeal dated 9.11.93 that she has filed a succession petition No.690/91 in the appropriate court to obtain the certificate to justify legality as recipient of reliefs from the respondents Railways. This has not yet been done and we are told that the process is on.

5. That apart, the learned counsel for the respondents has taken the objection in respect of limitation and would rely upon the decision of the apex Court in the case of State of Punjab Vs. Gurdev Singh (1991(4) SCC 1). The learned counsel for the respondents also placed reliance upon the decision of the Hon ble Supreme Court in the case of Life Insurance Corporation of India Vs. Asha Ramchandra Ambekar (1994(1) Scale 748) wherein it has been held that Courts/Tribunals cannot confer benediction impelled by sympathetic consideration.

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yielding to instinct will tend to ignore the good logic of law. The Courts are to administer the law as they find, however, inconvenient it may be.

6. It is well settled in law that a compassionate ground appointment has to be processed strictly in terms of the instructions laid down by the Government of India (Deptt. of Personnel and Training) in its O.M. No.14014/6/86-Estt.(D) dated 30.06.87. The application herein suffers from two basic deficiencies, namely, the determination of eligibility itself and secondly lack of relevant documents which have to be accompanied before such claim is made. I find considerable force in the contention of the learned counsel for respondents that without succession certificate, which is very crucial in the facts and circumstances of this case, applicant's entitlement for the relief cannot be considered.

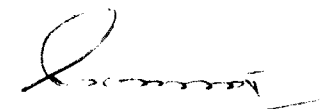
7. I am also not in a position to accept learned counsel for applicant's plea that the applicant be given appointment subject to the condition that the same offer can be terminated if the applicant fails to determine the eligibility/or comes out unsuccessful in getting the succession certificate. Such a proposition is alien to law and cannot be countenanced.

8. We are also aware of the latest instructions of the Hon'ble Supreme Court in this respect in the case of U.O.I. Vs. Bhagwan Singh (1995(6) SCC 476) wherein it has been said that "Even after the Court

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reaches a conclusion that the applicant has made out a case, all that the Court/Administrative Tribunal can do is only to direct the authority concerned to consider the claims of the applicant in accordance with rules or law, if any." This direction of the Hon'ble Supreme Court came after the decision of their Lordships in the case of Sushma Gosain (Smt.) Vs. Union of India (1989(4) SCC 468) and Phoolwati (Smt.) Vs. UOI and Ors. (1991 Suppl.(2) SCC). In the instant case even the eligibility itself is in question and therefore the question of giving direction does not arise.

9. In the background of reasons aforesaid, application fails on merits and is accordingly dismissed, but in the circumstances without any order as to costs.


(S. P. Biswas)
Member (A)

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