

~~CENTRAL ADMINISTRATIVE TRIBUNAL~~, PRINCIPAL BENCH

OA No.1175/1995

New Delhi, this 10th day of January, 1996

(F)

Hon'ble Shri B.K. Singh, Member(A)

Shri C. Bhowmik
s/o late Mrs. Manju Bhowmik
117, Type II, Minto Road, New Delhi-2 .. Applicant

By Shri D.R. Gupta, Advocate

versus

Union of India, through

1. Secretary
M/Urban Development, New Delhi
2. Director of Printing
M/Urban Development, New Delhi
3. The Asstt. Manager(Admn/Estates)
Govt. of India Pres, New Delhi .. Respondents

By Shri B. tall, Advocate

ORDER

This OA No.1175/95 has been filed on 3.6.95 for denial of compassionate appointment in place of applicant's mother and against cancellation of quarter No.117, Minto Road in the name of the mother of the applicant with effect from 5.5.95 and also against show cause notice D-65/2/E-III/Evict/567/95 dated 9.6.95 issued by the Estate Officer.

2. The admitted facts are these. The mother of applicant Mrs. Anju Bhowmik, who was employed as LDC under Respondent No.3, died in harness on 6.5.94 leaving 2 sons namely Shri D. Bhowmik aged 26 years and C. Bhowmik (applicant) aged 22 years. The applicant's father had died in 1975. The first son is doing professional course after graduating and is not

(B)

(3)

interested in compassionate appointment. The second son(applicant) is studying in B.Sc. and will be completing the course in another one and half years. It is admitted by both the parties that since no compassionate appointment has been granted to the applicant, he has been served with show cause notice for vacation of quarter. The relief sought is for giving compassionate appointment to the applicant and to regularise the quarter in his name.

3. On notice, the respondents filed their reply contesting the application and grant of reliefs prayed for. Heard the learned counsel for the parties and perused the record of the case.

4. It is admitted that compassionate appointment is still under consideration but there is a long queue of 400 applications for such an appointment. In the reply it has been indicated that certain clarifications have been sought for from the applicant vide letter dated 12.9.95 12x8x which according to the applicant's counsel, have since been furnished (Annexure A-I of the paper book). The elder brother has filed an undertaking that he is not interested in compassionate appointment but the same may be allowed to his younger brother.

5. The learned counsel for the applicant argued that the family needs compassionate appointment and also should be allowed to continue in the quarter. He cited

(4)

(a)

the judgement of Hon'ble Supreme in case of Shipra Bose & Anr. Vs. UOI in WP No.918/91 decided on 16.11.92, followed by the judgement of the Tribunal in several other cases particularly of Samir Kanti Misra & Anr. Vs. Director of Printing and others in OA 2366/92 decided on 21.1.93. He has reiterated this fact in his rejoinder also.

7. The learned counsel for the respondents relied on the judgement of the Hon'ble Supreme Court in LIC Vs. Mrs. Asha Ram Chander Ambekar & Anr. (JT 1994(2) SC 183). In case of Umesh Kumar Nagpal Vs. State of Haryana & Ors. JT 1994(3) SC 525, it has been held that mere death of an employee in harness does not entitle his ward to a job. The compassionate appointment is an exception to the rules and constitutional guarantees of appointment of public servant which is to be made through open advertisement and on merits. The compassionate appointment is an exception or a deviation from these constitutional guarantees and rules framed thereunder. This exception can be made only in case where the respondents are satisfied after taking into consideration the financial condition of the family that a job on compassionate ground is necessary to tide over a crisis or an emergent situation. Where on account of the death of sole bread winner the family is left in distress and penury and is in indigent condition the appointment is to be offered immediately to tide over



the crisis and if the family can survive without compassionate appointment, there is no justification for granting the same after a lapse of time when the crisis is over. The Hon'ble Supreme Court has further laid down the law that a compassionate appointment can not be claimed as a matter of course irrespective of the financial condition of the family either in Class III or IV. They have even regretted the action on the part of the departmental heads in the Ministries/Department of Government in granting compassionate appointment in a mechanical and routine manner without any application of mind. They have regretted the distortion of the Apex court decision in Sushma Gosain's case. Compassionate appointment is not a vested right to be claimed and offered at any time and in a routine manner. It has been laid down that the court/tribunal should be guided by the logic of law. In view of what has been stated above, the contention of the applicant claiming compassionate appointment can not be accepted. The very fact that the elder brother has stated that he is not in need of any appointment on compassionate ground is a clear proof that the family can sustain itself without the compassionate appointment. The elder brother has nowhere stated that he or any of his family member is in need of it. The family has been able to sustain itself for a long time and if there was any crisis period, the same is over by now. There is truth in the contention of the respondents that the family is getting pension both of the father and the mother and that it is enough to sustain itself.

7. If the compassionate appointment is not needed and the family has been able to sustain itself for such a long time, there is no justification for retention of the quarter. The retention of quarter has been allowed in case of Shipra Bose for the children where the father died in 1975 and the mother in 1981. Here there are grown up adults and they can fend for themselves. There is no need for compassionate appointment nor they can be permitted to retain the quarter. In the case of Shipra Bose, the order of the Hon'ble Supreme Court was passed in the special circumstances of the case as it was the case of widow and her orphaned children. The facts of the two cases being different the ratio of that judgement can not be applied to the instant case.

8. The application fails and is dismissed leaving the parties to bear their own costs. However, while parting I would like to add that this judgement will not be a bar to offer compassionate appointment if so advised by the respondents in case they are satisfied that the younger brother (applicant) can be offered compassionate appointment.


(B.K. Singh)
Member(A)

/gtv/