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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. No. 1299/96

Date of decision 30.10.1996

Shri Nand Kishore & Ors. Petitioner

Shri K.C. Mittal with Shri
Jasveer Singh and Ms Neelam... Advocate for the Petitioner
Singh

Versus

Union of India through
Secretary, Deptt. of Telecommuni- Respondent
cation and others.

Shri M.M. Sudan ... Advocate for the
Respondents

CORAM

The Hon'ble Smt. Lakshmi Swaminathan, Member (J)

1. To be referred to the Reporter or not? *Y*
2. Whether it needs to be circulated to other *No*
Benches of the Tribunal?

Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

Central Administrative Tribunal
Principal Bench.

O.A. 1299/96

New Delhi this the 30th day of October, 1996.

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

1. Shri Nand Kishore,
S/o late Sh. Chakardhar,
R/o Q.No. D-105, Moti Bagh,
New Delhi.
2. Jagdeshwari Devi,
W/o late Sh. Chakardhar,
R/o Q.No. D-105, Moti Bagh,
New Delhi. ...Applicants.

By Advocate Shri K.C. Mittal with Shri Jasveer Singh and Ms. Neelam Singh.

Versus

1. Union of India through
Secretary,
Department of Telecommunication,
Sanchar Bhawan.
2. Chief General Manager,
Northern Telecom Region,
Kidwai Bhawan,
New Delhi.
3. Estate Officer,
Office of the General Manager,
N.T.R. Eastern Court,
New Delhi. ...Respondents.

By Advocate Shri M.M. Sudan.

ORDER (ORAL)

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant is aggrieved by the order dated 27.5.1996 issued by the respondents rejecting his request for compassionate appointment on the death of his father in harness on 11.3.1995. Hence, this application has been filed u/s 19 of the Administrative Tribunals Act, 1985 to quash and set aside the order dated 27.5.1996 and the orders dated 24.5.1996 and 31.5.1996 for eviction of the

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applicants from the quarter previously allotted to the deceased government servant.

2. The facts in this case are not in dispute. Briefly stated, they are that the father of applicant 1 died while in service with Respondent 2 on 11.3.1995. The applicant had thereafter applied for compassionate appointment giving the details of the family and the circumstances in the proforma placed at Annexure A-4. As a result of such consideration, the respondents have issued the impugned order dated 27.5.1996.

3. The main argument of Shri K.C. Mittal, learned counsel for the applicant, was that the impugned order has been passed without application of mind and without taking into account the circumstances relating to the applicant for considering him for compassionate appointment. He also submits that this order is a non-speaking order. He has gone through the relevant instructions on the subject of compassionate appointment and relies on the D.O.P.Ts instructions of 1978, as amended from time to time, including the O.M. dated 9.12.1993, 28.9.1992 and finally the consolidated O.M. dated 30.6.1993 (SLJ Vol-52 1994(2) pages 40-47 of the General Section). He has submitted that although
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the O.M. of 9.12.1993 had given the expression 'near relatives' which had appeared in the earlier O.M., all these instructions are applicable to a son or daughter of the Government servant who dies in harness, taking into account the circumstances in which the family has been left, especially the financial aspects. In particular, he has also drawn attention to the O.M. dated 28.9.1992 which has clarified the intention behind the instructions contained in para 9(d) of the O.M. dated 30.6.1987. He submits that while the benefits the family might have received under the Welfare Schemes should be taken into account, the financial condition of the family has to be assessed taking into account its liabilities and all other relevant factors, so that a balanced and objective assessment is made on the financial condition of the family. The learned counsel also placed considerable stress on the fact that these were Welfare schemes made by the Government of India for the welfare of the indigent family of the deceased government servant. He has referred to a number of decisions of the Hon'ble Supreme Court (**The State of Bihar & Ors. etc. Vs. Samsuz Zoha etc.** (JT 1996(6) SC 7); **Himachal Road Corporation Vs. Dinesh Kumar** (JT 1996(5) SC 319) and **State of Haryana Vs. Rani Devi** (JT 1996(6) SC 646)) to show that in none of these cases the Supreme Court has stated that the competent authority

is not to make the objective assessment of the situation with regard to the family. He, therefore, submits that each case has to be looked into in the particular facts and circumstances. He has also referred to in detail various paragraphs in O.M. dated 30.6.1993 to show that the applicant's case is one where because of the financial circumstances it should be considered as ^{an} indigent family, as there was no earning member when the father died. His contention was that the eldest son, ~~who is employed~~ was already disclosed to the competent authority as having no connection with the family, even though he might be employed, but living separately. Therefore, in the circumstances, he submits that the impugned order has been passed arbitrarily and without application of mind by the respondents. He also relies on the judgements of the Supreme Court in **Umesh Kumar Nagpal Vs. State of Haryana** (JT 1994(3) SC 525) and **Phoolwati Vs. Union of India** (1991 Supp (2) SCC 689).

4. The respondents have ~~also~~ filed their reply controverting the above averments. Shri M.M. Sudan, learned counsel for the respondents, has also been heard. The main contention of the respondents is that taking into account the relevant facts and circumstances of the family, including the fact that the eldest son is employed though living separately, the competent authority came

to the conclusion that the family is not in indigent circumstances. Shri Sudan, learned counsel, has also relied on the judgement of the Supreme Court in **Umesh Kumar Nagpal (supra)** as well as the judgements in **State of Haryana Vs. Naresh Kumar Bali** (ATC 1994(27) 611 and **LIC Vs. Mrs. Asha Ramachandra Ambedkar** (JT 1994 (2) SC 183). The learned counsel submits that it is not *the* case of the applicant that his case has not been duly considered by the competent authority ^{as} ~~but~~ that nothing has been shown which warrants any interference by the Court at this stage nor does the Tribunal have the power to direct that the applicant should be appointed on compassionate ground under the guise of ^{exercising} the powers of judicial review. He has also submitted that the object behind the instructions for compassionate appointment, which ~~have~~ been upheld by the Courts, which ~~have~~ been laid down as far as back as 1959, was to see that the family of a Government servant who dies in harness and is in indigent circumstances is given financial help, but that should not be the source of employment as such. He has submitted that the competent authority had after taking into account the circumstances of the applicant, correctly come to a decision that the applicant cannot be given employment on compassionate ground. He further submits that no quota has been fixed for such appointment excepting that in para 5 of the O.M. dated 30.6.1993 the extent to which compassionate appointments can

be made has been given subject to reservation provided for Scheduled Castes, Scheduled Tribes, Physically handicapped persons and ex-servicemen.

5. I have very carefully considered the record and arguments advanced by the learned counsel in this case.

6. On perusal of the O.Ms/Instructions framed by the Government on the subject of compassionate appointment of son/daughter of the deceased Government servant, the objective seems to be that in exceptional cases when a Department is satisfied that the condition of the family is indigent and is in great distress, the benefit of compassionate appointment may be extended to a son/daughter/near relative of a Government servant. This is also clearly held by the Supreme Court in a catena of decisions which have been cited above by the learned counsel. However, it would be useful to refer to the relevant portion of the ^{Judgment of the 18} Supreme Court in **Umesh Kumar Nagpal's case (supra)** which reads as follows:

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"...The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased and it is only if it is satisfied, that but for the provision of employment, the family will not be

able to meet the crisis that a job is to be offered to the eligible member of the family...."

In the case of **LIC of India Vs. Asha Ramchandra Ambedkar (supra)**, the Supreme Court has held that the High Courts and the Administrative Tribunals cannot confer benediction impelled by sympathetic consideration. The courts should endeavour to find out whether a particular case in which sympathetic considerations are to be weighed falls within the scope of law.

7. In this case, it is seen that the applicant had submitted his application for employment on compassionate grounds giving the details of his family. From this proforma, it is noted that the applicant's father died after more than 30 years of service in Government and had left about 19 days of service before his date of superannuation. The family of the deceased had also received terminal benefits amounting to Rs.92,000/-. No doubt, the applicant has submitted that though his elder brother is working, he is not supporting the family and, therefore, he needs the compassionate appointment as the family is in indigent circumstances. Taking into account these various factors, it cannot be stated that the decision of the competent authority that the family is not in indigent circumstances is either arbitrary or perverse which justifies any interference in this matter. The judgements

of the Supreme Court referred to above are also fully applicable to the facts and circumstances of the case and I, therefore, see no good ground to either quash or set aside the impugned order or as alternatively prayed by the learned counsel for the applicant to remit the matter back to the department for reconsideration as nothing has been placed on record that the Committee has not considered all the relevant factors before coming to its decision. The impugned order also discloses the reasons as to why the request of the applicant has been turned down.

8. For the reasons given above, this application is dismissed. Interim order dated 18.6.1996 is vacated. No order as to costs.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member(J)

'SRD'