

Central Administrative Tribunal
Principal Bench: New Delhi

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OA No.2434 of 1996 decided on 16th May 1997.

Kum. Yoginderi

...Applicant.

(By advocate: Shri B.B.Raval)

Versus

Union of India & Ors.


...Respondents.

(By advocate: Mrs Pratima K. Gupta)

CORUM

Hon'ble Mr N. Sahu, Member (A)

1. To be referred to the Reporter or not? **YES**
Benches
2. Whether to be circulated to other /of the
Tribunal? ~~NO~~


(N. Sahu)
Member (A) 16/5/97

Central Administrative Tribunal
Principal Bench: New Delhi

OA 2434/96

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New Delhi this the 16th day of May 1997.

Hon'ble Mr N. Sahu, Member (A)

Kum. Yoginderi
D/o Late Shri Tej Ram
R/o Qr.No.759
Sector VIII
R.K.Puram
New Delhi.

...Applicant.

(By advocate: Shri B.B. Raval)

versus

Union of India through

1. Secretary
Ministry of Water Resources
Shram Shakti Bhawan
New Delhi - 110 001.

2. The Director
Directorate of Estates
Nirman Bhawan
New Delhi - 110 001.

...Respondents.

(By advocate: Mrs Pratima K. Gupta)

O R D E R (oral)

Hon'ble Mr N. Sahu, Member (A)

This petition has been filed by the applicant under Section 19 of the A.T. Act against the action of the respondents in not allowing the applicant to join duty despite the offer of compassionate appointment No.20/21/96/Admn. dated 3.6.96. It is also stated that the applicant's mother Smt. Atar Kala, wife of Tej Ram, addressed a representation dated 19.6.96 to the Under Secretary, Central Water Commission, Sewa Bhawan, R.K.Puram, New Delhi. Having no response, this petition is filed. The brief facts of the case are that the applicant is the daughter of late Shri Tej Ram who was employed as an Assistant in the Ministry of Water Resources. He died in harness on 21.1.96 leaving behind him his widowed wife, the applicant and Shri Prem Prakash, unemployed son (as per the averments made initially while

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applying for the job). The application was processed. Learned counsel for the respondents placed before me the original file. Preceding the appointment order, the notes in brief are as under:

2. As per the instructions, a compassionate appointment can be made either to Group-C or D posts when there is no earning member in the family of the deceased government servant. With regard to the applicant, the fact that she belonged to the Scheduled Caste community was noted. It was also noted that Tej Ram had a lien on the post of CSCS cadre which entitled him to be given a preference. The appointment order was issued on 3.6.96 and applicant appeared in the office to join duty. She was prevented from joining because of a fortuitous discovery that there are three other earning members in the family. The applicant approached this Court for a direction to the respondents to allow her to join duty. By an order dated 3.12.96 this Court directed the respondents to allow her to join duty on a purely provisional basis, subject to the outcome of the OA.

3. I have heard the counsels from both sides. Respondents' counsel has drawn my attention to one aspect of the case which needs scrutiny. Para 5 of Annexure A-2 is a proforma to be filled by the applicant regarding employment of dependents of government servants dying while in service. Para 5 reads as under:

4. "Particulars of all dependents of the employee (if some are employed, their income and whether they are living together or separately)". The applicant had filled in the name of her mother, herself and her brother as dependents and had omitted to

Particulars

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include the names of her other three brothers, Om Prakash, 33, Vijay Prakash, 31, and Ved Prakash, 29 who are admittedly earning on their own. The question at issue is whether the omission to include these names is proper compliance with the particulars required to be furnished at para 5 of the Application. In my view, the applicant should have in all fairness disclosed the names of these three brothers also as earning members. The purpose of seeking this information is that even if the three sons are residing separately, they do not cease to be part of the family. The object of the entire exercise was to find out whether the applicant is penurious and needs succour by way of a compassionate appointment. Having said that, it does not automatically follow that the respondents could instantaneously rescind their order of compassionate appointment. The law on the subject of compassionate appointment has been settled by a series of judgements of the Apex Court in a number of cases. The leading case on the subject is Umesh Kumar Nagpal Vs. State of Haryana 27 ATC 537. The paragraph where the law is laid down is reproduced hereunder:

"As a rule, appointments in the public service should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Government nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the respondents of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration, taking into consideration the fact that unless some source of livelihood is provided the family would not be able to make both ends meet, a provision is made

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in the rules to provide gainful employment to one of the dependents of the deceased who may be eligible for such employment. 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 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." (Emphasis supplied).

It is settled law that even if the Court reaches the conclusion that the applicant has made out a case, all that the High Court or Administrative Tribunal can do is only to direct the authority concerned to consider the claim of the applicant in accordance with relevant law or rules if any - State of Haryana V. Nareesh Kumar Bali (1994) 4 SCC 448; 1994 SCC (L&S) 909; (1994) 27 ATC 611."

5. The principles laid down by the Apex Court are that a compassionate appointment may be given to Class III/IV posts only when the financial condition of the family is so distressing that if some member of the family is not given an appointment, the entire family would be destitute. It is in recognition of the long service of the deceased, who in this case died in harness that the government felt it a necessary duty to help the family. But for the rules governing compassionate appointment, such an appointment would be a deviation from the normal process of public employment by notification, competition amongst eligible candidates and selection by merit. The Apex Court directed that such appointments should be strictly done in accordance with the rules. The most important condition is that the appointing authority should be satisfied that the family is in penury and without this appointment it would cause the family grave deprivation. The finding should be that but for this appointment, the family would be faced with starvation. Thus the

Nareesh Kumar Bali

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economic condition of the family has to be investigated to find out whether such was the condition of the family and a conclusion arrived at whether it deserved a compassionate appointment or not. I have seen the note dated 23.5.96. Unfortunately there is no such finding. Even so, once such an order of compassionate appointment is issued to the applicant, the order should not be rescinded preemptorily without proper consideration. I agree, however, with the submissions of the learned counsel for the respondents that the omission to include the names of the three sons was an important aspect which gave the respondents a right to review their order issued to the applicant. Respondent No.1 Secretary, Ministry of Water Resources, Govt. of India, Shram Shakti Bhawan, New Delhi shall take into account the fact that the three brothers who were claiming to be separate and independent earning members are also part of the family and this true picture of the family was not before the appointing authority when the appointment was made. Respondent No.1 shall consider this fresh fact and arrive at a finding as indicated in the Supreme Court judgement cited (Supra) after examining the financial condition of the family. If he still thinks that this fresh fact does not make any difference to the initial order of appointment on the lines and criteria given by the Hon'ble Supreme Court judgements, he shall confirm the order and continue the applicant in the post. If on the contrary he comes to a conclusion that this fresh fact leads him to the conclusion that the earning sons have a legal obligation to maintain the mother and the overall financial situation of the family is not precarious and does not deserve a compassionate appointment, he is at liberty to review the order and if necessary to rescind the same. This exercise shall be completed within a period of four



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months from the date of receipt of a copy of this order. Until such time, the applicant shall continue to work in this post. OA is disposed of.

N. Sahu
16/5/97

(N. Sahu)
Member (A)

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