

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI.

O.A.No.506/96.

New Delhi: this the 26th March, 1996.

HON'BLE MR.S.R.ADIGE, MEMBER (A)

Smt.Kamla Sapra,
W/o Late Shri Ram Lal Sapra,
aged about 61 years,
R/o Quarter No.10/4,
Railway Colony,
Sarojini Nagar,
New Delhi -110023.

2. Miss Meenakshi,
D/o Late Shri Ram Lal Sapra,
aged about 23 years,
r/o Quarter No.10/4,
Railway Colony,
Sarojini Nagar,
New Delhi-110023

.....Applicants.

By Advocate Shri B.B.Raval.

Versus

Union of India,
through the General Manager,
Northern Railway,
Govt. of India,
Baroda House,
New Delhi - 110001.

.....Respondent.

JUDGMENT

By Hon'ble Mr. S.R.Adige, Member (A).

In this application, Smt.Kamla Sapra and one other have prayed for to quash the impugned order dated 8.10.92 rejecting the prayer of Applicant No.2 Ms.Meenakshi for compassionate appointment, and seeking a direction to appoint Applicant No.2 to any suitable post on compassionate ground, together with payment of costs. A prayer has also been made for interim relief to restrain the respondents from evicting the applicant from Quarter No.10/4, Railway Colony, Sarojini Nagar, New Delhi, pending disposal of this OA.

2. I have heard Shri B.B.Raval for the applicant.

3. It is clear that the two applicants in the OA had also filed OA No. 1132/91 Mrs. Kamla Sapra & another Vs. UOI & others, consequent to the suicide of the husband of Applicant No. 1, Shri Ram Lal Sapra, a Railway employee on 18.12.90. In that OA, apart from seeking early release of GPF, gratuity, family pension and other superannuatory benefits, the two applicants had prayed for the same reliefs which have been prayed in the present OA, namely

i) To direct the respondents to provide Applicant No. 2 a suitable employment on compassionate ground;

ii) To regularise Quarter No. 10/4, Railway Colony, Sarojini Nagar, New Delhi in the name of Applicant No. 2.

4. The said OA was disposed of by judgment dated 5.12.91, the operative portion of which is contained in paragraph 6 of that judgment and is extracted below:-

" We therefore, partly allow this OA and direct (1) respondents to pay to Applicant No. 1 all the dues of provident fund, gratuity and other benefits within a period of three months from the date of receipt of a copy of this judgment. (2) Respondents are further directed to consider providing suitable appointment to Applicant No. 2 sympathetically on compassionate grounds within a period of three months from the date of receipt of a copy of this judgment. (3) We further direct respondents not to evict the applicants from Quarter No. 10/4, Railway Colony, Sarojini Nagar, New Delhi, till the payments of provident fund, gratuity and other due benefits of late Shri Ram Lal Sapra are paid to the applicants and till Applicant No. 2

is considered sympathetically for suitable compassionate employment. The applicants shall be liable to pay only the normal licence fee according to rules. (4) We also direct the respondents to allot this accommodation to Applicant No.2 on her appointment.

There will be no order as to costs.

5. Thereafter the applicants filed CCP No. of 1992 alleging that the directions in OA No.1132/91 decided on 5.12.91 had been deliberately and wilfully disobeyed. That CCP was disposed of by judgment dated 29.4.93. In so far as the prayer for providing suitable employment on compassionate ground to Applicant No.2 is concerned, the judgment dated 29.4.93 noted that the direction had to be understood as a direction to consider the case of the applicant for granting compassionate appointment to Applicant No.2 as sympathetically as possible. No positive mandamus has been issued directing the respondents to appoint the daughter. The respondents were well within their right in not giving appointment to the daughter on sympathetic ground. The case of the applicant was considered, but the respondents had not found it possible to accord to her the benefit of compassionate appointment. The Tribunal was satisfied from the stand taken by the respondents and the orders produced before them that they had considered the case of the applicant for compassionate appointment. The submission of Shri Raval, who was also the applicant's counsel in OA No.1132/91 and CCP No.187/92 that if the judgment was to be read as a whole, there was virtually a mandamus to grant

6

compassionate appointment, was also considered by the Tribunal who observed that all that could be said by perusing the entire judgment dated 5.12.91 was that the widow plight had been highlighted necessitating a look into her case for granting compassionate appointment to her. The direction could not be understood as a positive mandamus to give compassionate appointment to her. The respondents were only bound to consider the case of the applicant for compassionate appointment which they had done by means of speaking order, a copy of which had been produced and as there had been a consideration of the case as per the directions of the Tribunal, there was no violation of the directions contained in judgment dated 5.12.91.

6. In so far as the other relief sought namely regularisation of the quarter was concerned, it was noted that it was obviously dependent on the applicant No.2 being given compassionate appointment and if the appointment was given, there was an obligation to allot the very same accommodation to applicant No.2 and thus the direction did not have any effect as compassionate appointment was not given.

7. The Tribunal accordingly held that no ground had arisen for initiating Contempt of Court Proceedings against the respondents but there has been considerable delay in complying

with the direction, the CCP was disposed of with a direction to pay costs Rs.1000/- to the applicant.

8. Against that CCP, the applicants filed SLP No.9111/93, which was disposed of by the Hon'ble Supreme Court vide order dated 26.2.96 which is extracted below:

"We find no reason to interfere with the order passed on the application for Contempt. The SLP is dismissed.

Learned counsel for the petitioner has however, submitted before us that the appointment on compassionate ground has not been considered. If that be the position, it will be open to the petitioner to move against the decision passed on the question of compassionate appointment, before the appropriate forum."

9. As pointed out above, the present OA before me has been filed by the same persons who had filed OA No.1132/91 and seeks the same relief as was sought for in that OA. The only difference being in OA No.1132/91 was that certain additional relief had also been sought and the relief for regularisation of Quarter No.10/4, Railway Colony, Sarojini Nagar, New Delhi, which was Item 4 in the main reliefs in that OA, has been sought by way of interim relief in the present OA through a direction to the respondents to restrain them from evicting the applicants from the quarter in question till the disposal of this OA.

10. The Hon'ble Supreme Court in their order dated 26.2.96, extracted above, have stated

A

that the learned counsel for the petitioners Shri Raval had submitted before them that the appointment on compassionate ground had not been considered and if that was the position, it would be open to the petitioners to move against the decision passed on the question of compassionate appointment before the appropriate forum.

11. In the present OA, the applicants have themselves enclosed a copy of the respondent's letter dated 8.10.92 (Annexure-A) addressed to applicant No.2 which stated that the applicants' case for appointment had been considered in view of the Tribunal's directions in OA No.1132/91. As per the Railway Board's letter dated 7.4.86 the appointment on compassionate ground could be afforded under the following circumstances:-

- i) When Railway servants lose their lives, in the course of duty or get so crippled that they cannot do any work (this also in the course of duty- for example loco and traffic running staff in charge of trains involved in accidents).
- ii) When Railway employees die in harness while in service before retirement.
- iii) Where an employee's whereabouts are not known for a period of 7 years and the settlement dues of the employees are paid to the family on this account. This limit of 7 years may be relaxed to 3 years on merits of each case with the approval of the General Manager, subject to the conditions that the services of the person appointed on compassionate grounds would be terminated in case the missing employee is traced subsequently.
- iv) When Railway employees become crippled while in service or develop serious ailments like heart diseases, cancer etc. or otherwise medically decategorised for the job they are holding and no alternative job of the same emoluments can be offered to them.

12. That letter went on further to state that Shri Ram Lal Sapra was removed from service on 9.7.80 . Even if had he not been removed from service, he would have been retired from service on 31.1.85, on superannuation, his date of birth ^{being} 5.1.27. He died in 1990. Since his case did not fall in any of the circumstances explained above it was not possible to offer applicant No.2 appointment on compassionate grounds.

13. In the OA, the applicants themselves have admitted that this letter dated 8.10.92 was annexed to the counter reply filed by the respondents in the CCP.

14. From a perusal of the respondents' letter dated 8.10.92, it is thus clear that pursuant to the Tribunal's judgment dated 5.12.91 in OA No.1132/91, the respondents did consider the question of granting appointment on compassionate ground to Applicant No.2, but found that her case did not fall within the parameter set up in that letter. It is also clear that the fact that the respondents had considered the case of Applicant No.2 for appointment on compassionate ground, was also noticed by the Tribunal in its judgment dated 29.4.93 in CCP No.187/92 arising out of O.A.No.1132/91, who further gone on to observe in that judgment that the direction given to the respondents to consider the case of the applicant for compassionate appointment, had been complied with and they had passed a speaking order in this behalf. It is for this reason that the Tribunal had held that there was no violation

of the direction in regard to the consideration of the case of Applicant No.2 for compassionate appointment.

15. In the present OA, Applicant No.2 has sought support for grant of appointment on compassionate ground, in the background of the Hon'ble Supreme Court's judgment in Smt. Sushma Gosain & others Vs. Union of India & others -1989(4) SLR 327 but in Umesh Kumar Nagpal Vs. State of Haryana & others - and connected case- JI 1994(3)SC 525, the Hon'ble Supreme Court while observing with dismay that their decision in Sushma Gosain 's case (Supra) has been misinterpreted to the point of distortion, have emphasised that the grant of compassionate appointment is in the nature of an exception to the general rule that the appointments in the public services should be made strictly on the basis of open invitation of applications, and merit. Such an exception is justified on the ground that it prevents the family from sliding into ^{or} condition of penury and without any means of livelihood. The whole object of granting compassionate appointment thus to enable the family of the deceased to tide over the sudden crises. Furthermore, it has been held that mere death of an employee in harness does not entitle his family to compassionate appointment. What has to be examined ^{is} 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 would not be able to meet the financial crises, the appointment on

A

compassionate ground would be granted to an eligible member of the family.

16. In the present case, the prayer for appointment on compassionate grounds has been made nearly 16 years after the father of applicant No. 2 was removed from service; nearly 10 years after the date of his retirement on superannuation, had he not been removed from service, and nearly 6 years after he died. Manifestly therefore this is not a case where the breadwinner has died suddenly while in harness, which would justify grant of appointment on compassionate grounds, and the ratio of the judgment in U.K. Nagpal's case (Supra) is not even remotely applicable to the present case.

17. That apart that the action taken by the respondents in compliance of the Tribunal's judgment dated 5.12.91 in OA No. 1132/91 was thoroughly considered by the Tribunal in its judgment dated 29.4.93 in CCP No. 187/92 in which it has been alleged that there had been wilful and deliberate disobedience of judgment dated 5.12.91. The judgment dated 29.4.93 had specifically acknowledged that the case of applicant No. 2 for compassionate appointment had indeed been considered by the respondents. Hence the applicant's contention that the case of applicant No. 2 for appointment on compassionate ground was not considered, is without any basis, more particularly in the light of the fact that the SLP filed by the applicants, against the judgment dated 29.4.93 has itself been dismissed by the Hon'ble Supreme Court who have held that they find no reason to interfere

with the orders passed on the application for contempt

18. In the result, this OA is summarily dismissed

No costs.

Arjohgi
(S.R.ADIGE)
MEMBER (A).

/ug/