

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

O.A.No. 1181/1997

Date of Decision: 31- 8 -1998

Shri Surender Singh

APPLICANT

(By Advocate ~~Shri~~ Mrs. Avnish Ahlawat)

versus

Union of India & Ors.

RESPONDENTS

(By Advocate Shri H. L. Jad)

CORAM:

THE HON'BLE SHRI

THE HON'BLE SHRI S.P. BISWAS, MEMBER(A)

1. TO BE REFERRED TO THE REPORTER OR NOT? YES

2. WHETHER IT NEEDS TO BE CIRCULATED TO OTHER BENCHES OF THE TRIBUNAL?


(S.P. Biswas)

Member(A)

Cases referred:

1. LIC of India V. Mrs. Asha Ramachandra Ambekar & Anr. 1994 27 8TC
2. Umesg Kumar Nagpal V. State of Haryana & Ors. JT 1994(3) SC 174
3. Auditor-General of India V. G. Anantha Rajeswara Rao AIR 1994 SC 525
4. Ramana Dayaram Shett V. International Airport Authority 1979 3 SCC 1521
5. B.S. Minhas V. Indian Statistical Instt. (1983) 4 SCC 489
6. S.L. Mukherjee V. UOI 1990 (5) SLR 8

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1181/1997

New Delhi, this 31st day of August, 1998

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

Shri Surender Singh
5169/PCR Village & PO Jahangirpur
Dt. Rohtak, Haryana .. Applicant
(By Advocate Mrs. Avnish Ahlawat)

(12)

versus

1. Lt. Governor
through Govt. of NCT of Delhi
Commissioner of Police
Police Hqrs., New Delhi
2. DCP-Police Hqrs.I
IP Estate, New Delhi .. Respondents
(By Advocate H.L. Jad)

ORDER

The applicant, son of late Shri Bhim Singh, erstwhile ASI under Delhi Police, is aggrieved by Annexure-N communication dated 20.1.97 by which respondents have declined to consider his claim for appointment as Constable in Delhi Police on compassionate grounds following the death of his father in harness. Consequently, he is seeking relief in terms of issuance of direction to the respondent/s to appoint him as constable under the respondents.

2 Background facts, in brief, are as under:

After the death of applicant's father on 15.1.91. his mother applied for compassionate appointment in favour of applicant but she was informed by a communication dated 18.2.91 that her request for appointment of the applicant on compassionate grounds could not be acceded to due to applicant's under-age. Respondents, however, informed that she could be considered for

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appointment as "cook" on the same grounds for which she could submit her application, if she so desired. Applicant's mother being an illiterate lady was unable to accept the offer. However, vide communication dated 13.9.94 (Annexure C) she was directed to have the physical measurement of her son (Surender Singh) got done and report sent to concerned DCP/3rd Battalion alongwith passport size photographs and other details. Immediately on attaining the age of majority by 14.8.94, she applied for her son's appointment as Constable vide Annexure-B dated 22.8.94. This was followed by another representation dated 14.12.94 wherein she repeated her earlier request for applicant's appointment as Constable. With reference to the above appeal dated 14.12.94, the respondents replied favourably (Annexure H dated 21.12.94) and directed her to appear before DCP/HQ(1) on any working day. At this very stage, respondents also wrote a letter to SP, Rohtak (Haryana) to send a detailed report about the applicant's family members, incomes and other assets/liabilities necessary for consideration of such appointments. This was on 13.9.94. Feed-back report apparently from SHO, Jahangirpur of Rohtak (Haryana) was also made available by 11.10.94. The said report gives the status position of the family's economic condition with details of assets/liabilities of the deceased employee.

3. While the matter stood as it is as aforesaid, mother of the applicant was shocked to receive Annexure-E communication dated 15.11.94 indicating

that her request for appointment of her son as Constable in Delhi Police on compassionate grounds has been considered in the hqrs. but it is regretted that the same could not be acceded to. This communication rejecting applicant's plea for relief, received for the first time, did not indicate the reasons for which the applicant could not be considered. Consequently, applicant's mother continued sending representations to which as many as 8 replies were given, all communicating respondent's inability to accede to her request but none of them specified the reasons for refusal.

4. Mrs. Avnish Ahlawat, learned counsel for the applicant submitted that the applicant's case is fully covered by Government of India's instructions dated 26.9.95 on the subject of compassionate appointment as well as catena of judgements of the Hon'ble Supreme Court.

5. Shri H.L. Jad, learned counsel for the respondents opposed the claim on the basis that the elder son of the widow is serving in CISF and reportedly living with the family, the wife of late ASI has been paid Rs.2,33,044 as pensionary benefits, drawing family pension @ Rs.720 p.m. plus RIP and IR as admissible from time to time and the family has a house and a piece of agricultural land (3 kanal, 12 marla) at native village. Accordingly Smt. Sahab Kaur, wife of late ASI was informed vide Hqrs. letter dated 15.11.94 stating respondents' inability to accede to her request.

Learned counsel for the respondents cited the decision of the Hon'ble Supreme Court in the case of **Umesh Kumar Nagpal Vs. State of Orissa & Ors.**, JT 1994(3) SC 325 to support his contention that claim for such appointment cannot be made after sufficient lapse of time and when the crisis is over.

6. Before I examine the issues involved in this case, it will be appropriate to mention the principles required to be followed in offering such an appointment. The conditions that need to be fulfilled have been stipulated by the DOPT vide their three OMs No.14014/32/94-Estt(D) dated 28.11.94, 14014/20-90-Estt(D) dated 9.12.93 and 14014/6/95-Estt(D) dated 26.9.95. The apex court in a catena of judgements namely **LIC of India v. Mrs. Asha Ramachandra Ambekar and Anr.** (1994) 27 ATC 174, **Umesh Kumar Nagpal Vs. State of Haryana & Ors.** JT 1994 (3) SC 525 and **Audit-General of India v. G. Anantha Rajeswara Rao** AIR 1994 SC 1521, have laid down the law in this respect. Stated briefly, the apex court has laid down the following:

- (i) compassionate appointment should not reopen a back door for appointment without competition;
- (ii) the appointments should not be made after a long delay as the very purpose of mitigating the distress is frustrated; and
- (iii) that the family having sustained the economic hardship by lapse of time is not entitled to the grant of compassionate appointment.

7. In LIC of India (supra), the apex court held the following:

"No uniform rule can be laid down in such cases except considering the cases on facts of each case. Where there is a large family and no earning member, possibly when the application is made within a reasonable time say within a year, the case of the applicant may be considered for appointment depending on other circumstances. It is true that there is no right created for grant of compassionate appointment but the family do require the offsetting of the economic distress by grant of appointment in suitable cases. Where the amount of retiral benefits and pension is considerably high, that may be one of the grounds to refuse appointment. Large family with minors with no earning member may be a case in which compassionate appointment can be granted and in those cases, the matter would be whether the widow should be appointed or offered compassionate appointment. There may be cases and cases and the illustrations cannot be multiplied."

(16)

8. We have to examine applicant's case in the light of aforesaid law laid down by the apex court and instructions of DoPT's different OMs. Crucial item for consideration is that there has to be a finding that the family is in economic crisis and is in need of immediate succor following the death of the bread-earner. Even the fact that other members of the family engaged in gainful jobs may not debar consideration if those employees are of no help to the dependents of the deceased employee. What is to be seen is that whether minimum financial assistance is available to the family left behind by the deceased so as to save it from destitute. In the present case, as submitted in course of oral arguments, the first son of the family engaged in CISF is living separately elsewhere. The decision of the respondents dated 15.11.94 conveying their inability to accede to the request of applicant was based on the assessment made by the respondents' concluding that "financial

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position of the deceased is very sound. Beside^s owning house and agricultural land, the elder son is also serving in CISF". Since Annexure 'E' (dated 15.11.94) means a clear volta-face in respect of respondents' stand in Annexure 'C' (dated 13.9.94), the Tribunal decided to go through the records/departmental files

9. From a perusal of the records, I find serious infirmities in the decision making process. The conclusion about the sound financial position of the family was reached on 9.11.1994 at the level of ACP and DCP. This very decision was intimated to applicant indicating respondents' inability to accede to his request by their letter dated 15.11.94 (Annexure E). It is not in doubt that the competent authority who could deny such claim is the Commissioner of Police (CP in short). It appears that respondents have a well set procedure of dealing with such cases by placing the matters of "compassionate appointments" before a Committee headed by no less the CP. In other words, CP is the competent authority to accept or reject such proposals. For the first time, applicant's case was placed before the said Committee competent to take a decision ^{was} only on 30.5.96. Under these circumstances, it is not understood how the regret letter dated 15.11.94 could be issued well before the matter was placed for consideration by the appropriate committee. Perusal of records also show that 15.11.94-communication did not have the

prior approval of the CP, who is competent in such matters. Hence, such a communication has to be held invalid in law.

(18)

10. It is not in dispute that the item was formally placed in the meeting of the appropriate committee which decided to regret applicant's case based on the assessment that the wife of late ASI has been paid Rs.2,33,044 as pensionary benefits and drawing family pension @ Rs.720 p.m. plus RIP and IR as admissible from time to time and the family has a house and piece of agricultural land (3 kanal, 12 marla) at native village. The fact that the applicant was already asked to have the physical test done etc. was not brought out on 30.3.95 in Committee's meeting. Thus, Committee/CP was kept in the dark about Annexure "C" and "H". This was a serious procedural irregularity.

11. Another infirmity in the processing of the case relates to the decision of the respondents vide their order dated 3.7.95 by which they initiated enquiries to determine if the family is in receipt of any help from Satbir Singh and/or the latter is living with the family. This was intended to determine if the family still continued to be in economic distress. The report sent by the Deputy Commissioner of Police, Control Room, dated 3.8.95 was based on the report of SP, Rohtak dated 20.7.95. The said report supports the contention of the mother of applicant about economic status of the family. When the respondents themselves initiated action for re-verifying the economic

status of the family, it was incumbent on them to place the matter before the appropriate committee/authority after the report was received on 3.8.95. The CP or the Committee have never had an opportunity to consider this report which the respondents had themselves asked for. This is because, as per records, the committee or CP did not consider any such matter till 3.2.97 after the last meeting on 30.3.95. Here I am tempted to extract a passage from the judgement of the Supreme Court in the case of **Ramana Dayaram Shett V. International Airport Authority (1979) 3 SCC 489** which is as follows:

"It is well settled rule of administrative law that an executive authority must rigorously hold to the standards by which it professes its action to be judged and it must scrupulously observe those standards on point of invalidation of an act in violation of them"

The Supreme Court called out the aforequoted rule from the judgement of **Mr. Justice Frankfurter** in **Viteralli V. Saton (359 US 535)** which was a case relating to dismissal of an employee from service. The principle enunciated in Ramana's case has been extended to service jurisprudence by the apex court in **B.S. Minhas V. Indian Statistical Institute (1983) 4 SCC 582**.

I also find that following the receipt of report, respondents had also received a reference from the Lt. Governor admittedly on being represented by the widow of the deceased. Having initiated action to find out the economic position

of the family, the respondents were required to take a final decision in the matter based on the latest internal reports thus received by them.

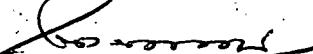
12. I also find a series of five communications after 15.11.94 all conveying regrets on behalf of the respondents in the matter. None of the communications indicate reasons for which respondents could not accede to the request. Legal requirement to record reasons for administrative decisions cannot be questioned. Every authority involved in process of adjudication is required to state reasons for her/his conclusions. In this particular case, series of orders contain only conclusions but no reasons. When an order is apparently to the detriment of an employee or the legal heir, it must be supported by reasons, excepting cases where requirement has been dispensed with expressly or by necessary implication. The administrative authority exercising judicial or quasi judicial function is required to record reasons for his/her decision as has been held by Hon'ble Supreme Court in **S.L.Mukherjee Vs. UOI 1990(5) SLR 8**). In this case, their Lordships, in a Constitution Bench, laid down that order/decision should contain reasons for arriving at the conclusion. Based on the law laid down, the above communications cannot be said to have served the legal purpose.

13. Evidently when Smt. Sahab Kaur was offered appointment on 18.2.91 as Cook or when the applicant was asked to have physical checks etc.

done by Annexure-C dated 13.9.94, followed by Annexure-H dated 21.12.94, it could not have been done without respondents having been satisfied that all the necessary conditions for compassionate appointment stand fulfilled. The two reports of Rohtak Police authorities dated 11.10.94 and 20.7.95 support applicant's claim and yet the impugned regret letter dated 20.1.97 reaffirming respondents' earlier stand of 5.4.95 has been sent to the wife of the deceased employee and that too without placing SP, Rohtak's report ^{dated} 20.7.95 before CP-the competent authority. Suffice it to say that respondents themselves had called for the report apparently to reconsider applicant's case after recording initial rejection on 30.3.95.

14. Based on the detailed reasons aforesaid, the applicant's case deserves to be reconsidered. The application is, therefore, allowed with the following directions:

- (i) Respondents shall reconsider applicant's claim. Because of the reasons recorded in para 13 aforesaid, the case shall be resubmitted to the CP/Committee concerned for the purpose of taking a fresh decision on the basis of the latest reports of the appropriate police authorities.
- (ii) This shall be done within a period of three months from the date of receipt of a copy of this order;
- (iii) Applicant shall be informed of the decision taken;
- (iv) There shall be no order as to costs.


(S.P. Biswas)
Member(A)

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