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Central Administrative Tribunal
Principal Bench: New Delhi

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OA No. 1513/97

New Delhi, this the 29th day of August, 1997

Hon'ble Dr. Jose P. Verghese, Vice-Chairman(J)
Hon'ble Shri K.Muthukumar, Member (A)

1. Smt. Sarada Rani,
wd/o late Shri Sant Ram,
r/o G-2343, Netaji Nagar,
New Delhi.

2. Sh. Anil Kumar,
s/o late Sh. Sant Ram,
r/o G-2343, Netaji Nagar,
New Delhi.

...Petitioners

(By Advocate: Shri George Paracken)

Versus

1. The Chief Election Commissioner,
Election Commission of India,
Nirvachan Sadan,
New Delhi - 110 001.

(By Advocate: Shri Arun Birbal)

2. Director,
Directorate of Estates,
Nirman Bhawan,
New Delhi.

....Respondents

(By Advocate: Shri R.V.Sinha)

O R D E R (ORAL)
[Dr. Jose P. Verghese, Vice-Chairman (J)]

The petitioner in this case is challenging the order of voluntary retirement said to have been passed with retrospective effect on the ground that the said order has been passed without application of mind and in reality his case should have been treated as a case of death while in service and on the said basis consequential benefits such as the pension, the compassionate appointment to one of his wards and permission to retain the quarters in the circumstances are also sought.

2. In reply to show cause notice the respondents Commission has stated that the petitioner, the wife of late Sh. Sant Ram, had represented to the Commission on 6.8.1996 that her son Mr. Raj Kumar aged 25 years who has passed 9th standard may be appointed on a suitable post, on compassionate grounds. According to the Commission, the provision for compassionate appointment is applicable to the son or daughter or a near relative of the government servant who dies in harness including death by suicide leaving his family in immediate need of succor/assistance when there is no other earning member in the family. It was also stated that in an exceptional case when the department is satisfied that the condition of the family is indigent and is in great distress, the benefit of compassionate appointment may also be extended to a son/daughter or near relative of a government servant retired on medical ground under Rule 38 of CCS(Pension) Rules, 1972, but it was stated by the respondents that the appointment under such Head can be considered only when Govt. servant retires on medical ground before attaining the age of 55 years. The submission of the respondents is that in the present case the date of retirement being 14.6.1996 on medical grounds, the petitioner was at the time of retirement was 55 years 7 months and 12 days of age, hence, his son cannot obtain the benefit of compassionate appointment. At the time of hearing, respondents have produced the rules, we have perused the same and we find these rules are only

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guidelines/instructions to be applied in each particular case at hand. We are not looking into the validity of these guidelines/instructions at present.

3. Respondents themselves have, at para 3.5, stated that on 14.8.1995 late Sh. Sant Ram, who was holding the post of Assistant, had himself requested to the Commission that he may be allowed to retire from service on medical grounds and his son Shri Raj Kumar aged 25/26 years who has passed 9th standard may be appointed to suitable post on compassionate grounds. Had the respondents considered the case in accordance with the rules within three months, the allegation that the case of compassionate appointment cannot be considered for want of minimum three years residual service at the time of retirement, would not have been a good defence for the respondents. The respondents should have in the present case considered the retirement, any time within three months after the original applicant admittedly is said to have been made on 14.8.1995. In the circumstances the respondents shall consider the case of the son of late Sh. Sant Ram for compassionate appointment.

4. The petitioner had claimed in the petition a relief also to quash the order of voluntary retirement passed on 14.6.1996 on the ground that the said order has been passed with retrospective effect and the said order has no legs to stand especially because late Sh. Sant Lal was not in his full senses to make such an application.

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for voluntary retirement and application for voluntary retirement pre-supposes a basic mental capacity to do so and the averments made in the reply itself indicate that the petitioner was on medical leave since November, 1991 and obtained a certificate from Department of Psychiatric, CGHS Centre, Kidwai Nagar, New Delhi showing that the petitioner was being treated for "Dep Psychosis". It was also stated that on the basis of a certificate issued by the competent authority on 7.11.1992, Shri Sant Ram was found to be mentally depressed and physically weak and apparently, there was very little chance of his resuming duties in the near future. It was also an admitted fact that Shri Sant Ram died on 24.11.1996. In the circumstances, the voluntary retirement order passed by the respondents on 14.6.1996 passed on application made by late Shri Sant Ram in the condition stated above is to be treated an application from a person whose mental capacity was not to the extent that he could make an application for voluntary retirement.

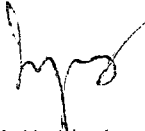
5. We are of the opinion that the present case cannot be treated as a case of voluntary retirement rather it should be treated as death in service and the petitioner herein will be entitled to all consequential benefits. The extreme indigent condition of the petitioner and her family, has also been brought to our notice. It also goes without saying that the consideration of compassionate appointment of the son or near

relative of late Shri Sant Ram shall be not as if Shri Sant Ram retired voluntarily rather he died while in service.

6. The final relief sought by the petitioner in this OA is that since there is considerable delay in obtaining the compassionate appointment at the instance of the respondents and this petition was pending in this court, as the petitioner and her family, in an extremely indigent condition since 1991, has been occupying the quarter and an order of eviction at this stage will not be justified on any count. We are unable to pass any order staying the eviction of the petitioner until an appointment order is passed by the Commission. We would like only to direct the respondent no. 2 to pass appropriate orders in the light of the observations made in this OA whether the petitioner could be allowed to continue without treating this case as precedent, and the petitioner and her family members may be allowed to continue in the quarter till an appointment order on compassionate grounds is passed by respondent no. 1 or not. The said order shall be passed within four weeks from the date of receipt of the copy of this order and the same may be communicated to the petitioner till then, the petitioner and her family members shall not be removed from the quarters in their possession. This direction given to respondent no. 2 shall confine to the facts and circumstances of this case only and in the meantime before respondent no. 2 pass an appropriate order, the appointment on compassionate ground is

forthcoming from respondent no. 1, the respondent no. 2 shall also consider the case of the petitioner for an immediate adhoc allotment in accordance with the rules.

7. The OA is allowed to the extent above with no order as to costs.



(K. Muthukumar)
Member (A)



(Dr. Jose P. Verghese)
Vice-Chairman (J)

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