

Central Administrative Tribunal
Principal Bench: New Delhi

9

OA No. 1962 of 1997 decided on 2.6.1998

Name of Applicant: Smt. Leelawati a anr.

By advocate: Sh. D.M. Sharma

Versus

Name of Respondents: Union of India

By advocate Sh. N.S. Mehta

Coram


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

1. To be referred to the Reporter or not?

Yes

2. Whether to be circulated to other
Benches of the Tribunal?

No


(N. Sahu)
Member (A)

10

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No. 1962 of 1997

New Delhi, this the 2nd day of May, 1998

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

1. Smt. Leelawati, Widow of late Shri Kailash Chandra, (Formerly Mazdoor (Civilian) of Office of Garrison Engineer (M.E.S.), Mathura. Present Address : C/o Shri Ghanshyam (Railway Wale), Nihal Vihar, Near Nala, Jwala Puri, New Delhi.
2. Shri Jagdish Kumar, S/o late Kailash Chandra, Present Address : C/o Shri Ghanshyam (Railway Wale), Nihal Vihar, Near Nala, Jwala Puri, New Delhi.

- APPLICANTS

(By Advocate Shri D.N. Sharma)

Versus

1. Union of India (Through : The Secretary to the Govt. of India), Ministry of Defence, South Block, New Delhi.
2. The Quarter Master General, (Engineer-in-Chief Branch), Sena Bhawan, Army Headquarters, New Delhi.
3. The Chief Engineer, Headquarters Central Command, Lucknow Cantt.
4. The Garrison Engineer (M.E.S.), Mathura Cantt.

- RESPONDENTS

(By Advocate Shri N.S. Mehta)

O R D E R

By Mr. N. Sahu, Member (Admnv) -

The prayer of applicant no.2 in this Original Application is for a compassionate appointment appropriate to his educational qualification.

2. The brief facts are that applicant no.1 is widow of late Shri Kailash Chandra, a permanent civilian mazdoor of the office of Garrison Engineer

_____(MES), Mathura. Her husband expired on 14.5.1993. She sought a compassionate appointment for her son Jagdish Kumar, applicant no.2. Her application was processed. She furnished his physical fitness certificate from the Chief Medical Superintendent, Mathura. His character and antecedents were also verified. Certain documents were also called for. She was informed by respondent no.4 by a letter dated 23.8.1993 that his case was under consideration by the higher authorities. Waiting for a long time applicant no.1 moved a representation on 3.4.1996 to respondent no.4 and an appeal on 5.8.1996 to respondent no.2. There was no response to these representations and hence this Original Application.

3. After notice, the respondents state that the Board of Officers duly recommended his case and forwarded the same to the appointing authority, namely, CELZ Lucknow. They also state that the applicant no.2 is one of those deserving candidates who are in the waiting list and his number in the waiting list is 76 based on the date of death of his father. It is stated that his appointment will be considered after vacancies are released. The next point made was that applicant no.1 has three adult sons, of whom two are residing separately. The youngest son looks after her. She gets a family pension of Rs. 490/- plus dearness allowance. She has also been paid Rs.75,980/- by way of terminal benefits. The Garrison Engineer reported that she

:: 3 ::

has no source of income except pension. She has also no immovable property. She depends on physical labour to manage her livelihood.

4. The learned counsel for the respondents states that although applicant no.2 has been found fit for compassionate appointment, yet as there are other persons waiting in the line, he has to wait for his turn. As there are no posts now, the respondents are waiting for release of posts.

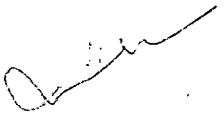
5. I have heard both the counsel. Applicant No.2 was empanelled for compassionate appointment for the last five years. He has expressed his willingness to take up appointment at any establishment/ formation under control of respondent no.3.

6. The respondents have not correctly appreciated the law laid down by the Hon'ble Supreme Court in respect of compassionate appointment. In the case of Umesh Nagpal Vs. Union of India, JT 1994 (3) SC 525 their Lordships laid down that a compassionate appointment is not a matter of right. It is given only to deserving people in lieu of long years of service rendered by the deceased to the organisation. This appointment is given only as a succor to the family because of the loss of the only bread winner in the family to save them from penury and starvation. It is for the appointing authority to investigate and decide as to whether the

:: 4 ::

applicants' family is really destitute and deserves immediate relief by way of compassionate appointment. Once the appointing authority is satisfied that applicant no.2 deserves such an appointment, there should be no delay in giving him the job. Thus, any delay defeats the very purpose of compassionate appointment. In this case five years have already passed. Applicant no.2 is stated to be no.75 in the waiting list.

7. I will examine the issue from two angles. Let us assume 75 posts are released. Does it mean that all the 75 persons waiting will be given compassionate appointment? Such an appointment is not a substitute for the appointment to a public service under Article 16 of the Constitution where any appointment to a public post is made as per the notified rules amongst deserving candidates who compete and get selected to a post. It does not mean that wards of dying employees shall automatically get appointment. This is absurd and it subverts the very constitutional philosophy of public service and appointment to a public post by every eligible Indian on the basis of rules, selection, merit and qualification. One is amused by the stand taken by the respondents that although applicant no.2 deserves an appointment, he is kept at no.75 in the waiting list and he has to wait for his turn. Supposing the 75th post comes after another 10 years. Does it mean that applicant no.2 has to wait for 15 years to get a



:: 5 ::

compassionate job? This again is contrary to the law on the subject and contrary to the pronouncement of the Hon'ble Supreme Court.

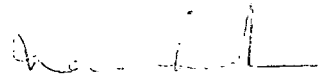
8. There can be no question of a waiting list of deserving persons for getting a compassionate job. That proposition is totally misplaced. If the respondents find a particular applicant to be fit for compassionate appointment, the order should be issued forthwith say, within a period of three months. Otherwise it would not be a case of compassionate appointment. There is no question of compassion if some one has to wait for 5 years to 10 years to get a job.

9. The admitted position, however, is that applicant no.2 deserves a compassionate job. I do not know whether the other 74 are equally deserving. I would, therefore, direct in accordance with law laid down by the Hon'ble Supreme Court in Nagpal's case (supra) to re-examine their stand in the light of the Supreme Court's decision. If the posts are available, then applicants for compassionate appointment shall be given a job within a reasonable time which shall not be more than 3 to 6 months. Otherwise the respondents can state their stand candidly so that the applicants do not nurture false hopes of getting compassionate job and waiting for years on. Such a position is contrary to the law laid down on the subject.

10. As far as relief to applicant no.2 is concerned, it would depend on whether there is any vacancy and whether the respondents can create a post for such a case. They have to deal with other pending claims. The respondents cannot naturally offer a job unless there is a sanctioned post available.

// In the circumstances, the respondents are directed to decide within a period of four weeks from the receipt of a copy of this order as to whether they can create a post, regular or supernumerary, for applicant no.2 to whom the Board has already approved as a deserving case. If they can, they should also make up their mind to issue the order forthwith. If they cannot, they should inform their inability. They cannot issue an order of compassionate appointment after a long delay. They have to understand that the compassionate appointment is a departure from the normal provisions applicable to public appointment and such a departure can be tolerated only within the four corners of the law laid down by the Hon'ble Supreme Court.

12. With the above observations, the Original Application is disposed of. No costs.


(N. Sahu)
Member (Admnv) 21/6/98

rkv.