

(17)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No. 440 of 1997

New Delhi, this the 3<sup>rd</sup> day of April, 1998

Hon'ble Mr. N. Sáhu, Member (Admnv)

Adesh Kumar Rai, S/o Shri Baleshwar  
Rai, r/o 173, Gali No.9, Neeti  
Vihar, Delhi -110032, - APPLICANT

(By Advocate R.P. Kapoor)

Versus

1. The Union of India, Ministry of Agriculture, thru their Secretary, Krishi Bhawan, New Delhi.
2. The Under Secretary (K), Indian Council of Agricultural Research, Krishi Bhawan, New Delhi.
3. Senior Administrative Officer, Indian Council of Agricultural Research Institute, Pusa, New Delhi.
4. The Appointment Committee, thru Senior Administrative Officer, I.A.R.I., Pusa, New Delhi.

RESPONDENTS

(By Advocate Shri V.K. Rao)

ORDER

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

The plea in this case is for appointing the applicant on compassionate grounds.

2. The applicant's father Shri Baleshwar Rai worked as Beldar in 'Grade D' service in the Farm Operation Service Unit of the I.A.R.I., Pusa. The said Baleshwar Rai suddenly disappeared on 31.7.1984 and was not traceable thereafter. The applicant's mother applied in 1989 for her appointment on compassionate grounds and this was turned down (Annexures 5 to 9). Later on she got her name

*[Signature]*

registered in the Employment Exchange and on 2.7.1989 she was appointed as Beldar. The applicant's main claim is that this appointment was in the normal course and no compassionate consideration was involved. The applicant's elder brother applied for compassionate appointment but that too was turned down. He was independently again appointed as a casual Beldar in Group 'D'. He was thereafter retrenched but under the orders of the Tribunal he was put back in service. In the year 1995, according to the narration in the O.A., the family felt that the father of the applicant was no more and after that belief the applicant having attained 20 years of age offered himself for an appointment on compassionate grounds. The grievance of the applicant is that he was not extended a fair and just consideration and his request was not acceded to. He relies on the decision of the Hon'ble Supreme Court in the case of Smt. Sushma Gosain Vs. Union of India, AIR 1989 SC 1976 = 1990(1) SLJ 118. His case has not been disposed of so far. It is in the above circumstances that there is a prayer for considering his case sympathetically for a compassionate appointment.

3. After notice, the respondents state that the father of the applicant was missing since 1988. There was no need for them to wait till the applicant attained majority. The purpose of compassionate appointment was to extend succour to the bereaved family on account of the death of the sole bread winner. It is stated that the Apex Court

held that compassionate appointment cannot be claimed as a matter of right. It is for the appointing authority to decide each and every case on merits. The respondents tried their level best to locate Shri Baleshwar Rai. Without any clue about his whereabouts, they appointed his wife Smt. Jaya Devi in a Group 'D' post on compassionate grounds. It would be inconsistent with the principle of compassionate appointment to wait for a long period of seven years so that under Sections 7 and 8 of the Evidence Act there could be a conclusive legal finding about the death of Shri Baleshwar Rai. Smt. Jaya Devi, wife of Shri Baleshwar Rai, was initially engaged as a casual labour and subsequently after her name was sponsored through the employment exchange she was regularly appointed when she completed 480 days in two consecutive years. It was stated that this was done with a view to help the family on humanitarian grounds. Because of the regularisation of the mother, the application of the eldest son of Shri Baleshwar Rai was also rejected because the mother would look after her children in every respect. Thereafter in an affidavit filed on 10.2.1998 the respondents have reiterated the above statements. The main stand taken was that although there was no provision for providing compassionate appointment to the wife of a missing Government employee the respondents considered her request on humanitarian ground and engaged her as daily paid worker. Later on, the compassionate appointment committee in its meeting held on 4.4.1989 recommended her appointment



to 'Group D' subject to relaxation of age. Accordingly after obtaining age relaxation from the competent authority she was offered regular employment with effect from 3.8.1990.

4. I have also considered the affidavit filed on behalf of the applicant on 13.2.1998. In sum and substance it is stated that there is no case for a compassionate appointment in the event of a missing employee. The late Baleshwar Rai can be treated as dead only in the year 1995-96. The respondents cannot deny the applicant a compassionate appointment because they had appointed his mother on compassionate grounds. It is stated that her mother was appointed in the regular course and not on compassionate grounds. It is vehemently argued by the learned counsel for the applicant that this was a case of non-relaxation of age. There was no interview and there was no seniority list which was followed. The case was not referred also to Employment Exchange. Therefore, it was not a case of compassionate appointment. He states that in Annexure-5 the ICAR has taken a firm stand that the widow of a missing Government employee is not eligible for appointment on compassionate grounds. In Annexure-A-7 it is stated that Smt. Jaya Devi was asked to appear for an interview before a Selection Committee with a direction for production of her original certificates. This was dated 15.7.1989 and the interview was on 27.7.1989. Thereafter Smt. Jaya Devi the mother was appointed. If that were so, how can this be called a compassionate

appointment? The argument is that all records were consistent with the fact that Smt. Jaya Devi was not issued a compassionate appointment except in the case of age relaxation.

5. The File No. 6-11/86 P -III was produced. I have seen the notes of the Senior Administrative Officer dated 9.7.1990 and the Joint Director on 17.7.1990. The notes point out that she was engaged as a daily paid labourer although she was overaged and her name was not sponsored by the Employment Exchange. Her case was submitted to the Compassionate Appointments Committee on 4.4.1989. It recommended that since her husband was missing with effect from 31.7.1984 and as she was continuously working as daily paid labour she might be given a regular job of SS grade subject to the "no clue" report received from the police. Even so, the ICAR had stated that a widow of a missing Government employee is not eligible for appointment on compassionate grounds. Thereafter Smt. Jaya Devi made a representation that she had completed more than 240 days and her case was again re-considered for appointment on compassionate grounds. The power to relax the age has been delegated to the Director of the Research Institute. This matter was again reconsidered and a precedent was quoted in that one Smt. Jamna Devi, wife of Shri Roop Chand, was appointed under similar circumstances and, therefore, she was working as daily paid labourer since 1985 and had completed 240 days she was considered for appointment. The letter

of the Senior Administrative Officer dated 25.8.1990  
to the Deputy Director, ICAR, Krishi Bhawan explains  
the entire case.

6. I have carefully considered the submissions by the rival counsel. I am of the view that the decision of the respondents to appoint Smt. Jaya Devi initially as a casual labour and eventually as a Group 'D' can also be called a compassionate appointment. The applicant's case has absolutely no merit in the light of the decision of the Hon'ble Supreme Court in the case of Umesh Nagpal Vs. Union of India, (1994) 27 ATC 537. A compassionate appointment is to be given only to one member of the family and that too to tide over the sudden financial crises arising out of the death of the sole bread winner. The mother of the applicant has accordingly been appointed. The applicant has no locus standi to question the vires of this appointment. The ICAR initially appointed her as a casual labour and after some years of service through a regular procedure of consideration by a committee and thereafter after obtaining age relaxation regularised her in Group 'D'. The fact is borne from the record that the elder brother of the applicant is also employed. Thus, in this family there are now two sources of income. The applicant again cannot claim a compassionate appointment and that too 14 years after the death of the bread winner. Nagpal's case (supra) has laid down a proposition that a compassionate appointment should be given at the earliest possible time. At any rate

(22)

there cannot be a delay of 10 to 14 years. The question that would arise is how the family was pulling on for all these years. If they had enough to carry on and fight litigation, there is no justification for them to plead a compassionate appointment. The file produced before me shows that the respondents considered the case of Smt. Jaya Devi soon after the disappearance of Shri Baleshwar Rai, her husband. As far as compassionate appointment is concerned I do not think in the light of the decision of the Apex Court there is any infirmity in their consideration. There may be technical blocks because Shri Baleshwar Rai was missing and not dead in harness. But what is to be seen in a compassionate appointment is how to relieve a distressed family. This Court cannot be made a battle ground to adjudicate the competing claims of the rival members of the family for compassionate appointment. In that event the only inference possible is there can be no case for compassion. I have perused the file before me. I have noticed the concern shown by the authorities for the relief to the family immediately after the death. They have properly considered the claim of Smt. Jaya Devi and over a period of time regularised her services. I find absolutely no merit in the applicant's case.

7. In the result, the Original Application is dismissed. No costs.

Ans  
 (N. Sahu) 3:498  
 Member (Admnv)

rkv.