

Central Administrative Tribunal
Principal Bench, New Delhi.

O.A.No.2135/94

New Delhi this the 24th Day of July, 1995.

(13)

Hon'ble Sh. B.K. Singh, Member(A)

Shri N. Rosia,
S/o late Sh. N. Kondiah,
R/o House No.14, Double Storey,
Jaisalmir House, Mansingh Road,
New Delhi.

Applicant

(through Sh. O.P. Khokha, advocate)

versus

Union of India, through

1. The Secretary,
Ministry of Home Affairs,
North Block,
New Delhi-1.
2. The Director of Estates,
Nirman Bhavan,
New Delhi-11.

Respondents

(through Mrs. Raj Kumari Chopra, counsel for R-1 and
Sh. B.K. Punj, proxy counsel for Sh. M.M. Sudan,
counsel for R-2)

Sh. M.M. Sudan, advocate)

ORDER (ORAL)

delivered by Hon'ble Sh. B.K. Singh, Member(A)

This O.A. is directed against Annexure A-1
wherein the request of the applicant for regular
appointment has been rejected by the respondents.

The admitted facts are that the applicant
Smt. Note Roshamma who was working as Safai Karamchari
in the Ministry of Home Affairs expired on 24.6.1993.
The retiral benefits which have been granted by the

(Signature)

respondents to the applicant are given below:-

(X)

1. Enhanced family pension
w.e.f. 25.6.93 Rs. 442.00 p.m.

2. Thereafter family pension
w.e.f. 25.6.2000 Rs. 375.00 p.m.

3. against Insurance Cover Rs. 15,000.00

4. from saving fund of the
C.G. Employees Group
Insurance Scheme, 1980. Rs. 1,885.00

5. Death Gratuity Rs. 10,608.00
(less recovered towards
licence fee, festival
recovery & withheld for
want of NOC from Dte.of
Estate) Rs. 1,360.00

Paid. Rs. 9,248.00

Total (3), (4)
and (5) Rs. 26,133.00

The reliefs sought in the O.A. are:-

- (i) to direct the respondent No.1 to appoint the applicant against a suitable post in Group-D post with immediate effect.

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(ii) to adjust the applicant in any group-D post w.e.f. the date he has been working as Daily Wager performing the duties of a peon etc.

(iii) to allow him to stay in Qr.No.14, Double Storey, Jaisalmir House, New Delhi till his request for employment against Group-D post is reconsidered after which the said quarter can be regularised.

Heard the learned counsel of the rival parties and perused the record of the case.

It is admitted that the respondents have engaged the applicant on daily wage basis in response to the representation filed by the applicant to the Minister of State, Ministry of Home Affairs and the reply given by the respondents is that they have considered the matter sympathetically and on compassionate ground the applicant was engaged on daily wage basis w.e.f. 3.1.1994. This also according to the respondents has been done as a special case keeping in view the financial difficulties of the applicant and on account of the demise of his mother who was the sole bread earner for the family.



The learned counsel for the applicant vehemently argued that the family is in indigent circumstances and as such he is entitled to compassionate appointment and in this connection he has relied upon the judgement of the Hon'ble Supreme Court given in the case of Umesh Kumar Nagpal Vs. State of Haryana reported in JT 1994(3) SC 525 and also that of Sushma Gosain & Ors. Vs. Union of India & Ors. reported in 1989(4) SLR 327 and another judgement Auditor General of India Vs. Ananta Rajeshwar Rao reported in JT 1994 SCC 192. In the light of the observations of his Lordships in these judgements, the learned counsel for the applicant argued that the case deserves consideration at the hands of the respondents for employment against a group-D post.

The learned counsel for the respondents rebutted the arguments of the learned counsel for the applicant by quoting the paragraphs from the judgement of the Hon'ble Supreme Court in the case of Umesh Kumar Nagpal Vs. U.O.I. (supra) and argued that this judgement goes against the applicant because the ratio of the judgement is to the effect that the person seeking the compassionate appointment must be in absolute penury and without any means of livelihood. She argued that this is not a case of compassionate appointment at all as per the normal law laid down by the Hon'ble Supreme Court in the case of Umesh Kumar Nagpal. The law laid down is that unless it is shown that but for a compassionate appointment the whole family would be facing a situation of starvation, the question of compassionate appointment could be

considered. In the instant case, the applicant is getting Rs.442.00 p.m. as family pension and he is earning Rs.2039/- on daily wage basis. Thus, she argued that the family is not in indigent circumstances and, therefore, cannot claim compassionate appointment as a matter of right. She further argued that there is no vacancy in Group-D post and that the court has no jurisdiction to issue any direction for creation of a post which falls within the domain of the executive. The Hon'ble Supreme Court has categorically laid down that the creation, abolition and extension of posts is not within the jurisdiction of the courts and they should not issue any direction in regard to these matters. In the light of the observations of the Hon'ble Supreme Court in a catena of judgements that these are policy decisions of the Government and the Courts must decline to interfere in these matters. This is admitted. This Court is not competent to issue any direction for creation of a post. However, it is for the respondents to consider the case of the applicant, if so advised, for a compassionate appointment. The learned counsel during the course of arguments said that the case was sympathetically considered and he was given engagement w.e.f. 3.1.94. The daily wage appointment itself changes the entire complexion of the case for compassionate appointment. This being so, the prayer for compassionate appointment and for issuance of a direction for creation of a group-D post is declined.



Since the applicant is not a regular employee of the Government and is not a holder of a civil post, I cannot issue any direction to regularise the quarter occupied by his mother in the name of the applicant. It is presumed that he would have paid the normal licence fee for four months and double the normal licence fee for another four months. If that period is over, rest of the period will be deemed as an unauthorised occupation. The respondents are well within their competence to charge market rent/penal rent following the procedure laid down in Section 7 of the P.P.E. Act, 1971. The stay order granted by the Court is vacated because the quarter cannot be regularised and also cannot be allotted to him since he is not a regular employee of the Government.

Keeping in view the decisions of the Hon'ble Supreme Court, I do not find any justification for allowing the relief prayed for. However, the Court leave the discretion to the respondents to consider the case of the applicant in its own turn on merits and according to law for compassionate appointment. Accordingly, the application is dismissed as devoid of any merit, leaving the parties to bear their own costs.


(B.K. Singh)

Member(A)

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