

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

D.A. NO. 2137/94

New Delhi, this the 7th day of July, 1995

Hon'ble Shri J.P. Sharma, Member (J)

1. Shri Soma,
s/o Shri Gopi,
2. Gyanshwar Dayal,
s/o Shri Soma,
R/o Village Basant Nager Post,
Muradnagar,
Distt. Ghaziabad, U.P.

... Applicants

By Advocate: Shri V.P. Sharma

Vs.

1. Union of India
through the Secretary,
Ministry of Defence Production,
Govt. of India, New Delhi.
2. The General Manager,
Ordnance Factory Muradnagar,
Distt. Ghaziabad, U.P.
3. The Director General,
Ordnance Factory Board,
10-A Auckland Road, Calcutta.

... respondents

By Advocate: Shri V.S. R. Krishna

ORDER(ORAL)

Shri Soma was medically boarded out when he was 57 years of age while working in the Ordnance Factory, Muradnagar as a workman. His incapacity to work has been due to his employment with the respondents as a moulder. The family of the employee who has been medically boarded out consists of 3 major married sons and one married daughter. The employee

also got about Rs.45,200/- as terminal benefits besides the pension getting monthly at the rate of Rs.515 per month plus 97% relief. Applicant No.2. Shri Gyaneshwar Dayal is the son though married and major applied for compassionate appointment and his request has been rejected by the respondents on the grounds that the major married sons and daughters are not considered as dependent and the employee owns his own house in Muradnagar and also got adequate terminal benefits sufficient to maintain the medically boarded out employee and his wife. Aggrieved by this order, the present application has been filed and the respondents contested this application highlighting the ratio of the case L.I.C. Vs. Mrs. Asha Ramchander Ambedkar reported in JT 1994(2)SC 183. It is stated that the family of the medically boarded out employee has no minor issues who can be said to be dependent on the family of the employee. It is also stated that the applicant No.2 has not filed any such certificate to show that he was declared unsuccessful in the High School examination but he only filed a transfer certificate from an Instutition.

(9)

The applicant has not filed any rejoinder.

I heard the learned counsel for the applicant Shri V.P. Sharma and counsel for the respondents Shri V.S.R. Krishna. The learned counsel for the respondents hammered persistently that a married major son cannot be said to be dependent on the medically boarded out employee. However, it could not substantiate this averment by citing any authority, rule, regulation or administrative instructions. The learned counsel has however projected that this has been the consistent view maintained by the department in disposing of such applications of compassionate appointment. The action by the administration should not be arbitrary. The O.M. in question issued by Ministry of Personnel No.14014/6/86-Estt.(D) dated 30.6.87 clearly lays down that where a department is satisfied that the condition of the family of a person who has been retired on medical grounds under Rule 38 of the Central Civil Services(Pension)Rules,1972, or corresponding provisions in the Central Civil Service Regulations before attaining the age of 55 years. In the

case of Group 'D' employees who superannute at the age of 60 years, the benefit of compassionate appointment can be given to one of their wards. Here the majority or minority of the ward is not at all considered by the Department of Personnel. The majority is attained by a person at the age of 18 years. In some service rules entry to service is at the age of 18 years and that may continue upto the age of 26 years and in some cases upto 30 years. When the employment is open to such persons who are beyond the age of majority for considering compassionate appointment, the majority cannot stand in the way. Regarding the fact that whether a marriage should stand in the way of a deserving candidate; if the family is indigent, that shall be discriminatory in the sense that the married and unmarried persons cannot be sought distinct class for the objective to be achieved. If a person is married at a younger age then he cannot be said to be disqualified. Customs which have sanctions of law and are perpetual in nature have been established to be a good law. Thus marriage by itself should not deprive of a deserving candidate for compassionate appointment if the family is indigent.

(10)

The impugned order as well as counter filed by the respondents go to show that the need of Applicant No.2 has not been considered and has been rejected only because he was married. The action of the respondents is unfair, unjust, unequitable and cannot be sustained.

In view of the above facts and circumstances, the case is sent back to the competent authority to consider the case of Applicant No.2 on compassionate ground as per O.M. referred to above dated 30.6.87 as to whether the family of deceased is indigent taking into account that there are two other major married sons who are also earning members, may be separate considering the law laid down in the case of L.I.C. Vs. Asha Ramchander Ambedkar (supra).

The application is disposed of with the above observation and the respondents to comply with the directions of considering a fresh the case of Applicant No.2 on the observation made in the body of this order and decide the case within a period of four weeks from the date of receipt of this order. Cost on parties.

J. P. SHARMA
(J. P. SHARMA)
MEMBER (J)

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