

10

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

O.A.NO.2389/94

New Delhi, this the 24th March, 1995

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

1. Mrs. Aruna Debsal,  
w/o late Sh. Shiv Prasad Debsal,  
r/o 75, Press Road,  
New Delhi.

2. Shri Bhushan Debsal,  
s/o late Shri Shiv Prasad Debsal,  
75, Press Road, New Delhi.

... Applicants

By Advocate: Shri B.T. Kaul

Vs.

1. Union of India  
through the Secretary,  
Ministry of Urban Development,  
Nirman Bhawan, New Delhi.

2. The Directorate of Printing,  
through the  
Director of Printing,  
Nirman Bhawan,  
New Delhi.

3. The Manager &/Cum-Estate Officer,  
Govt. of India Press,  
Minto Road,  
New Delhi.

... Respondents

By Advocate: Shri Madhav Panikar

ORDER

Shri Shiv Prasad Debsal, Compositor Grade I, who died in harness was working in the office of Govt. of India press, Minto Road, New Delhi on 5.10.92. He left behind his widow, Applicant No.1, son Bhushan Debsal, Applicant No.2 aged 27 years, another unmarried son Atul Debsal, aged 32 years and 2 daughters Ms. Kiran and Bimla. On the death of the employee, the family was given a family pension of Rs. 1800/- p.m. which includes basic pension of Rs. 825/- and other retirement benefits amounting to Rs. 1,68,580/-. The eldest son i.e. Atul is also employed in United India Assurance Company

J

and is getting about Rs.3300/- p.m. as his emoluments. The case of the applicants is that the family needs immediate rehabilitation and the Applicant No.2 be given compassionate appointment on any of the posts for which he is eligible to supplement the income of the family. It is further stated that the amount of Rs.1,68,580/- which was received by the family as retirement benefits of the deceased employee was spent away in the marriage of one of the daughters and that the elder son Atul is living separately since 1986 and is not looking after the interest of the family nor giving any financial help. The representation was made to the respondents and by the order dated 19.10.93 and by the order dated 11.7.94, the request was turned down holding that the criterion for giving compassionate appointment is not met in the case of the applicant.

2. The applicants have filed this application in December, 1994 and have prayed for the grant of the reliefs that the impugned order dated 11.7.94 be quashed and the eviction notices dated 25.8.93 and 17.11.94 be also quashed and the case of the Applicant No.2 be considered in accordance with the instructions on the subject and appoint the applicant in their office on compassionate ground. The applicants have also prayed for the grant of the interim relief that they should not be evicted from the allotted quarters. The Tribunal considered the same on 3.1.95 and the same was not allowed. During the course of hearing, it appears that the applicant has since vacated the said premises allotted to the deceased employee and only the issue for consideration in this C.A. is whether the applicant is entitled for compassionate appointment as per relevant instructions on the subject.

3. The respondents have contested the case and in the reply stated that the family of the deceased cannot be treated to be in indigent condition and the case has not been found fit and deserving one for appointment on compassionate ground. It is stated that the deceased was Compositor Grade I and on his death a sum of Rs.1,68,580/- has been paid to the family as the retirement benefits of the deceased and also a family pension has been awarded. One of the sons of the deceased is also employed in United Assurance Company India and getting a salary of Rs.3,300/- p.m.. It is said that the impugned order does not call for any interference.

4. The applicant has also filed the rejoinder reiterating the facts but denied in the rejoinder that immoveable property i.e. house is owned by the family of the deceased employee. It is reiterated that the family needs immediate rehabilitation.

5. Heard the learned counsel of both the parties at length and perused the records. The learned counsel for applicant has referred to the circular O.M. No. 14014/20/90-Estt(D) dated 9.12.93 of Ministry of Personnel, Public Grievances and Pensions. Circular O.M. No. 14014/5/86/Estt(D) dated 30.6.87 and other O.M.s. dated 17.2.88, 22.9.92, 28.9.92 and 25.1.93 have also <sup>been</sup> referred to. The guideline has been laid down that no near relative will henceforth be eligible for appointment on compassionate ground and it is only a widow or son or daughter or adopted son or adopted daughter of a deceased Govt. servant who can be considered. This is because of the judgement of the Hon'ble Supreme Court in the case of Auditor General of India and others V. Shri G. Ananta Rajeswara Rao. It is said by the Hon'ble Supreme Court on 8.4.93. It is also

3

mentioned in the circular that in case where any member of the family of the deceased is already employed and is not supporting the other members of the family of the deceased, extreme caution has to be observed in ascertaining the economic distress of the members of the family of the deceased so that the provisions of appointment on compassionate ground is not circumvented and misused by making grounds that the members of the family already employed is not supporting the family. In the circular dated 28.9.92, the Ministry of Personnel has also clarified that the application for compassionate appointment should not be rejected on the ground that the family of the deceased Govt. servant has received the benefits under the various welfare schemes. While those benefits should be taken into account, the financial condition of the family has to be assessed taking into account its liabilities and all other relevant factors such as the presence of an earning member, size of the family etc. so that a balanced and objective assessment is made on the financial condition of the family while considering a request for appointment on compassionate ground.

6. The contention of the learned counsel for the applicant is that the respondents have not applied their mind and the conclusion drawn that the family is not indigent is based on surmises. The matter has been considered by me in greater detail. The scheme of compassionate appointment was conceived as far back as in the year 1958 and since then a number of welfare measures have been introduced by the Government. The benefit therefore received under the aforesaid scheme has to be kept in view. The contention of the learned counsel that the retirement benefits received by the family of Rs.1,68,580/- could not at all be taken into

JL

X

account by the respondents cannot be accepted. The welfare scheme of family pension also to the widow of the deceased is about Rs.825/- p.m. alongwith 105% D.A. and the total amount being about 1800/- p.m. and seeing to the strength of the family that the deceased left behind 2 daughters and 2 sons, out of these 2 sons the elder is employed and is unmarried and is getting about Rs.3300/- p.m.. The contention of the learned counsel that the elder son is living separately and is not supporting the family is an after thought and since it has not been believed by the administration so the Tribunal cannot appreciate the same and come to another finding. Thus the family of the deceased is in the receipt of Rs.1800/- p.m. as family pension, Rs.3300/- p.m. as a salary of an unmarried son Atul and the retirement benefits to the tune of Rs.1,68,580/- has also been received. Though the counsel for the respondents has pointed out that the address of the deceased as well as of the applicant has been shown to be Dehradun and that they own a house but since the fact is denied by the applicants that may not be considered and has also not been observed to in the impugned order. In any case the Hon'ble Supreme Court has clearly laid down the law that the appointment on compassionate ground is not as a matter of right. In the case of LIC Vs. Mrs. Asha Ramchander Ambekar and Anr. JT 1994(2) SC 183 it has been held that the courts are to administer law as they find it, however, inconvenient it may be. In another recent decision in the case of Umesh Kumar Nagpal Vs. State of Haryana & Ors reported in JT 1994(3) SC 525

15

the Hon'ble Supreme Court held that the appointment in the public services should be made strictly on the basis of open invitation of applications and merit. However, there is one exception in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. It has also been observed by the Hon'ble Supreme Court that this exception to the general rule of giving appointment some Governments and public authorities have been offering compassionate employment sometimes as a matter of course irrespective of the financial condition of the family of the deceased. It is, therefore, evident that the Hon'ble Supreme Court has clearly held that only ground which can justify compassionate employment is the penurious condition of the deceased family. In the case Mrs. Asha Ramchander Ambekar, the Hon'ble Supreme Court has directed that the courts cannot order directly the appointment on compassionate ground but can only direct that the matter be considered by the respondents.

J

(b)

the contention of  
7. We, therefore, find no merit in the learned counsel  
that the family after the death of the employee was reduced  
to such a state of affairs to come within the definition of  
an indigent family. The reliance has also been placed by  
the learned counsel for the applicant on the case of Brij  
Bala and ors. Vs. UCI in O.A.No.980/92 decided on 16.2.93  
that is a case relevant to that issue only. The condition  
of that family was found by the respondents themselves and  
covered by the scheme and which was also considered by  
Tribunal as justified. That is not the case here.

8. In the above facts and circumstances, the application  
is totally devoid of merit and is dismissed leaving the  
parties to bear their own cost.

*J. P. Sharma*

(J. P. SHARMA)  
MEMBER (J)

'rk'