

Central Administrative Tribunal
Principal Bench

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O.A. No. 854/94

New Delhi, this the 19th Day of May, 1995

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

Surjeet Kaur (Smt.)
Wife of late Shri Nihang Singh,
Technician, Resident of 450,
Alipur, Delhi- 110 036.

Jaspal Singh,
s/o Late Shri Nihang Singh,
Resident of 450, Alipur,
Delhi- 110 036.

..... Applicants

(By Shri T.C. Aggarwal, Advocate)

Versus

Union of India through

1. Secretary,
Ministry of Information & Broadcasting,
Shastri Bhawan,
New Delhi- 110 001.

2. The Director General,
All India Radio,
Parliament Street,
New Delhi- 110 001.

..... Respondents

(By Shri P.H. Ramchandani, Advocate)

ORDER

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

The husband of the applicant Shri Nihang Singh

was Technician in the All India Radio who died in

harness on 3rd August, 1989 leaving behind the applicant

No. 1 the widow; the applicant no. 2 the son and

another son Sh. Gurdeep Singh and Ms Sukhraj, daughter.

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The family is in receipt of a family pension which was plus D.A. + I.R. Rs. 880/-/till 4.8.1986 and thereafter it had been plus D.A. + I.R. reduced to Rs. 450/- The elder son is employed. The applicant No. 1 made a representation to the respondents to appoint her son Sh. Jaspal Singh on compassionate ground and her claim was rejected against which the applicant filed O.A. No. 2577/92 which was decided by the order dated 16.4.1993 by the Principal Bench remanding the case with direction to the respondents to dispose of the representation of the petitioner by a speaking order. After the decision of the case the respondents again considered the matter and by the impugned order dated 1.11.1993, the Deputy Director again rejected the application. A notice was issued to the respondents on the relief prayed for by the applicants for giving compassionate appointment to the applicant No. 2 Shri Jaspal Singh on group 'C' post and the respondents have not filed any reply but Shri P.H.Ramchandani appeared and contested the admission of the application on 12.5.1995. Heard Shri T.C.Agarwal for the applicant who has advanced his arguments and the learned counsel wanted to cite some more judgements but the same has been given to the Court Officer today. The case of the applicant

is fully covered by the case of Asha Ram Chandra Ambedkar reported in Judgement / 1994(2) SC page 183. The Tribunal earlier considered the matter and remanded the case to the respondents to re-consider the case of the applicant. Respondents have again re-considered the matter and no prejudicial attitude has been shown by the applicant against the exercise of powers by the respondents. Though the retirement benefits received by the family of the deceased employee may not be the sole consideration to reject the claim of compassionate appointment but the retirement benefits can very well be taken into account. Similarly, whether the ⁱⁿ family is/indigent circumstances or not, the respondents can take into account whether any of the ward of the deceased employee is already engaged. The respondents have considered this matter.

The learned counsel for the applicant has relied upon certain authorities. He has cited the case of Phool Kumari v/s. UOI and others decided by the Jaipur Bench of CAT on 5 Feb., 1992 reported in 1993 (23) ATC page 548. In the reported case the Bench has not considered the latest decision of the Hon'ble Supreme Court of India. In the case of Asha Ram Chandra Ambedkar v/s. LIC reported in 1994(2) SC 183. The learned counsel has also cited the case of

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S. Ajitha Versus Union of India & Ors. reported in 1994 (27) ATC page 292 of the Ernakulam Bench and in this case also the Tribunal has not referred to the latest decision of Life Insurance Corporation of India (L.I.C.). The learned counsel has also referred to other decided case by various Benches of the Central Administrative Tribunal but these are all old decided cases and there is no reference of the case of Asha Ram Chandra Ambedkar. The learned counsel has also filed the circular of Ministry of Personnel, Public Grievance and Pension (DOP&T) No. 1215/90-CS.II dated 22.9.1992 where it is also written that appointment on compassionate ground should not be rejected merely on the ground that the family of the deceased employee has received the benefit under various welfare schemes. While these 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. DOP&T has also issued another

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Circular No. 14014/22/92-Estt(D) dated 25.1.1993 clarifying certain points that there is no ban for giving compassionate appointment by way of recruitment. The learned counsel has also referred to consolidated instructions issued by DOR&T dated 30.6.1993 in which all the points already referred to have been re-iterated. Having considered the guidelines laid down in the aforesaid O.Ms and the law cited by the applicant's counsel, the latest decision by the Hon'ble Supreme Court of India in Life Insurance Corporation of India's case(supra) is most relevant. The headnote of the same in Judgement Today which is a precise of para 10, 13, 18 & 19 of the report is quoted below:-

"Of late, this Court is coming across many case in which appointment on compassionate ground is directed by judicial authorities. Hence, we would like to lay down the law in this regard. The High Courts and the Administrative Tribunals cannot confer benediction impelled by sympathetic consideration... Yielding to instinct will tend to ignore the cold logic of law. It should be remembered "law is the embodiment of all wisdom". Justice according to law is a principle as old as the hills. The Courts are to administer law as they find it. However, inconvenient it may be... The Court should endeavour to find out whether a particular case in which sympathetic consideration are to be weighed falls within the scope of law. Disregardful of law, however, hard the case may be, it should never be done. In the very case, itself, there are Regulations and Instructions which we have extracted above. The Court below has not even examined whether a case falls within the scope of these statutory provisions. Clause 2 of sub-clause (iii) of Instructions makes it clear that relaxation could be given only when one of the members of the family is gainfully employed. Clause 4 of the Circular dated 20.1.1987 interdicts such an appointment on compassionate grounds. The appellant Corporation being a statutory Corporation is bound by the Life Insurance Corporation Act as well as the Statutory Regulations.

and Instructions. They cannot be put aside and compassionate appointment be ordered. Further it is well-settled in law that no mandamus will be issued directing to do a thing forbidden by law... It is true that there may be pitiable situations but on that score, the statutory provisions cannot be put aside... For aught one knows, there may be other cases waiting already for appointment on compassionate grounds, they may be even harder than that of the 2nd respondent. Thus, apart from the directions as to appointment on compassionate grounds being against statutory provisions, such decision does not take note of this fact. Whatever it may, the Court should not have directed the appointment on compassionate grounds. The jurisdiction under mandamus cannot be exercised in that fashion. It should have merely directed consideration of the claim of the 2nd respondent. To straightway direct the appointment would only put the appellant Corporation in piquant situation. The disobedience of this direction will entail contempt notwithstanding the fact that the appointment may not be warranted. This is yet another ground which renders the impugned judgement dated 19.10.1993 unsupportable. (Para 10, 13, 18 & 19).

The same view has been taken by the Hon'ble Supreme

Vs. State of Haryana
Court of India in the case of Umesh Nagpal/reported in

J.T.1994(3) SC page 525. The ratio laid down by the Hon'ble Supreme Court in considering the compassionate appointment to the ward of a deceased employee is to see whether the family is in indigent circumstances and needs immediate rehabilitation on account of the death of the employee.

Now, coming to the case in hand, one of the son of the deceased is in service. The widow is also getting pension. She has also been granted certain terminal benefits. In the application it is not stated that there are other liabilities besides the second son. The age of the ward has not been given by the applicant. It is not evident as to how much years were left to retire on superannuation of the deceased employee.

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The respondents have already considered the matter twice. The contention of the applicant's counsel is that there is no speaking order cannot be a ground to again remand the case to the department concerned. No malafide has been alleged against the competent authority or its sub-ordinates. The case of the applicant has been considered according to rules. No violation of the rules has been cited by the applicant nor argued by the counsel for the applicant.

In view of the above facts and circumstances, the applicant has got no case for getting the appointment on compassionate ground. The application is, therefore, dismissed accordingly with no orders as to costs.

J. P. Sharma

(J. P. SHARMA)
MEMBER (J)

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