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CAT/7/12

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI**

O.A. No. 1373/94
T.A. No.

199

DATE OF DECISION 6.2.1995

<u>Smt. Rishala and others.</u>	Petitioner
<u>Shri A.K. Bhardwaj.</u>	Advocate for the Petitioner(s)
Versus	
<u>Union of India & Ors.</u>	Respondent
<u>Shri V.S.R. Krishna.</u>	Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. J.P. SHARMA, MEMBER (J)

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement? 73
2. To be referred to the Reporter or not? 73
3. Whether their Lordships wish to see the fair copy of the Judgement? X
4. Whether it needs to be circulated to other Benches of the Tribunal? 2

For name

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Central Administrative Tribunal
Principal Bench, New Delhi

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OA No.1373/94

New Delhi, this the 6th February, 1995.

HON'BLE SHRI J.P.SHARMA, MEMBER(J)

Smt. Rishalo widow of late Sh. Mansha Ram
resident of House No. S 505,
School Block,
Shakarpur, New Delhi.

Mehar Chand son of late Shri Mansha Ram
resident of H.No. S-505,
School Block,
Shakarpur, New Delhi.

Applicants

(By advocate: Shri A.K.Bhardwaj)

Versus

Union of India through

The Secretary,
Ministry of Defence Production,
Central Secretariat,
New Delhi.

The Director General,
Ordnance Factories No. 10 Auckland Road,
Calcutta, W.Bengal.

The General Manager,
Ordnance Factory, Muradnagar,
Distt. Ghaziabad,
U.P. 201206.

Respondents.

(By advocate: Shri V.S.R.Krishna)

JUDGEMENT(ORAL)

HON'BLE SHRI J.P.SHARMA, MEMBER(J)

The deceased employee Shri Mansha Ram was employed as Core Maker and while in service he died in harness on 24.1.1993. As per admission of the respondents in their counter the deceased left the widow applicant No.1, Mehar Chand applicant No.2 unemployed son, Mahavir Singh aged 33 years employed son, Narendra Pal aged 30 years and other unemployed sons namely Kailash Chand, Kamal Singh and Shri Sanjay.

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2. The application was made for giving compassionate appointment to the applicant No. 2 as per the circular of DoP&T vide O.M. No. 49019/6/80/Estt.(C) dated 19th October, 1980 read with Circular No. 14014/6/86 dated 30th June, 1987. The respondents by the impugned order dated 12th June, 1993 rejected the prayer made by the applicant no. 1 i.e. widow for giving employment to Mehar Chand applicant No. 2 communicating that due to retirement benefits paid to her and after considering the details of the family and liabilities to be shared, the request for compassionate appointment could not be favourably accepted.

3. In this application filed by the applicants jointly in July, 1994, a prayer has been made that applicant No. 2 be given suitable appointment in the Ordnance Factory after quashing the order dated 12th June, 1993.

4. The respondents in their reply opposed the grant of the relief basically relying on the decision of the Supreme Court of India in the case of L.I.C. Vs. Mrs. Asha Ramchander Ambekar 'JT 1994(2) SC 183 read with another Judgement in the case of Umesh Kumar Nagpal Vs. State of Haryana (JT 1994(3)SC 325 in which Hon'ble Supreme Court of India in a similar matter has given certain directions in the form of guidelines to consider the request of compassionate employment of an employee who dies in harness. In short, it has been laid down that the financial condition of the family must be taken into account and that the family needs immediate rehabilitation on account of death of the sole bread earner of the family. It is further stated in the counter that a sum of Rs. 1,61,882/- were paid as terminal

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benefits on account of the death of the employee and that a sum of Rs. 1,255/- as family pension shall be paid to the widow of the deceased including all DA etc. upto the time the deceased would have attained the age of superannuation and thereafter this amount of pension shall be reduced according to rules.

5. It is also stated that there is a member earning in the family and he can also share the responsibilities and liabilities of the deceased employees and can rehabilitate the family in dire need. The applicant has not filed any rejoinder.

6. The contention of the learned counsel for the respondents is that the family does not come within the purview of the indigent family and in substituting this contention he has merely referred to retirement benefits paid to the widow on the death of the deceased employee. Firstly, the monetary benefits shall be inherited as per personal law of the deceased employee by all the surviving members including the married daughters. It may be that some of them may waive the claim but according to law all these monetary benefits cannot be said to be available to the widow of the deceased employee. As head of the family after the deceased employee, she has to bring up sons admitted-ly four of them are under 25 years of age as admitted by the respondents in their counter ^{un-} leaving aside the other_A employed son who is 33 years of age. The next contention of the learned counsel for the respondents is that one of the sons is employed and he can very well share the responsibilities and if he is not standing in the need of the family then there is no occasion to give back door employment to applicant No.2.

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7. It is not uncommon that after marriage the couple needs its own needs and the required attention to the other members of the family cannot be accepted so much as from the widow of the deceased. This comparative analysis has not been done by the respondents. The respondents have to ascertain what is the earnings of one of the employed son, what is the strength of the family and how much he can spare in these hard times for the well being of his other kith and kins. Learned counsel for the applicant has read out the impugned order which is in a cyclostyled form where blanks have been filled up. The respondents have been replying ^{more casually} ~~more carelessly~~ to all those who apply for the aid and compassionate appointment. The respondents have not applied their mind to the main issue in this case as to whether the family is in such a circumstances inspite of the largeness of the family and atleast four of the sons are under 25 years of age, unemployed, unmarried and have to be rehabilitated. The contention of the respondents' counsel that the request has been made for the employment of the 4th son cannot be taken as a ground as such the request of the widow has been ^{unfairly} turned down. It is the widow who can easily find out one of his sons who can look after the family in a better manner. The sons who are married of course have to look after their own family after marriage. After these two married sons applicant No. 2 comes next. The widow, therefore, has not arbitrarily choosen applicant No. 2 for consideration for compassionate appoitment.

8. DoP&T has also issued a circular in the year 1992 vide OM No. 14014/14/91-Estt.(D) dated 28.9.92 wherein it

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laid down that the application for compassionate appointment should not be rejected merely on the ground that the family of the deceased Government servant has received the benefit under the various welfare scheme. While these benefits should be taken into account, the financial conditions 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, ages of the children and the essential needs of the family etc. so that balance and objective assesement is made on the financial condition of the family while considering a request for appointment on compassionate ground.

9. The learned counsel for the applicant has also referred to another Circular of DoP & T issued on 28th August, 1993 vide OM No. 12/5/90-CS-II wherein it has been observed that in the case of Group 'D' staff where the employee has died in harness or retired on medical grounds, the request for appointment on compassionate grounds be considered more sympathetically.

10. Having given a careful consideration to all the points referred to above, the impugned order dated 12th June, 1993 cannot be said to be a fair and reasonable order passed by the respondents. The respondents have not considered the case of the applicant as per the circulars referred to above. The respondents have also not considered that the retirement benefits of the deceased have to be inherited, according to personal law, by all the surviving members of the deceased family.

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11. In view of the above facts and circumstances, the impugned order is quashed and the case is remanded to the competent authority to consider the case in the light of the observation made above and the circulars laid down by DoP&T and after considering the same pass a speaking order expeditiously in the case of the applicant No. 2. The application is, therefore, disposed of accordingly with no order as to costs.

J. P. Sharma

(J.P.SHARMA)
MEMBER(J)

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