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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

D.A.No.1378/94

This the 22nd day of November, 1995.

HON'BLE MR R.K.AHOOJA, MEMBER(A)

1. Smt.Bhagwan Devi
Widow of late Shri Hari Ram,
Resident of House No.461,
Meera Bagh, Paschim Vihar,
New Delhi.
2. Prashant Kumar Son of late
Shri Hari Ram resident of
H.No.461, Meera Bagh,
Paschim Vihar, New Delhi. Applicants.

(through Mr A.K.Bhardwaj, Advocate).

vs.

1. Union of India
through the Secretary,
Ministry of Defence Production,
Central Secretariat,
New Delhi.
2. The Director General
Ordnance Factories,
No.10, Auckland Road,
Calcutta, W.B.
3. The General Manager,
Ordnance Factory,
Muradnagar. Respondents.

(through Mr V.S.R.Krishna, Advocate).

ORDER

PER MR R.K.AHOOJA, MEMBER(A)

The two applicants, namely, Smt.Bhagwan Devi and Shri Prashant Kumar are the widow and son of late Shri Hari Ram, who died in harness while working as L.S.F.(Welder) in Ordnance Factory, Murad Nagar. The applicants state that they made several representations for giving compassionate employment

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to the second applicant but no response was received. Finally, the respondents issued impugned order dated 12.11.1993 denying the compassionate employment to the second applicant on the ground that the applicants have received ^{death of} terminal benefits on account of the bread-winner of the family, namely, late Shri Hari Ram. Aggrieved by this decision, the two applicants have approached this Tribunal for a direction to be issued to the respondents to give compassionate employment to the second applicant in the Ordnance Factory, Murad Nagar or elsewhere.

2. The applicants have before his death, the deceased employee had not discharged any of his liabilities towards the applicant and other members of his family, which included two unmarried daughters and one son. The applicants and the other members of the family were totally dependent on the deceased employee. They belong to a backward Schedule-Caste community and do not own or possess any moveable or immoveable property. The applicants claim that the terminal benefits, which amounted to about Rs.80,000/-only, have been spent in arranging the marriage of the elder daughter in the year, 1993. The widow is receiving an amount of Rs.1182/- per month by way of pension, which the applicant states, is not even sufficient for payment of the rent of the accommodation in which they are staying; even this pension will be reduced on reaching the date of superannuation of the deceased government

employee. In these circumstances, it is alleged that the respondents were wrong in denying the compassionate employment to the second applicant despite the fact that the latter was duly qualified for the same.

3. The respondents have denied the claim and stated in their reply that the deceased employee, after rendering a service of more than 26 years, left behind his wife, two daughters and one son. One of the daughters is married. The widow was paid a lump-sum amount of Rs.1,07,415/-approx. as terminal benefits and is also getting Rs.1051/- as family pension. Apart from this, the widow is having a combined house in 80 Square Meters. The respondents state that the request of the applicants was considered in terms of the government instructions on the subject and it was concluded that the pecuniary condition of the family was not indigent, and, therefore, the same was turned down and the applicants informed accordingly.

4. I have heard the learned counsel for the parties. Shri A.K.Bhardwaj, learned counsel for the applicants has argued that it was wrong on the part of the respondents to take into account the fact that the elder daughter of the first applicant had been married and that the applicants had a house to live in. He pointed out that the said daughter had been married after the death of the deceased employee and the family had necessarily to spend a lot of money on her marriage and consequently all the terminal benefits granted to the widow exhausted.

As regards the house, he drew the attention of the Court to the fact that it was a joint property held by the four brothers, including the deceased employee. The house itself was only 80 Sq.Yards in measurement and by no stretch of imagination it could be considered that 1/4th of the same would suffice for the family of the deceased. The learned counsel argued that with the spiralling cost of living, a paltry sum of Rs. 1000/- or so ^{rupees} is totally insufficient for a family of three persons. Moreover, they had to live in a hired accommodation. He further argued that the mere fact of grant of terminal benefits was not a bar for considering the case of compassion to employment and that this has been clearly laid down in O.M.No.14014/14/91-Ett(O) dated 28.9.1992 issued from the Ministry of Personnel Public Grievance and Pension. It was submitted that in this totality of circumstances, the contention of the respondents that the applicants were not in any indigent condition, was not correct, and, therefore, the decision not to give compassionate appointment to the second applicant should be set aside.

5. Shri V.S.R.Krishna, the learned counsel for the respondents drew the attention of the Court to the relevant rule, which allows compassionate employment, as detailed in Swami's Hand Book, 1994. He laid stress on the fact that the rules provide that such compassionate appointments are to be made in relaxation of the rules only if the condition of the family is indigent.

and is in great distress. In this case, the respondents had taken into account the fact that the grant of terminal benefits of a considerable sum of Rs.1.00 lac, the grant of family pension, the subsequent marriage of one of the daughters and the availability of a joint family house did not put the applicants in the category of an "indigent family in great distress". He strenuously argued that the adequacy of financial means of such a family living in Moradnagar may not be so if the same family wishes to live in Delhi.

6. I have considered the arguments and pleadings put forth on behalf of the two sides. It is not the purpose of the rules permitting compassionate employment in relaxation of the recruitment rules to make such appointment as a matter of right. The rules specify ^{need and distress} in matter of need, depending on the circumstances and the conditions of the surviving family of the deceased government employee. The purpose is also not to maintain the surviving family in the same circumstances and with the same expectation as would have been the case if they had not been confronted with this misfortune of losing the head of the family but to ensure that they are not left in a condition of penury and destitution, since, the State, as an employer owes this much to the employees, who have rendered loyal and faithful service. The assessment of the financial conditions and circumstances of the surviving family, is therefore, a necessary pre-requisite of a decision to allow the compassionate

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appointment. The learned counsel for the respondents has argued that though the loss of the head of the family, who was a bread winner, is bound to place the surviving family in a difficult position and the circumstances are bound to evoke sympathy yet, if the family has sufficient means to tide over the crisis then the appointment in relaxation of the rules in preference to others coming from open market, who may be even in a worse position, would not be justified. Seen in this perspective, the decision of the respondents cannot be said to be unreasonable since the applicants have been given more than a lac of rupees by way of terminal benefits and the widow has been given a family pension.

7. The learned counsel for the respondents has placed reliance on the two Judgments of the Hon'ble Supreme Court in Life Insurance Corporation of India vs. Mrs. Asha Ramchandra Ambekar & another, (J.T. 1994(2) S.C. 183) and Umash Kumar Neopali vs. State of Haryana and others, 1994 Supreme Court Cases (L&S - 930). In the former case, the Hon'ble Supreme Court has held that the High Courts and the Tribunals ought not to confer benediction impelled by sympathetic consideration and disregardful of law. In the present case, there would be no contravention of law, if the compassionate appointment is given since there is no bar, which existed in the case of Life Insurance Corporation (Supra), whereby no compassionate appointment could be allowed if any of the members of the family was gainfully employed.

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In the later case, the Hon'ble Supreme Court has highlighted the object of granting compassionate employment which is to enable the family to tide over certain crisis. The apex Court has emphasised that 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. To the general Rule that appointments in the public services should be made strictly on the basis of open competition from the market, the Hon'ble Supreme Court has held that :

"...there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependents of an employee dying in harness leaving his family in penury and without any means of livelihood..."

8. In the present case, the grant of retiral benefits and the family pension have ensured that the the family is not left without any means of livelihood. One of the daughters of the first applicant is already married and the Son, the second applicant, has now come of age. There is also a place to stay for the family, even though it may not be in Delhi and ^{may even be} uncomfortable and small. It is also relevant to mention that a period of more than three years has elapsed since the demise of the government servant. One could say that the respondents could have been more sympathetic but it cannot

be held against them that they have not duly considered the claims of the applicants. There is a reasonable basis for the conclusion arrived at by the respondents and there is, therefore, no ground for interfering with it.

9. In the result, the O.A. is dismissed, leaving the parties to bear their own costs.

R.K. Ameja
(R.K. AMEJA)

MEMBER (A)

November , 1995.
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