

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1512/94

199

T.A. No.

DATE OF DECISION 16.8.99

Shri R.S. Yadav and Ors.

....Petitioner

Sh. S. S. Tiwari

....Advocate for the
Petitioner(s)

VERSUS

Union of India through DG
and others

....Respondent

Ms. Gitanjali Goyal

....Advocate for the
Respondents.

CORAM

The Hon'ble Smt. Lakshmi Swaminathan, Member (J)

The Hon'ble Shri N. Sahu, Member (A)

1. To be referred to the Reporter or not? YES
2. Whether it needs to be circulated to other
Benches of the Tribunal? No.

Lakshmi S
(Smt. Lakshmi Swaminathan)
Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.
OA 1512/94

New Delhi this the 16th day of August, 1999.

Hon'ble Smt. Lakshmi Swaminathan, Member(J)
Hon'ble Sh. N. Sahu, Member(A)

1. Shri R.S. Yadav,
S/o late Sh. Kanwar Singh Yadav,
R/o H.No. WZ-71,
Vill. Todapur, P.O. Pusa,
New Delhi.
2. Sh. Chander Prakash Yadav,
S/o Sh. R.S. Yadav,
R/o H.No. WZ-71,
Vill. Todarpur, P.O. Pusa,
New Delhi.

.... Applicants

(through Sh. S.S. Tiwari, advocate)

versus

1. Union of India through
Director-General,
Council of Scientific &
Industrial Research,
New Delhi.
2. National Physical Laboratory
through its Director,
Dr. K.S. Krishnan Road,
New Delhi.

3. The Secretary,
Ministry of Personnel,
Public Grievances and
Pensions, (Deptt. of
Personnel & Training)
North Block, New Delhi.

.... Respondents

(through Ms. Gitanjali Goyal, advocate)

ORDER(ORAL)

Hon'ble Smt. Lakshmi Swaminathan, Member(J)

This application has been filed by two applicants against the rejection letter dated 23.7.93 issued by the respondents denying compassionate appointment to Applicant No.2. They have also challenged the validity of the Ministry of Personnel,

Public Grievances and Pensions (Department of Personnel & Training), O.M. dated 30.06.1987.

2. The brief facts of the case are that Applicant No.1 who was working as Khalasi with the respondents and who was later promoted as Technician with the respondents retired on medical grounds as he was not keeping good health w.e.f. 01.06.1992. At that time, admittedly, he was over 57 years. After retirement of Applicant No.1, he applied to Respondent No.2 for appointment of his son i.e. Applicant No.2 on compassionate ground but the same was rejected by order dated 31.07.1992. He had made further representation which had also been after re-consideration rejected by the respondents' letter dated 23.07.1993 which has been impugned in this application. The O.A. has been filed on 25.07.1994.

3. Shri S.S. Tiwari, learned ccunsel for the applicants, has submitted that there is no rational in providing the cut off age of 57 years for a Group-D employee who has retired on medical grounds for consideration of appointment of his son/daughter/near relative as contained in the DOP&T O.M. dated 30.06.1987. According to him, giving a cut off age before attaining the age of 57 years for a person who retires on medical ground and then only his spouse/ward can be considered for compassionate appointment is illegal, arbitrary, unreasonable and unconstitutional as it creates a class within a class. He has also submitted that as the

respondents themselves have reconsidered the applicant's representation after rejecting his earlier representation by letter dated 31.07.1992, the O.A. is not barred by limitation.

4. Respondents in their reply have controverted the above averments. We have also heard Ms. Gitanjali Goyal, learned proxy counsel for the respondents. She has submitted that the competent authority has considered the case for compassionate appointment of Applicant No.2 in terms of the DOP&T O.M. applicable to the case. As applicant No.1 had retired from service on medical grounds after attaining the age of 57 years, the case of the applicant had been rightly rejected by the competent authority. She has further submitted that the application is barred by limitation as the first representation of the applicant was rejected by the respondents on 31.07.92 and the O.A. has been filed in July 1994. She has also submitted that in any case Applicant No.1 was to retire on attaining the age of 60 years, and in this case he had retired on medial grounds well after 57 years of age. According to her, the O.M. providing the cut off age of 57 years is neither unreasonable nor arbitrary.

5. The learned counsel for the respondents also relies on the decision of the Tribunal in **Ram Chander Prasad Sah and Arun Kumar Sah Vs. U.OI & Ors (CAT PATNA**

Bench 321/93), reported in Swamy's Digest. In this case, the Tribunal has held that the respondents contention that the applicant, having retired after attaining the age of 55 years is not entitled to claim appointment of his son, applicant No.2, on compassionate ground, since the applicant is not covered by the relevant O.M. dated 07.04.86, deserves to be accepted. The petition was, therefore, held to be without merit and was dismissed.

6. We have carefully considered the pleadings and the submissions made by the learned counsel for both the parties.

7. On the preliminary objection of limitation, the plea raised by the learned counsel for the respondents is rejected, having regard to the letter impugned here, which is dated 23.07.93. On perusal of this letter it is clear that the respondents have reconsidered the applicant's request carefully and thereafter passed this order. The application, therefore, cannot be held to be barred by limitation.

8. On merits, we find that the DOP&T O.M. dated 30.06.1987 provides the conditions/principles to be followed by all Departments for making compassionate appointments of sons/daughters/near relatives of deceased Government servants. The relevant portion of this O.M. which is applicable to the facts of this case reads as follows:-

"In exceptional cases when a Department is satisfied that the condition of the family is indigent and is in great distress, the

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benefit of compassionate appointment may be extended to a son/daughter/near relative of a Government servant retired on medical grounds under Rule 38 of Central Civil Services (Pension) Rules, 1972, or corresponding provisions in the Central Civil Service Regulations before attaining the age of 55 years. In case of Group 'D' employees whose normal age of superannuation is 60 years, compassionate appointment may be considered where they are retired on medical grounds before attaining the age of 57 years." (Emphasis added).

9. It is settled law that the provisions for compassionate appointment have to be given effect to immediately for the benefit of the family of the deceased Government servant who dies in harness, where there are no other earning members in the family to tide over the financial difficulties. Paragraph-1(b) of the DOP&T O.M. provides that in exceptional cases when the Department is satisfied that the condition of the family is indigent and is in great distress, the benefit of compassionate appointment may be extended to a son/daughter/near relative of a Government servant who is retired on medical grounds, provided this has been done before he attains the age of 55 or 57 years, as the case may be. In the present case, Applicant No.1 was a Khallasi and being a Group 'D' employee would have normally superannuated at 60 years. We find that the provisions for compassionate appointment as provided in this O.M. cannot be held to be unreasonable. The O.M. has taken into account the various situations where such appointments have to be provided by the Government to the dependent member of the family of the Government servant who

either suddenly dies in harness or is retired on medical grounds before attaining the age of 57 years. When Applicant No.1 was retired on medical grounds he had admittedly crossed the age of 57 years and was about two years away from the normal date of his superannuation. It is settled position that in such cases it is necessary to provide a cut off date. In the present case looking to the facts and nature of the appointment, we do not find the conditions prescribed in the DOP&T O.M. including the cut off age of 57 years either unreasonable, arbitrary or not having any reasonable nexus to the object to be achieved.

10. In the present case since admittedly the applicant was retired on medical grounds at the age of more than 57 years and 11 months, the DOP&T O.M. dated 30.06.87 is applicable. In the circumstances, the rejection letter issued by the respondents cannot be faulted. As stated above, we are also of the view that the challenge to the validity of O.M. on the ground that prescription of cut off age of 57 years for a person who retires on medical ground for entitlement of his son for compassionate appointment is without any basis to warrant interference in the matter.

11. For the reasons given above, we find no merit in this application. The O.A. is dismissed. No order as to costs.

N. Sahu
(N. Sahu)
Member(A)

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member(J)