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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

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OA.No.1514/94

and

MA.No.1979/94

Dated this the 5th of ~~November~~ ^{December}, 1994

Shri C.J. Roy, Hon. Member(J)

1. ~~Shri~~ Usha Gupta,
W/o Shri V.P. Gupta,
UDC, employed in the
Department of Ocean Development,
Ministry of Home Affairs,
New Delhi,
R/o D-840, Netaji Nagar,
New Delhi.

2. Rasmi Gupta,
D/o Shri V.P. Gupta,
UDC, employed in the
Department of Ocean Development,
Ministry of Home Affairs,
New Delhi.

...Applicants

By Advocate: Shri F.G. Saxena.

versus

1. Union of India through
the Secretary to the Govt. of India,
Department of Ocean Development,
Ministry of Home Affairs, New Delhi.

2. Shri B.K. Mukhopadhyay,
Under Secretary to the Govt. of India,
Department of Ocean Development,
Ministry of Home Affairs,
New Delhi.

3. Union of India through
Secretary, Ministry of Home Affairs,
North Block, New Delhi.

4. The Asstt. Directorate of Estates,
Type B(B), Nirman Bhawan, New Delhi.

...Respondents

By Advocate: Shri M.M. Sudan

ORDER (Oral)

(By Shri C.J. Roy)

This is an application filed by two applicants, the first one being the wife of Shri V.P. Gupta and the second one being their daughter. Shri V.P. Gupta was attached to the Department of Ocean Development in the Ministry of Home Affairs and was medically decategorised on 30.11.91 by Annexure-F order dated 4.12.92 after attaining the age of 55 years and is retired.

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He has got a service of 2 years and 4 months if he is not medically decategorised. He has got 4 daughters, the eldest one being married and is in indigent circumstances staying in Government accommodation No.840-D, Netaji Nagar, New Delhi. In the circumstances the applicants made a representation on 16.7.91 (Annexure 'B') which was rejected by the respondents by Annexure 'A' order dated 12.4.93. They claim there is a scheme framed by the respondents.

2. The learned counsel for the respondents asserts the assertion of the applicants by filing a counter as well as the claim. He draws my attention to the claim at page-38 of the paper book of his annexure to the counter, in which, it is stated:

"(b) In exceptional cases when a 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 retired on medical grounds under Rule 38 of Central Civil Services (Pension) Rules, 1972, or corresponding provisions in the Central Civil Services Regulations before attaining the age of 55 years."

3. It is relevant to note that the word 'a medically decategorised person' may be given appointment, provided, the employee in Group 'C' post, the normal age of retirement is 58 years. Shri V.P.Gupta has not crossed the age of 55 years. Therefore, he is not entitled and the representation filed by the applicants was rightly rejected by the respondents, as urged by the learned counsel for the respondents.

4. In the rejoinder filed by the applicants, they have more or less asserted the same points as raised in the OA, which does not throw much light on the case as if amounting to a favourable rebuttal evidence.

5. I have heard the learned counsel for both parties and perused the documents on record.

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6. It is an admitted fact that Shri V.P. Gupta, the first applicant's husband is a medically decategorised person after passing 55 years of age. Therefore, it is claimed that this scheme is not applicable to him.

7. The applicants have filed unnumbered petition for condonation of delay. The Registry is directed to number the said petition.

In view of the circumstances of the case, though the delay is going against the applicants, I prefer to condone the delay on humanitarian ground. The delay is condoned and the petition is allowed.

8. MA.1979/94 is filed for joining parties together in one OA. It is stated that the applicants have a common interest and they are entitled to the same relief and the Cause of action is also the same. I am satisfied that they have a common interest.

Heard. MA.1979/94 is allowed.

9. The learned counsel for the respondents vehemently opposes the case on the ground that this scheme is not applicable to the applicants and their representation is being rightly rejected by the respondents.

10. At page-39 of the OA, I find in the eligibility conditions for Group-C posts, compassionate appointment should be considered by direct recruitment quota only, and the persons who are eligible only should be appointed, and there is a power of relaxation given to the State in exceptional circumstances. After finding that the circumstances of the family is in hardship, relaxation is permitted upto two years in educational qualification. These are all executive instructions.

11. The OM dated 30.6.87 of the Department of Personnel, Public Grievances and Pensions (Department of Personnel and Training) in regard to compassionate appointment of son/daughter/near relative of deceased Government servant clearly states at page-3 (running page 40 of the OA) that:

"(a) In deserving cases even where there is an earning member in the family, a son/daughter/near relative of the deceased Government servant, leaving his family in distress may be considered for appointment with the prior approval of the Secretary of the Department concerned who, before approving the appointment, will satisfy himself that the grant of concession is justified having regard to the number of dependents, the assets and liabilities left by the deceased Government servant, the income of the earning member as also his liabilities including the fact that the earning member is residing with the family of the deceased Government servant and whether he should not be a source of support to the other members of the family."

The Secretary of the Department, therefore, is empowered to appoint a person in indigenous circumstances.

12. Compassionate appointment is not a matter of right.

13. The latest judgement of the Hon. Supreme Court states that no direction to appoint should be given to a person in indigent condition, thereby, depriving the rights of other people, which would amount to discrimination, as urged by the learned counsel for the respondents.

14. That apart, I still see from this scheme, an inbuilt power of relaxation is given to the Government and they are of executive instructions. Though its validity is upheld by the Hon. Supreme Court, it is never mentioned to me that the relaxation power has been taken away from the executive.

15. However, after considering all the aspects, I feel, not to be quoted as a precedent that the respondents may in the light of the observations made by me reconsider the case of the 2nd applicant/provided she fulfils all eligibility conditions after giving relaxation, on humanitarian ground within a period of two months from the date of receipt of a copy of this order.

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16. The applicants pray for the 2nd relief of relaxation of quarter. That relief is rejected. However, until the matter is disposed of by the respondents, they may not be evicted, but rent could be collected from them under extant rules.

With this direction the DA is disposed of. No cost.

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W. B. Roy
(C.J. ROY)
MEMBER(J)