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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2207/2000

New Delhi this the 17th day of ^{August} ~~July~~, 2001. (X)

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

1. Smt. Prem Saini,
S/o late Sh. Radhey Shyam Saini,
Opp. House No.4-8/15,
Vijay Nagar,
Delhi-110009.
2. Shri Santosh Saini,
S/o late Shri Radhey Shyam Saini,
Opp. House No.4-8/15,
Vijay Nagar,
Delhi-110009.

...Applicants

(By Advocate Ms. C.K. Sucharita)

-Versus-

1. Union of India,
through its Secretary,
Cabinet Secretariat,
Public Grievances,
2nd Floor,
Sardar Patel Bhawan,
New Delhi.
2. Central Public Works Department,
through the Director General of Works,
Nirman Bhawan,
New Delhi.

...Respondents

(By Advocate Shri P.P. Relhan, proxy for Sh. J.B. Mudgil,
Advocate)

O R D E R

By Mr. Shanker Raju, Member (J):

Applicant No.2, seeks his compassionate appointment, which has been denied to him by the respondents by an order dated 20.12.99.

2. Briefly states applicant No.1, husband of the deceased Government servant died on 5.2.96. The applicants contend that the relevant application has been moved to the respondents for considering the case of APPLICANT No.2 as for compassionate appointment the respondents have refused to allow the applicant to stay in the Government quarter

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② Connected with Court's order
dated 2.11.2001

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and observed that the case would not be processed unless the Government accommodation is vacated. In pursuance, the same was vacated on 1.6.98. Vide letter dated 20.12.99 the claim of the applicant for compassionate appointment was rejected on the ground that the same was not covered under the rules as a sum of Rs.1,52,745/- has been paid as retiral benefits as well as family pension of Rs.1508/- per months with 35% DA. It is also stated that the elder son of the deceased government servant, ~~i.e., Applicant No.2~~ has been working in a private firm and they have no liability. The applicant has made several representations to the various authorities and on 20.12.99 the claim was again considered and rejected.

3. The applicant contends that the family is indigent and despite the ~~second son, i.e., Applicant No.2~~ ^{elder son of Applicant No.1} is working in a private firm does not debar his claim being considered as provided under the scheme with the approval of the Secretary of the Ministry concerned. The applicant further places reliance on the decision of Apex Court in Smt. Phoolwati v. Union of India, 1991 Supp. (2) SCC 689 and Balbir Kaur v. Steel Authority of India Ltd., 2000 (6) SCC 493 to contend that family pension scheme cannot in any way be equated with the benefit of compassionate appointment. According to the applicant the amount given to her was too meagre and still the family is indigent and deserving. According to her the son of the applicant has not been paid a fixed sum which has been varying from 1993 to till date. It is stated that despite the ~~applicant No.2~~ was allowed to appear in the written test and interview and was found eligible for appointment the same was denied to him arbitrarily. In her rejoinder the learned counsel for

② Corrected vide Court's order dated 2.11.2001

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the applicant has sated that the rejection of the prayer of the applicant is illegal as benefits given as lump sum have already been incurred for clearing the debts and on vacation of the Government accommodation they are living in a relative's house. It is also stated that the elder son of the applicant has been separated from the family and without a secured job the condition of the family is pathetic and the have to maintain two minor sons.

4. Strongly rebutting the contentions of the applicants the learned counsel of the respondents stated that the OA is barred by limitation, as the orders passed on 28.10.98 have been challenged only in 2000 and as the family of the deceased was paid amount towards terminal benefits and monthly pension has been accorded which is supplemented by enhanced DA and the fact that the son of the applicant is employed in a private firm the condition of the family cannot be observed as indigent. It is also stated that Sh. Deepak Saini has been residing with the deceased at the time of his death. It is also contended that compassionate appointment cannot be claimed as a matter of right and it is only restricted to 5% quota of the direct recruitment. The case of the applicant has been examined at the higher level, including by the concerned Minister. After application of mind the respondents have not acceded to her request as the case of the applicant was not fit as per the scheme and rules and was not deserving in the circumstances. It is also stated that the accommodation was vacated after two years and four months as the elder son is liable to look after the family. Placing reliance on the decision of this Tribunal in OA-2474/88, Satyender Singh Rawat v. Union of India it is

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contended that the compassionate appointment is considered only in extreme cases of hardship and as the same is lacking in the present case it was rightly rejected as per the latest scheme on compassionate appointments issued vide memorandum dated 9.10.98. Further placing reliance on the decision of the Apex Court in Umesh Kumar Nagpal v. State of Haryana & Ors., JT 1994 (3) SC 525, it is contended that the offer of compassionate appointment cannot be by way of matter of court, it is only the family which has been left in penury and without any means of livelihood can be appointed. As regards clause 10 of the scheme where the Secretary concerned with his approval can appoint the dependants even if there is an earning member in the family it is stated that the same is in deserving cases which the applicant is not. The learned counsel of the respondents has also produced the relevant records in pursuance of the directions of this court dated 25.5.2000 and stated that the matter has been considered by the Minister concerned, which shows that there is no lack of application and mind by the respondents in ~~not~~ⁱⁿ considering the case of the applicant.

5. I have carefully considered the rival contentions of the parties and perused the material on record and also the departmental record produced by the respondents. In my confirmed view the compassionate appointment cannot be claimed as a matter of right. It is considered only in extreme cases of hardship and penury. The family of the deceased has been accorded retiral benefits and the family pension which is supplemented by the enhanced DA. The elder son is also employed. The compassionate appointment cannot be an alternative method

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of employment. It is only to be accorded in deserving cases and that too against 5% vacancies reserved for such appointment. On going through the facts of the case I find that the respondents have considered the applicants' case for compassionate appointment upto the stage of Minister concerned, in accordance with the scheme of 1998. No malafide or arbitrariness has been alleged by the applicants against the respondents. It is also not a case of discrimination. The applicants have also not alleged any differential treatment meted out to them. As contained in the OM dated 9.10.98 and having regard to the decision of the Apex Court in Umesh Kumar Nagpal's case (supra) the right is only of consideration and not of appointment. The appointment is restricted to 5% of direct recruitment that too in cases where the family is deserving. Keeping in view the facts of the present case as the applicants have been accorded retiral benefits and one son of the deceased Government servant is earning and the fact that despite this the case was considered by the respondents in accordance with the scheme, I find that the present OA lacks merit and the claim of the applicants for compassionate appointment is not well founded.

6. As regards the ratio cited by the learned counsel of the applicant the same would not have any application in the present case, as despite being accorded financial benefits the son of the deceased Government servant was also working.

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7. In the result and having regard to the reasons recorded the applicants have failed to make out a case. The OA is found bereft of any merit and is accordingly dismissed. No costs.

S. Raju

(Shanker Raju)
Member (J)

'San..'