

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

.....

OA No.2355/89

Date of decision: 24-7-1990

POORAN CHAND

..... APPLICANT

VERSUS

UNION OF INDIA & OTHERS .. RESPONDENTS.

ADVOCATES:

Shri J.P. Verghese,

... for the applicant.

Shri M.L. Verma,

... for the respondents.

CORAM:

Hon'ble Shri P.K. Kartha, Vice-Chairman (J)

Hon'ble Shri P. Srinivasan, Member (A)

J U D G E M E N T

(Judgement of the Bench delivered by
Hon'ble Shri P. Srinivasan, Member (A))

This application has come up before us for admission today with notice to the respondents.

Shri J.P. Verghese, learned counsel for the applicant and Shri M.L. Verma, learned counsel for the respondents have been heard. We feel that this application can be disposed of at this stage itself. We proceed to do so.

The applicant was working as a Monument Attendent (a group 'D' post) in the Archaeology Survey of India. In 1983, he suffered a heart-attack. According to the applicant, he applied for voluntary retirement in March, 1983 on the ground that he was too ill to work. The enclosures filed with the reply of the respondents indicate that on 30-11-1984, the applicant made a request that he be allowed to retire voluntarily on the condition that his son was given appointment on compassionate grounds. The applicant made another representation

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on 27-5-1985 (Annexure 2 to the application), again reiterating his request for being allowed to retire voluntarily on condition that his son would be given appointment on compassionate grounds. The applicant was eventually subjected to medical examination towards the end of August, 1985. The Chief Medical Officer declared him unfit for government service on 10-9-1985 and he was finally retired from the Government service on 31-10-1985. The applicant was born on 1-7-1928. Therefore, when he retired from Government service on 31-10-1986, he had crossed the age of 58.

^{M for}
The age of retirement ~~from~~ Group 'D' staff is 60.

The respondents rejected the request of the applicant that his son be given appointment on compassionate grounds in their letter dated 22-2-1989. Aggrieved with this letter, the applicant has come before this Tribunal.

Shri J.P. Verghese submitted that the respondents had rejected the case of the applicant's son for compassionate appointment, only on the ground that the applicant had crossed the age of 57 when he was eventually retired under Rule 38 of the Pension Rules on the basis of a medical certificate. He contended that for the purpose of determining the age of the applicant on the date of his retirement, the respondents should have taken into account the date on which the applicant himself sought voluntary retirement on the ground of ill health. The applicant had admittedly applied for voluntary retirement, as early as on 30-11-1984 and again on 27-5-1985 and on both these dates he was less than 57. If the respondents delayed referring his case to the medical officer, that cannot be held against the applicant or his son. If the applicant had been medically examined for the purpose of Rule 38 of the Pension Rules, immediately on his representations

J. P. Verghese

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dated 30-11-1984 / 27-5-1985 and had been allowed to retire soon after, he would have retired before attaining the age of 57 and his son would have been eligible for appointment on compassionate grounds. Shri Verghese also submitted that the requirement that a Government servant belonging to group 'D', should not have attained the age of 57 years, if his son was to be considered for compassionate appointment came only in 1987. It had been incorporated in the Office Memorandum dated 30-6-1987 issued by the Department of Personnel. The applicant was retired under Rule 38 of the Pension Rules, much earlier than this, on 31-10-1986. Prior to the OM of 30-6-1987, it was the OM dated 27-11-1978 issued by the Ministry of Home Affairs which held ^{the field} unfilled. That OM did not stipulate that for considering the cases of sons of Government servants for compassionate appointment they should have been retired on medical grounds under Rule 38 of the Pension Rules before attaining a particular age. In other words, when the applicant retired, there was no dis-qualification against his son being considered for compassionate appointment on the ground of the age of the applicant. The respondents therefore should not have considered the case of the applicant's son, in terms of the OM dated 30-6-1987. They should have considered the case of the applicant's son in terms of the OM dated 27-11-1978 without any requirement of a maximum age of retirement. Shri Verghese, therefore, submitted that this Tribunal should direct the respondents to consider the case of the applicant's son for compassionate appointment ignoring the OM dated 30-6-1987.

Shri M.L. Verma on the other hand contended that even before the OM dated 30-6-1987, there was a requirement that a Government servant who retired under Rule 38 of the Pension Rules, should not have crossed

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a particular age if his son was to be appointed on compassionate grounds. Shri Verma drew our attention to a note dated 11-12-1986 recorded in the Office of the respondents according to which the concession of compassionate appointment could not be extended to sons of Government servants who retired under Rule 38 of the Pension Rules ^{M after} attaining the age of 55. Thus the respondents acted well within the Rules and instructions on the subject by declining compassionate appointment to the applicant's son.

We have considered the rival contentions very carefully. The grant of appointment on compassionate grounds to sons and relatives of Government servants is a concession and does create ^M a right in favour of the Government servant concerned or his relatives. It is in the nature of an ex gratia benefit. Therefore a person claiming compassionate appointment for his son has to fulfil the requirement laid down for the purpose strictly.

We have before us an Office Memo dated 25-11-1978 issued by the Department of Personnel which is binding on all Government departments. That OM was primarily concerned with the subject of compassionate appointments of near relatives of deceased government servants. However, para 6 of the said OM deals with cases of Govt. servants who are retired on medical grounds under Rule 38 of the Pension Rules.

"In exception cases where a Department is satisfied that the condition of the family is indigent and in great distress, the benefit of compassionate appointment may be extended to the son/daughter/near relative of Govt. servant retired on medical grounds under Rule 38 of the Central Civil Services Pension Rules) 1972 or corresponding provisions in the Central Civil Regulations. "

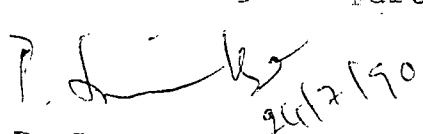
This OM did not say that the Government servant in question should have retired from service before attaining a certain

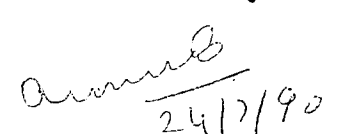
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age. In other words, whenever a Govt. servant retired on medical grounds under the said Rule 38, the benefit of compassionate appointment could be extended to his son/daughter/near relative, if the family was indigent and in great distress. Our attention has not been drawn to any OM on the subject issued later till we come to the OM dated 30-7-1987 issued after the applicant ^{retired from} ~~referred~~ for service. The departmental note relied on by Shri Verma which appears as Annexure V to the reply also bears a date subsequent to the retirement of the applicant. Moreover that note which requires retirement before attaining the age of 55, obviously refers to employees in Group C and above for it is not the case of the respondents that a Group D official should retire before he attains 55 years of age if his son is to be considered for compassionate appointment. In any case a departmental office note cannot overrule an OM issued by the Department of Personnel. We, therefore, feel that the case of the applicant's son for compassionate appointment should have been considered by the respondents in terms of the OM dated 27-11-1978 irrespective of the applicant's age on retirement and not in terms of the OM dated 30-6-1987. All the more so in view of the fact that the applicant had sought voluntary retirement as early as on 30-11-1984 on medical grounds when he had not attained the age of 57. We, therefore, direct the respondents to consider the case of the applicant's son for appointment on compassionate grounds in terms of para 6 of the OM dated 25-11-1978 of the Ministry of Home Affairs, ignoring the subsequent OM dated 30-6-1987, so far it sets an upper age limit by which a Govt. servant should have retired for the purpose.

The application is disposed of on the above terms, leaving the parties to bear on their own costs.


(P. SRINIVASAN)
MEMBER (A)


(P.K. KARTHA)
VICE CHAIRMAN (J)