

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 2485/89
T.A. No.

199

DATE OF DECISION 5.6.1990.

Smt. Roshanara Begum	Petitioner
Shri J.P. Verghese	Advocate for the Petitioner(s)
Versus	
Union of India through	Respondent
Secy. Min. of Human Resources Dev.	Dev.
Shri M.L. Verma	Advocate for the Respondent(s)

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The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr. D.K. Chakravorty, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal?

(Judgement of the Bench delivered by Hon'ble
Mr. P.K. Kartha, Vice-Chairman)

The applicant, who is the widow of Late Shri Allaiddin, who had worked in the Office of the Archaeological Survey of India at Agra Circle, filed this application under Sec.19 of the Administrative Tribunals Act, 1985, praying that her son should be appointed to the post held by her husband in the Archaeological Survey of India on compassionate grounds. The pleadings in this case are complete. The application has not, however, been formally admitted.

2. We have heard the learned counsel for both the parties and have gone through the records of the case carefully. In our opinion, the application could be disposed of at the admission stage itself.

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3. The applicant's husband had served in the Archaeological Survey of India for about 23 years. He died in an accident while on duty on 10.3.1987, leaving behind the applicant, 4 sons, and 2 daughters. The three elder sons are married and are living separately. According to her, these three sons do not support her in any way, monetarily or otherwise. Her youngest son, Shafelludin, is unemployed and lives with her. Her request to the respondents to appoint her on compassionate grounds, has not received favourable response. She has alleged that respondent No.2 (Archaeological Survey of India) have appointed persons on compassionate grounds in similar cases.

4. The respondents have contended that the applicant does not deserve appointment on compassionate grounds and in this context, they have referred to the O.M. issued by the Department of Personnel & Training on 30.6.1987, which is at Annexure-I, p.33 of the paper-book. They have further contended that the three sons of the applicant are employed and that the applicant has received the following amounts by way of retirement benefits and family pension as under:-

"Provisional pension

Death-cum-retirement Rs.2250/- on 3.11.1987
gratuity + Rs.1500/- Rs.11863/- only on 11.2.88
Rs. 2652/- only on 3.11.87)

Provisional DGR
Gratuity

Insurance Scheme Amount Rs.10,000/- on 3.11.1987
G.P.F. Final payment Rs. 8,437/- on 16.7.1987
Family pension @ Rs.470/- p.m. upto 10.3.1994
Family pension @ Rs.375/- p.m. after 10.3.1994."

(Vide para.5, page 5 of the counter-affidavit,
p.31 of the paper-book).

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5. In view of the above, the respondents have contended that her condition is not indigent and that the benefit of appointment on compassionate grounds of her son cannot be considered at this stage.

6. In our opinion, the respondents have not examined the case of the applicant from the right perspective. The O.M. dated 30th June, 1987 issued by the Department of Personnel & Training on the subject of compassionate appointments, stipulates that such appointments are to be given to a son or daughter, or near relative of the deceased Government servant "leaving his family in immediate need of assistance, when there is no other earning member in the family". In the instant case, the husband of the applicant died in harness. The only question to be enquired into is whether he left his family in immediate need of assistance. For this purpose, what is to be seen is whether there is any other earning member in the family.

7. We are not impressed by the contention of the respondents that the applicant is not entitled to the benefit of appointment of her son on compassionate grounds because three of her sons are already employed in Government service. In this context, it is pertinent to mention that the O.M. issued by the Department of Personnel & Training, does not define the expression 'family'. The applicant belongs to the Muslim community. In the well known book, 'Mulla's Principles of Mahomedan Law', it has been stated that "there is no such thing as a joint Mahomedan family, nor does the law recognise a tenancy in common in a Mahomedan family". (Vide 18th Ed. by M. Hidaytullah, p.50).

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8. In Sahul Hamid Vs. Sulthan, A.I.R. 1947 Madras, 287, Rajamanickar J., as he then was, has held as under:-

"The Mahomedan Law does not recognise a joint family as a legal entity."

9. In Maidal Islam Vs. Commissioner of Wakfs, A.I.R. 1943, Calcutta, 635, it was observed that the word "family" is really one of great flexibility and is capable of many different meanings according to the connection in which it is used. It may include all members of the household, living under the authority of the head thereof, as also the servants employed in the house.

10. It would, thus appear that in the absence of any definition of the expression 'family' in the aforesaid O.M., the meaning assigned to it in common parlance, should be applied. The concept of a family is that a body of persons live in one house and under one head of that family. Having regard to the position in Mahomedan Law, which does not recognise the concept of joint family, it was wrong on the part of the respondents to have concluded that the applicant is not entitled to the benefit of appointment of her youngest son on compassionate grounds on the ground that her three other sons are employed though they are married and living separately. There is nothing on record to indicate that all the sons are living under one roof with the applicant as the Head of the family.

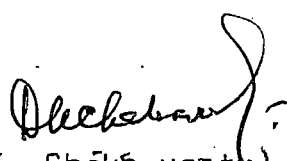
11. The fact that the applicant is getting a family pension of Rs.470/- per month and that she has received some amounts towards retirement benefits, mentioned above, will not, in our opinion, disentitle her from getting her son employed in the office of the respondents on compassionate grounds. Even if the applicant were to deposit the amounts received by her by way of retirement benefits in long-term




fixed deposits, the interest accruing thereon will not provide her sufficient means of livelihood.

12. In the light of the aforesaid considerations, we are of the view that the respondents ought not to have rejected the applicant's case, which is a deserving one. The application is, therefore, disposed of with the direction to the respondents to consider the matter afresh in the light of the observations contained in this judgement. They shall do so as expeditiously as possible, but in no event, later than one month from the date of communication of this order. If, on verification, it is found that the three sons who are employed in Government service, are living separately with their respective families, and that the applicant and her youngest son are living separately, the respondents shall consider appointing the youngest son of the applicant on compassionate grounds in a suitable post.

The parties will bear their own costs.


(O.K. Chākṛavorty)
Administrative Member

5/6/90


(P.K. Kartha)
Vice-Chairman (Judl.)