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CENTRAL ADMINISTRATIVE TRIBUNAL
DELHI BENCH
NEW DELHI

Original

Application No. 1422 of 1988

Transfer Application No. _____

Date of decision . 1. 19

Smt. Nazara Begum Petitioner(s)

Through

Sri R. L. Sethi

Versus

Union of India Respondent(s)

Through


Smt. R. K. Chopra


CORAM:

Hon'ble Sri Ajay Johri, AM

Hon'ble Sri G. S. Sharma, JM

- ✓ 1. Whether Reporters of Local Papers
may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether to be circulated to all
Benches? No
4. Whether fair copy to be typed for
perusal? Yes


(G.S. SHARMA)
(~~N.R. BAKSHI~~)
JUDICIAL MEMBER


(AJAY JOHRI)
(~~S.R. XXXXX~~)
MEMBER

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Central Administrative Tribunal, Principal Bench
New Delhi.

Registration O.A.No.1422 of 1988

Smt. Nazra Begum	Applicant
	Vs.	
Union of India	Respondent.

Hon. Ajay Johri, AM
Hon. G.S.Sharma, JM

(By Hon. G.S.Sharma, JM)

This is an application u/s. 19 of the Administrative Tribunals Act XIII of 1985 for the appointment of the son of the applicant or in the alternative for her own appointment ^{on any Group 'D' Post} in place of her deceased husband on compassionate grounds and for allowing her to retain the Government accommodation in her occupation.

2. The undisputed facts of this case are that the applicant's husband Afjal Mohammad was employed as Junior Butler in the house-hold establishment of the President's Estate, New Delhi, who died in harness on 7.1.1988 leaving two minor sons and three minor daughters besides the applicant. The applicant had applied on 11.1.1988 and 13.4.1988 to the Military Secretary to the President for giving employment to her elder son Mohd. Sami on compassionate ground but her request was turned down on the ground that the son being less than 18 years was not eligible for any employment under the Government. The applicant thereafter applied for her own appointment but she too was not given any appointment and as the authorities were also pressing her to vacate the Govt. accommodation allotted to her husband, she filed the

present petition for the reliefs already stated above on the grounds that under the G.I.M.P. Memo dated 30.6.1987 the relaxation upto 4 years could be granted for giving employment to her son and in any case the employment should have been given to her and without the employment it is difficult for a family of 6 persons to pull on and under the rules she or her elder son are entitled to appointment to any class 'D' post.

3. The petition has been contested on behalf of the respondent and in the reply filed on its behalf by the Under Secretary (Estt.), President's Secretariat, it has been stated that the applicant on her own showing is a PARDANASIN lady and there is no job for such ladies in the President's House-Hold Establishment. The son of the applicant for whom the employment is sought by her is hardly of 13 years and he cannot be given any employment under the rules. After the death of her husband, the applicant received a sum of Rs.29,599 by way of G.P. F, gratuity, insurance etc., and is getting Rs.555 per month as family pension. She is thus in a position to maintain herself and her children. Employment on compassionate ground is not a matter of right and the employer is not legally bound to provide job to the deceased's family.

The applicant has been allowed to retain the Govt. accommodation in her occupation up to 31.8.1988 and under the rules she has no right to live in the said accommodation any further. Even on getting appointment, the applicant cannot live in the accommodation standing in the name of her deceased husband unless it is allotted to her and she has thus no cause of action to approach the Tribunal. Under

the O.M. dated 30.6.1987 the applicant for compassionate appointment should be eligible and suitable for the post in all respects under the provisions of the relevant Recruitment Rules. No appointment of a person below 18 years is permissible under the rules and the son of the applicant can apply for his appointment on compassionate ground on attaining the age of 18 years under the Govt. of India order dated 17.2.1988 and the applicant being PARDANASIN is ineligible for any appointment and the application deserves to be dismissed.

4. In her rejoinder the applicant has stated that several Hindu ladies, as mentioned in para 6.5, ~~of the~~ ³ ~~petition~~, were employed on compassionate ground in the President's Secretariat and the refusal to employ the applicant on this ground is discriminatory. The applicant is prepared to unveil her veil for the sake of livelihood and her son is eligible for appointment after relaxing the rules and in any case she is entitled to an appointment on compassionate ground, which is necessary to maintain her family.

5. The learned counsel for the parties were heard. Annexure 4 to the reply filed by the respondent is the O.M. dated 30.6.1987 issued by the Department of Personnel and Training for providing appointment to the sons/daughters/near relatives of the deceased Govt. servants on compassionate ground. We will like to refer the relevant provisions of this O.M. here. Under para 1(a) of this O.M., a son, daughter or other near relative of a Govt. servant dying in harness can seek appointment on compassionate ground when there is no other earning member in the family. In the present case, there is no dispute between the parties on the point that after the death of the husband of the applicant, there is no earning member in the family. Clause (b) of para 6 relating to relaxation provides that the relaxation

in lower age limit should not be below 14 years of age. According to the particulars of his family furnished by the deceased, his elder son was born on 5.10.1975 and, as such, he is not yet of 14 years, ^{therefore,} and as such, there is no question of granting any relaxation regarding his age at this stage. The respondent has further filed the latest O.M. dated 17.2.1988, copy annexure 1 to the reply, which shows that it has been decided that if an employee dies while on service and there is a ward below 18 years of age who alone is available for employment, should apply for a job as soon as he attains the age of 18 years and the persons below the age of 18 years should not be considered for appointment on compassionate grounds. This O.M. further provides that the general instructions contained in O.M. dated 30.6.1987 may be treated as amended to this extent. We are, therefore, of the view that after ^{the} issuance of this O.M. no relaxation can be granted in respect of the age to the son of the applicant for providing any job to him. According to this O.M., if due to any disability, the applicant herself cannot be considered for appointment on compassionate grounds and her son is minor, he (her son) should apply for a job on attaining the age of 18 years. At present, his appointment on compassionate grounds is out of question.

6. Regarding ^{the} appointment of the applicant, the learned counsel for the respondent raised ^a new ground, which was not taken in the reply, at the time of argument to contend that the husband of the applicant was a work-charged personnel and as such, provisions of appointment on compassionate grounds are not applicable to his wards. For this contention, reliance was placed on the President's Secretariat (Recruitment and Condition of Service) Rules, 1976 as published in the Extraordinary Gazette of India dated 1.4.1976. According to the definition of Secretariat as given in clause (f) of Rule 2 of

these rules, the staff borne on the House-Hold Establishment of the Secretariat and work-charged establishment of the gardens attached to the President's estate are not included in the President's Secretariat. Reliance was also placed on G.I. M.H.A. Notification No.7/5/1959-Estates (A) dated 25.5.1959 which provides that work charged personnel of the President's Garden Establishment and the Estate Office are excluded from the operation of the Central Civil Services (Classification, Control and Appeal) Rules. After a very careful consideration, we are unable to uphold this contention of the respondent as the same could not be raised in the absence of a specific plea in the reply. ^{Further,} There is nothing on the record to show that the deceased husband of the applicant was a member of the work-charged establishment or the provisions of compassionate appointment are not applicable to the staff borne on the House-Hold Establishment of the President's Secretariat. Even O.M. dated 30.6.1987, copy annexure 4 to the reply, does not provide any exception in this respect and, in our opinion, this applies to the wards of all Govt. servants dying in harness. The contention raised on behalf of the respondent is, therefore, not tenable.

7. The respondent has not given any reply to the applicant to the applications moved by her for giving compassionate appointment to her or her son and in the reply filed before this Tribunal, the respondent has taken the stand that no appointment can be given ^{to} the applicant on two grounds: (1) because she is a PARDANASIN lady and there is no job for ladies in the House-Hold Establishment of the President. Regarding her first disability, the applicant has changed her stand in the rejoinder and she has showed her readiness to come out of PARDAH and serve the Government

after removing her veil on getting appointment. Her readiness to do so is sufficient for considering her for appointment. Regarding the other ground, the insistence on behalf of the respondent was on the fact that the applicant could be considered for compassionate appointment only in the House-Hold Establishment ^{as a Butler &} and as there is no job for ladies in the House-Hold Establishment, the applicant cannot be given any appointment. We are, however, unable to accept even this contention as no specific provision has been brought to our notice restricting the scope of appointment on compassionate grounds only to the establishment or department to which the husband of the applicant belonged. On the other hand, according to the relevant O.M. dated 30.6.1987, the authority competent to make compassionate appointment is Joint Secretary incharge of administration or Secretary in the Ministry/Department concerned and in the case of attached or subordinate offices, such power may be exercised by the Heads of the Department. We are, therefore, of the view that in case there is no job for ladies in the House-Hold Establishment of the President, the applicant can be considered by the Joint Secretary Incharge of the Administration or the Secretary (Estt.), President's Secretariat or the Secretary of the Ministry concerned for giving her appointment on any group 'D' post under him and not necessarily ^{as a Butler &} in the House-Hold Establishment of the President, according to the provisions of O.M. dated 30.6.1987.

8. Lastly, it has been contended on behalf of the respondent that compassionate appointment cannot be claimed as of right and in support of this contention reliance was placed on a decision of the Allahabad High Court in Arun Misra Vs. Union of India (1984 (1) S.L.J.-615). We have very carefully gone through this decision and in our opinion, it does not uphold the contention of the respondent. It was

nowhere held in that case that compassionate appointment cannot be claimed as of right. On the other hand, their Lordships of the Hon'ble Allahabad High Court did not think it necessary to record a finding on this point and after interpreting para 5 of O.M. dated 23.5.1978 had held that as there were earning members in the family of the deceased and the administration having refused to give appointment on that ground, the Court was not justified in interfering with the discretion exercised by the administrative authorities. In the present case, as stated above, no decision has yet been taken in the matter of the applicant by any competent authority and there is also no earning member in the family. Therefore, the case law relied upon by the respondent is not applicable to the facts of the present case.

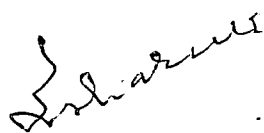
9. On the other hand, the applicant has placed reliance on the decision of this Tribunal in Smt. Munni Devi Vs. General Manager Northern Railway (A.T.R. 1986 (CAT)-105), in which the benefit of appointment on compassionate grounds was extended to the daughter of a serving railway employee who had developed serious ailment while in service. We are, therefore, of the view that the application of the applicant was not given due consideration by concerned authorities. We accordingly direct the respondent that the applicant should be considered for giving appointment on compassionate grounds on any group 'D' post by the concerned authority according to the O.M. dated 30.6.1987.

10. Regarding the prayer of the applicant for allowing her to continue in the Government accommodation allotted to her husband, we are of the view that this request is not covered under the relevant O.M. dated 30.6.1987 and no other

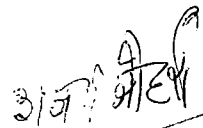
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provision has been shown to us for allowing the applicant to continue in the Govt. accommodation indefinitely or to allot any Govt. accommodation or the same Govt. accommodation out of turn on compassionate grounds. The relief claimed by the applicant in this connection is accordingly rejected.

11. The application is disposed of accordingly without any order as to costs.



(G.S.SHARMA)
MEMBER (J)



(AJAY JOHRI)
MEMBER (A)

Dated: 20.1.1989
kkb.