

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

REGN. NO. OA 220/88.

DATE OF DECISION: 17.9.1990.

Shri Sukhvinder Singh Dhillon

... Applicant.

VERSUS

Union of India & Ors.

... Respondents

CORAM:

The Hon'ble Mr. Justice Amitav Banerji, Chairman.

The Hon'ble Mr. P.C. Jain, Member(A).

For the Applicant.

... Mrs Shashi Kiran,
Counsel.

For the Respondents.

... Mr. P.H. Ramchandani
Sr. Counsel.

(Judgement of the Bench delivered by
Hon'ble Mr. Justice Amitav Banerji,
Chairman.)

The applicant, Sukhvinder Singh Dhillon, has filed this Application (O.A.) under Section 19 of the Administrative Tribunals Act seeking a direction to the respondents to consider the case of the applicant on compassionate ground for appointment in the All India Radio where his father Shri Mohinder Singh Dhillon was working as Senior Engineering Assistant. The applicant had also prayed that pending final decision of the Application, the respondents be directed to consider the applicant for the post of "Production Assistant".

Briefly stated, the relevant facts are as follows:-

Shri Mohinder Singh Dhillon, the father of the applicant, was working as Senior Engineering Assistant in the office of the Chief Engineer, (North Zone), Shahjahan Road, A.I.R., New Delhi. On the morning of 2nd November, 1984, after the assassination of Smt. Indira Gandhi, the Prime Minister of

India, the father of the applicant was on duty, working round the clock while coming home to collect his clothes, he had been caught by a mob and was killed. After the death of his father M.S. Dhillon, there was no source of income for the family except a few dues which were payable to the mother of the applicant. The condition of the family was indigent and the family was facing great hardship. The applicant's case was that he was a post graduate and had already worked as Production Assistant on several occasions with the All India Radio on casual basis. He had applied for being appointed as Production Assistant on compassionate ground on account of his father's dying in harness.

After the death of his father, the mother of the applicant had written a letter to the then Prime Minister of India and in reply to that the Respondent No. 3 had enquired "as to which post your son is to be considered for appointment on compassionate grounds". The applicant had approached the respondents and supplied all necessary information vide letter dated 29.7.1987. Thereafter, the

respondents had issued two letters dated 11.11.1987 in which it was stated that the applicant's case was not covered under the Rules. These are marked as Annexures P-5 and P-6 to the Application. The applicant had also indicated that he had essential educational and technical qualifications for the post of Transmission Executive (also known as Production Assistant). He had passed the test interview of Production Assistant on 25.4.1977 and again on 18.5.1977. In April, 1977, he had worked as Production Assistant on casual basis. He submitted that he was entitled to get the job on compassionate ground. But he had not been given while others less qualified persons had been appointed. He mentioned the names of Ms. Shakuntala Tondon, Ms. Karuna Sahai and Ajay Singh Rekhi. They all had been appointed on compassionate ground. Citing the case of Ajay Singh Rekhi on compassionate ground, he indicated that Smt. Kulwant Kaur Rekhi, the mother of Ajay Singh Rekhi, was also producer in Doordarshan and even then Ajay Singh Rekhi was given an appointment on compassionate ground.

The respondents in their reply have indicated the reasons that the Application should not be allowed. It was pointed out that Shri M.S. Dhillon died on 2.11.1984 leaving his widow and two sons viz., Shri M.S. Dhillon and the applicant. Shri M.S. Dhillon, at that time, was serving in All India Radio and later served as Senior Technician in Doordarshan Kendra, New Delhi. After the death of Shri M.S. Dhillon, his widow got a pension of Rs.1182/- per month and other benefits including G.P.F., Insurance, D.C.R.G. and Leave Encashment etc. A total amount of Rs.1,21,076.50 was received by his widow as pensionary benefits and the

deceased had also left a residential house in which the widow was living. It was stated that the widow does not seem to be in indigent circumstances. Secondly, it was pointed out that at the time of death of his father, the applicant was working as Public Relations Officer at Delta Ltd. at Ruwi, Sultanate of Oman. The applicant held this post from 3.9.1981 to 30.4.1987. He was, therefore, not in indigent circumstances. Thirdly, it was stated that the applicant's claim for appointment as Transmission Executive or Production Assistant was not feasible as he did not possess the essential qualification for the post of Transmission Executive i.e. second class degree having a record of literary or dramatic or debating activities or publications on literary or Scientific subjects from a recognised University. The applicant had passed his B.A. and M.A. in 3rd Division. It was further stated that the applicant has no locus standi for being appointed as Production Assistant. Lastly, it was stated that the appointment is only made where the family is in financial distress. This was not the position in this case.

In a rejoinder, it was stated that the other elder son of the deceased was living separately and was not supporting the family. It was further pointed out that the pension of Rs.1182/- per month was not for a whole life but for 7 years. Out of the other benefits of Rs. 1.21 Lakhs, most of the amounts which were due to the deceased were paid. There was no payment to the widow or his family on account of his death by the Government.

We have heard Mrs. Shashi Kiran, learned counsel for the applicant. She has urged that the respondents acted arbitrarily in not appointing the applicant on compassionate ground. She urged that the matters on compassionate ground are to be considered liberally and appointments given to augment the resources of the deceased family, who are left without the earning member. In this case, the applicant's father died during the course of performing his duties in the wake of the assassination of the then Prime Minister of India and the family was indigent as the applicant was unemployed.

She relied on four decisions viz., SMT. SUSHMA GOSAIN AND OTHERS VS. UNION OF INDIA AND OTHERS (AIR 1989(SC)P-1976), SMT VIDYA DEVI VS. UNION OF INDIA AND OTHERS (1989(3)AISLJ P-23), SMT PEELA BAI VS. UNION OF INDIA AND OTHERS (1989(2)AISLJ P-263) and TARSEM KUMAR SENGAL VS. STATE OF PUNJAB & ORS. (1987(2) AISLJ P-131).

Shri P.H. Ramchandani, Senior Counsel, appearing for the respondents urged that the appointment on compassionate ground is not a matter of right. But it is in the discretion of the Government inasmuch as this is to be granted if the family has been left in indigent state and needs immediate rehabilitation. Since the family of the deceased was not in indigent state and did not require immediate relief, the respondents had acted properly in refusing the prayer. It was also pointed out that the applicant's brother was already employed in Doordarshan Kendra, New Delhi as Senior

Technician. It was further urged that the widow of the deceased gets a monthly pension and has also received a sum of Rs.1.21,076.50 on account of pensionary benefits after the death of her husband and a house has also been left behind and as such the family cannot be said to be in indigent circumstances. He further urged that the case is not covered under the Rules for the applicant was working as Public Relations Officer at Delta Ltd. at Ruwi, Sultanate of Oman, from 1981 to 1987. However, he was not entitled to the post of Transmission Executive or Production Assistant as he was not eligible to be appointed as he lacked essential qualification.

Reference was made to the consolidated instructions of compassionate appointment of son/daughter/near relative of deceased Government servant. In respect of the appointments granted to some others named in the O.A. by the All India Radio/Doordarshan, it was stated that each case was decided on its own merit and the same cannot be cited as a ground. It was urged that the case of the applicant was clearly distinguishable and as such there was no arbitrariness in exercise of discretion by the respondents.

Before we take up the questions involved in this case, one more fact needs to be mentioned. The elder brother of the applicant Shri M.S. Dhillon, aged 34 years, also died on 4.12.1988 in an accident at Lucknow Road, Timarpur, Delhi leaving behind his widow and two children. The two questions that arise in this case are:-

(1) Whether the Application made by the applicant for being appointed on compassionate ground was maintainable?

(2) Whether the exercise of discretion by the respondents was in accordance with law?

The appointment on compassionate ground on the basis of dying in harness rule is well established. It has been made to ease a situation which occurs when an earning member of the family in Government service or in service of Govt. Corporations dies and leaves behind his family in an indigent condition either the son or the daughter or the widow may be appointed in Class 'C' or 'D' posts to augment the income of the family so that they may live and face the extraordinary situation caused by the death of earning member of the family. The question as to what post or job the said member of the family is to be appointed is left to the discretion of the authorities of the Ministry or Department or Corporation where the deceased worked. Apart from the other things, the qualifications of the persons to be appointed are also material. The consolidated instructions issued by the Government dated 23.5.1978 by the Ministry of Home Affairs, Department of Personnel, New Delhi, clearly say that the Ministries and Departments are competent for appointment in relaxation of the procedure of recruitment through Staff Selection Commission or Employment Exchange, the son/daughter/near relative of a Government servant who dies in harness, leaving his family in immediate need of assistance in the event of there being no other earning member in the family, to a post of LDC or any other

Group 'C' post of comparable rank or Group 'D' post, after the proposal for such appointments has been approved by the Joint Secretary Incharge of the Administration or Secretary in the Ministry/department concerned.

The above instructions have been referred to in several decisions. But it will be relevant to cite a recent decision of the Supreme Court in the case of SUSHMA GOSAIN VS. U.O.I. (Supra). The principle laid down by the Supreme Court is significant. The Supreme Court observed that-

"We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant".

This was in a case where the applicant Smt. Sushma Gosain had filed a writ petition in the High Court of Delhi for a direction to appoint her in a suitable post. Her husband was Storekeeper in the Department of Director General Border Road. He died in 1982. The applicant prayed for appointment as LDC on compassionate grounds in terms of O.M. dated 25.11.1978. The department resisted the writ petition with a primary contention that the appointment of ladies in the establishment was prohibited. The Director General Border Road approached other departments to get an employment to Sushma Gosain in order to mitigate her hardship, but every one regretted. It was stated that if Sushma Gosain nominates a male member of her family, he could be considered for appointment. But the applicant had only a minor son. The

High Court dismissed the writ petition by a brief order holding that since no relief could be given to the petitioner, the petition was dismissed. Their Lordships of the Supreme Court observed that-

"It seems to us that the High Court has made the order in a mechanical way and if we may say so, the order lacks the sense of justice".

We may also refer to the case of SMT. VIDYA DEVI VS.

UNION OF INDIA AND OTHERS(Supra) where the Chandigarh Bench of the Tribunal held-

"The respondents are expected to have a liberal approach having regard to the beneficent nature of the policy of compassionate employment. To argue that the legal heirs of the deceased would be able to take out livelihood on attaining maturity would be tantamount to defeat the very purpose and the object underlying the policy rendering minimum financial assistance to the indigent and needy heirs of a deceased Government employee. Hence, we do not feel persuaded to hold that the applicant did not deserve compassionate appointment for the reasons stated above".

The Division Bench directed the respondents to consider the Application of the applicant for compassionate employment.

In case, however, the respondents had already filled up the vacancies of 1988, they must offer her compassionate employment within six months from the receipt of this order against the vacancies which may occur in 1989, for going beyond this will be too late and defeat the very purpose of compassionate appointments.

In the present case, the applicant's father died on 2.11.1984 while on duty in the wake of the assassination of the then Prime Minister Smt. Indira Gandhi. There is nothing

on the record to show that any amount was paid to the members of the family as compensation. The amount that was paid to the widow of the deceased was the sum due to the deceased if he had died or retired on 2.11.1984 by way of Death-cum-Retirement Gratuity, G.P.F., Insurance, leave encashment etc. These sums would have been paid to her even if the deceased met with an accident while not on duty. The amount which she received, if properly invested would have given her a thousand rupees or more per month, besides she had also been granted a sum of Rs.1182/- as pension. It is also a fact that on 2.11.1984 the eldest son of the deceased, Shri M.S. Dhillon, was employed in the All India Radio/Doordarshan as Senior Technician. Besides this, the applicant, Shri Sukhvinder Singh Dhillon was also employed but outside India in the Sultanate of Oman. It is also relevant that the deceased left behind him a house for the family. All these circumstances indicate that the family was not in an indigent condition.

Five years later the applicant made an application for appointment on compassionate grounds in the All India Radio/Doordarshan as Transmission Executive or Production Assistant. This prayer was rejected by the respondents. A grievance is now made that the applicant was entitled to be appointed on compassionate grounds as Transmission Executive or Production Assistant in the All India Radio/Doordarshan.

The Instructions dated 23.5.1978 issued by the Ministry of Home Affairs, Department of Personnel, New Delhi empowers the Ministries and Departments for making appointment on compassionate grounds in relaxation of the procedure of recruitment of the son/daughter/near relative of a Government servant dying in harness emphasised (i) leaving his family in immediate need of assistance and (ii) there being no other earning member in the family. In the present case the facts and circumstances show that at the time of the death of Shri Mohinder Singh Dhillon, his family was not left in an indigent condition although they may have had some very difficult time in the beginning till the retiral benefits and pension were paid to the widow and, secondly, both the sons of the deceased were then employed. Consequently, according to the aforesaid Instructions, the applicant was not entitled to the relaxation of rules for the recruitment on the basis of the dying in harness principle.

Another aspect of the matter to be considered is whether an application made after five years of the death, during which time the son of the deceased becomes unemployed, is a factor to be taken into consideration. It is well settled that this assistance should be given when the family is in an indigent condition and the succour is needed immediately after the death. In other words, there should be an urgency in the matter of

providing relief to the distressed family. This situation did not arise for five years after the death of the applicant's father. We do not think that an application for appointment on compassionate grounds is maintainable, after a change of circumstances when the son of the deceased became unemployed. That is not what is contemplated in the Instructions dated 23.5.1978 nor under the aforesaid decision of the Supreme Court.

Another circumstance which was mentioned during the course of the arguments was that the elder son of the deceased had died in an accident on 4.12.1988 and this factor needs to be considered by the Department. The application for appointment on compassionate grounds made to the Department have been considered much before 4.12.1988 and the present O.A. was pending before the Tribunal. The death of the elder son of deceased Shri Mohinder Singh Dhillon might give rise to an appointment on compassionate grounds. But that matter is not before us nor are we entitled to consider it in this O.A.

The applicant's claim that he was tested twice for appointment as Transmission Executive/Production Assistant but was not given the appointment is subservient to the question whether he was entitled to be appointed on compassionate grounds at all. If the answer to the above was in the negative, then in that event, the question for appointment as Transmission Executive/Production Assistant did not arise.

Having considered the matter, we are unable to hold that the discretion exercised by the respondents was bad in law or liable to be interfered with. We, therefore, dismiss the O.A. but leave the parties to bear their own costs.

L. M.
(P.C. JAIN)
MEMBER (A)

AB
(AMITAV BANERJI)
CHAIRMAN

SRD

17.4.40