

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 312/1988

T.A. No.

199

DATE OF DECISION December 12, 1990.

Mrs. Jiwan Devi & Another	Petitioner
Shri Sant Lal	Advocate for the Petitioner(s)
Versus	
Union of India & Ors	Respondents
Shri P.P. Khurana	Advocate for the Respondent(s)

CORAM

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

The Hon'ble Mr. I.K. Rasgotra, Member (A)

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

(AMITAV BANERJI)
CHAIRMAN
12.12.1990.

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
DELHI.

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O.A. No. 312/1988. Date of decision: 12.12.1990.

Mrs. Jiwan Devi & Another ... Applicants.

Vs.

Union of India & Ors. ... Respondents.

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HON'BLE MR. JUSTICE AMITAV BANERJI, CHAIRMAN.

HON'BLE MR. I.K. RASGOTRA, MEMBER (A).

For the applicants

Shri Sant Lal, counsel

For the respondents

Shri P.P. Khurana,
counsel.

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

The applicant No.1, Mrs. Jiwan Devi is the widow of late Shri Narain Dass who was employed as a Sorting Postman in New Delhi Head Post Office under Delhi Postal Circle. He expired on 18.2.1987 in harness. He had left behind two sons and five daughters. The elder son was living separately from the family and was employed as a Draftsman in the Okhla Telephone Exchange. Applicant No.2 is Lalit Kumar Arora son of the deceased. He passed Secondary School examination in 1987 from the Central Board of Secondary Education, Delhi. The applicants applied to the Chief Postmaster, New Delhi on 5.3.1987 for providing employment to applicant No.2 on compassionate grounds to render help to the bereaved family. He had attained the age

of 18 years. The applicants have prayed that applicant No.2 is entitled for appointment according to his educational qualification on compassionate ground.

Certain other facts pertaining to the accommodation which was being occupied by the deceased and for its retention have been mentioned in the O.A. but we do not think that the same should detain us for no relief has been asked in respect thereof.

Shri Sant Lal, learned counsel for the applicant stated that on 17.6.1988, a Division Bench of the Tribunal had directed the respondents to take decision on the application of Shri Lalit Kumar (Applicant No.2) for compassionate appointment within a period of three months from the date of the communication of the above order. On 21.10.1988, another Division Bench passed an order on the information supplied by the learned counsel for the respondents that applicant No.2 was under age being 16 years and 3 months at the time of his father's death on 18.2.1987. He attains the age of 18 years on 3.11.1989 and, therefore, his case would be considered for employment on compassionate grounds on his attaining majority. Learned counsel for the applicant, however, urged at that time that employment on compassionate grounds was permissible by relaxing the minimum age as is provided for in the Government order. The Bench had, therefore, directed the respondents to consider whether relaxation can be accorded and "if not, why not."

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The matter came up before a Bench of which one of us (Amitav Banerji, J) was a Member on 6.12.1988. Reference was made to the Office Memorandum dated 21.3.1988, which made it clear that the applicant could apply when he attains the age of 18 years and not before. The case thereafter had been expedited for the purpose of hearing.

We have heard learned counsel for the parties. We directed the respondents to produce the record relating to the payment of retiral benefits of the applicant and other legal representatives. Shri P.P.Khurana, learned counsel for the respondents informed the Bench that Mrs. Jiwan Devi was receiving Rs.637/- as family pension and a further sum of Rs.274/- as D.A. totalling Rs.911/- per month. She had also received the following amounts:

D.C.R.G.	Rs.42,075.00
Group Insurance	Rs.21,140.00
Provident Fund	Rs. 9,253.00
Leave encashment	Rs. <u>607.00</u>
Total	Rs. <u>73,075.00</u>

Consequently, it was also pointed out that the eldest son of the deceased was in Government employment and the only dependent on the widow was the younger son. The widow and her younger son were not an indigent family. The widow has a substantial income and also had received a substantial amount of money by way of retiral benefits of the deceased. That amount was sufficient for taking care of both the mother and son. Although it was stated that the deceased left behind five daughters, there is ^{no} mention anywhere that these daughters ^{are} either not married or are dependent on the mother. Lastly, Shri P.P.Khurana argued that the appointment

on compassionate grounds proceeds on the exercise of discretion after carefully considering the matter whether the party has been provided with sufficient funds and has a family pension. Without considering the above facts, appointment on compassionate grounds would not be justified.

Shri Sant Lal, learned counsel for the applicants, however, urged that the earlier orders passed by the Bench indicated that the only question to be considered was only the age of applicant No.2. He having attained the age of majority, he should be appointed. In support thereof, he cited the case of RATNA DEVI Vs. THE SECRETARY, HARYANA STATE ELECTRICITY BOARD, CHANDIGARH (SLJ 1987(3) 186) decided by the Punjab and Haryana High Court. In that case, the petitioner's husband died in harness and she applied for appointment of one son. This was refused on the ground that another son was working in the Bank. The High Court Bench held that the spirit of the Govt. orders did not demand consideration whether another son was working. The Bench ordered compassionate appointment of the petitioner's son. In this case the rule of Employment was decided by the Haryana State Electricity Board's in its meeting held on 22nd October, 1971 and had taken the following decision:

" EMPLOYMENT

One or more members of the family of the deceased may be considered for employment in the Board's services, relevant rules being relaxed, if necessary and if feasible."

This was on the basis of the special provision contained in the Haryana State Electricity Board's instructions.

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Learned counsel for the applicants also cited the case of SMT. ROSHANARA BEGUM V. UNION OF INDIA THROUGH SECY. MINISTRY OF HUMAN RESOURCES DEVELOPMENT (1990(2) ATJ 206) where a Division Bench of this Tribunal held that younger son of the deceased was to be considered for appointment on compassionate grounds notwithstanding that his mother was getting a family pension of Rs.470/- per month and has also received some amounts towards retirement benefits.

Learned counsel for the applicants had also referred to the decision of the Chandigarh Bench of the Central Administrative Tribunal in the case of SMT. VIDYA DEVI V. UNION OF INDIA & ORS. (1989(3) SLJ 22). In this case the sole question for consideration was whether the applicant was entitled to employment to a Group 'D' post on compassionate grounds or not. In this case it was stated that the widow had received financial benefits amounting to Rs.52,000/- and she had three minor children to support. She was drawing a pension of Rs.375/- per mensem. The Bench held that:

"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."

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Reference was also made to the case of
SMT. SUSHMA GOSAIN & ORS. V. UNION OF INDIA & ORS (1989(2)
Scale 473), decided by the Supreme Court on 23.8.1989

It was observed:

"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."

This was a case where the appointment was sought by the widow of the employee whereas the plea was taken that no ladies were offered appointment in the D.G. Border Road because of the nature of the work. The High Court had dismissed the writ petition but the order was reversed by the Supreme Court. In this case, there was a delay in making the appointment on the plea that there was no suitable post. Their Lordships held:

"If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant."

The present case is not one of delay. No person can be appointed unless he attains the age of 18 years. The question of appointing someone who is still a minor in Government service does not arise.

The principle underlying the appointment on
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compassionate ground is / render immediate financial assistance to the indigent and needy heirs of a deceased Government employee". The first requirement is that it is an indigent

family, needing succor to survive the situation created by the death of the bread earner who was a Government employee.

In a recent decision by a Division Bench of this Tribunal in the case of SMT. HAR DEI V. U.O.I. & ORS. (DA 2267/89) decided on 18.7.1989, the request of the applicant for compassionate appointment on account of the death of her husband who was employed as a Packer under the second respondent was denied. In their reply, the respondents stated that the only son of the applicant was employed as Packer under the second respondent, her two daughters were married and that she had no liability. It was further stated that an amount of Rs.49,238.50 had already been paid to the applicant on account of D.C.R.G., leave encashment etc. besides family pension of Rs.710/- per month. The Division Bench held:

"Employment on compassionate ground cannot be claimed as a matter of right. When the competent authority has duly considered the circumstances of the family of the deceased employee based on the request of the widow, and rejected the request for appointment, we are of the view that there is no case for judicial review. The application is rejected."

It will be evident from the above that the appointment on compassionate grounds on the death of a Government employee dying in harness is not a right for the heirs of the deceased employee. It is to be granted by the authorities concerned only where the facts and circumstances make out a case for giving immediate help to an indigent family whose needs are such that relief by way of appointment on compassionate ground is

considered necessary. The authorities concerned have to consider the funds at the disposal of the family of the deceased, i.e., the amount of Provident Fund, D.C.R.G., and Pension etc. which accrues to the family and whether there are any other social benefits given to the family of the deceased.

In the present case, we were shown the photostat copy of the letter No.R&E/B-41/837 dated 2.2.1990 issued by the Asstt. Director (Staff), Office of the Chief Postmaster General, Delhi Circle, New Delhi to the first applicant which reads as under:

"Madam,

I am directed to refer your application dated 2.1.90 and to inform you that the request for employment to your son can not be acceded to, under the rules.

The inconvenience caused to you is regretted very much...."

It is apparent that the Department has finally decided the matter declining to grant the relief prayed for by applicant No.1.

Applying the principles discussed above to the facts of the case, it is apparent that the applicant No.1 is not in an indigent state. Substantial amounts of funds had been placed at her disposal which would have come to the husband of the applicant No.1 on his retirement. She is also receiving a family pension of Rs.911/- per month. Besides this, funds placed her disposal amounts to over Rs.73,000/-. It cannot, therefore, be said that she was in such dire need of funds to tide over the very

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difficult situation. The position was that applicant No.2, younger son, was of 14 years when her husband died. He was not eligible to be appointed. By the time he became eligible for appointment, the applicant No.1 had been provided with sufficient funds.

The authority concerned was the Chief Postmaster General, Delhi Circle who had considered the matter and took a decision. A decision had been taken declining to exercise the power to make an appointment on compassionate grounds. Having heard the learned counsel for the parties, examined the matter and the legal position, we are satisfied that this is not a fit case for interference. We have already indicated our reasons above.

In the result, therefore, the O.A. fails and is dismissed but there will be no order as to costs.

I.K. Rasgotra
(I.K. RASGOTRA) 12/12/90
MEMBER (A)

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12-12-90
(AMITAV BANERJI)
CHAIRMAN