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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH; DELHI

O.A. NO. 1247 OF 1988

Date of decision 24-12-1990

Kumari Kamlesh	...	APPLICANT
Shri R. K. Kamal	...	Counsel for the Applicant
V/s		
Union of India & Others	...	RESPONDENTS
Shri K. C. Mittal	...	Counsel for the Respondents

CORAM : Hon'ble Shri P. C. Jain, Member (A)  
Hon'ble Shri J. P. Sharma, Member (J)  
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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 their Lordships wish to see the fair copy of the Judgment ? *No*
4. To be circulated to other Benches of Tribunal ? *No*

*J. P. Sharma*

( J. P. Sharma )  
Member (J)

*P. C. Jain*

( P. C. Jain )  
Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, DELHI.

O.A. NO. 1247 of 1988

Date of decision 26-12-1988

Kumari Kamlesh	...	APPLICANT
Shri R. K. Kamal	...	Counsel for the Applicant
V/s		
Union of India & Others	...	RESPONDENTS
Shri K. C. Mittal	...	Counsel for the Respondents

CORAM : Hon'ble Shri P. C. Jain, Member (A)  
Hon'ble Shri J. P. Sharma, Member (J)

J U D G M E N T

(Hon'ble Shri P. C. Jain, Member(A) :

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant who is the daughter of one Shri Brij Lal, Record Attendant, in the Office of the Director, National Archives of India and who died in harness on 21.12.1984, has prayed that the impugned order dated 31.5.1988 (Annexure A-1) by which she has been finally informed that her request for compassionate appointment cannot be acceded to, be quashed and the respondent No.1, e.g., Union of India through Director, National Archives of India, be directed to appoint her on a Group-D post on compassionate grounds. As an interim relief, she prayed that she be not evicted from the Government accommodation (which was allotted to her late father) till the disposal of this application.

2. The Tribunal in its order dated 8.7.1988 directed the respondents, as an interim measure, that until further orders she should not be dispossessed from the Government accommodation. This interim order was extended till 29.8.1988 vide orders passed on 22.7.1988. The record of the case does not show that this interim order was extended beyond the aforesaid date.

3. The relevant facts, in brief, are that the applicant applied for compassionate appointment vide her application dated 16.1.1985 (A-4) in which inter alia it was stated that her father died leaving behind herself and her ailing mother. The request for compassionate appointment was rejected vide memorandum dated 1.7.1985 (Annexure A-7). She continued to make representations through various personalities/authorities, and with reference to her application dated 20.5.1988 she was again informed that her request could not be acceded to as the same is not covered under the rules. An order was also passed on 24.4.1987 under Sub-Section (1) of Section 5 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 for vacation of the premises allotted to late Shri Brij Lal within 15 days.

4. The case of the applicant is that her request for compassionate appointment has been rejected on extraneous grounds and in violation of the Government's instructions on the subject in an arbitrary manner which is violative of Article 14 of the Constitution. It is contended that her father had left behind her mother who was suffering from chronic schizophrenia (a form of insanity) for the last 15 years or so; that she was unmarried; and that the family had not heard of her brother for the last 11 years who was thus presumed to be dead. The rejection of her request for compassionate appointment on the ground that she was married daughter and that her brother was alive and employed and that she had allegedly concealed the fact in an affidavit submitted by her for payment of settlement dues of her late father to her, are untenable.

5. We have perused the material on record and also heard the learned counsel for the parties.

6. It is on record that the applicant's mother also died on 10.10.1987. It has also come on record that the applicant's brother is alive and has been working since 1974 on daily wages

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in the T.B. Chest Clinic, Narela under the Municipal Corporation of Delhi. The applicant has, however, filed with her misc. petition for early hearing an affidavit of her brother verified on 17.9.1988 to the effect that he is not in a position to maintain his sister and he did not keep any touch with any member of his family for the last about 11 years. It is pertinent that in her rejoinder to the counter affidavit filed by the respondent No.1 the applicant stated that when she went to seek her brother at the stated address she could not meet him or ascertain the truth about it. She has also stated that Annexure R-8, which is a letter dated 13.6.1988 from the Senior Medical Officer-in-Charge, T.B. Chest Clinic, Narela verifying the engagement of the applicant's brother since 1974, is yet to be verified. But the affidavit of her brother which she filed on 7.5.1990 is dated 17.9.1988. The aforesaid rejoinder was filed on 14.9.1988. The fact of her brother being alive and working came to the notice of the respondents through an anonymous letter dated 7.4.1988 (R-7). The applicant, however, did not file this affidavit dated 17.9.1988 either with the application or with her rejoinders to the counter affidavits filed by the respondents 1 and 2 separately. It is, therefore, prima facie difficult to believe that the applicant was not aware of the address of her brother at least from about middle of 1988 when his employer verified to respondent No.1 the fact of his employment with them since 1974 and the affidavit sworn in by him the language of which shows that this has been done by him at the request of his sister. The applicant, however, concealed this fact until the beginning of May, 1990.

7. The other point of dispute in this case is whether the applicant is married or not. She has asserted that she is unmarried, and has filed a copy of the affidavit dated 21.2.1985 which she had furnished to respondent No.1 in connection with the payment of her father's settlement dues

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to her, and also filed a copy of a letter dated 6.9.1987 from the General Secretary of Srinivas Puri Sudhar Samiti (Regd.) in which it has been certified that "Kumari Kamlesh was never married which is true to the best of my knowledge and belief. No doubt, her father took advance from GPF for solemnizing the marriage of his daughter but the same was never solemnized, and as such she is still unmarried." On the other hand, the respondents have asserted that on the basis of the documents with them, the applicant is married. They have referred to the application dated 23.8.1973 (R-1) given by her father for a temporary advance from his G.P. Fund for performing the engagement ceremony of the applicant. The sanction was issued on 3.9.1973 (R-2). Another application for withdrawal (non-refundable) was made on 24.10.1980 for performing the marriage (R-3). The sanction was issued on 1.11.1980 (R-4). Another evidence furnished by the respondent No.1 is that the applicant's father changed his nomination for Death-cum-Retirement Gratuity on 6.3.1981 by which the nomination of the applicant was cancelled and one Shri Nand Lal was nominated in the event of his wife dying earlier than him. It has, therefore, been contended that the nomination in favour of the applicant was withdrawn by late Shri Brij Lal, as he was aware that his daughter who had since been married would not be in a position to look after his wife. It is also asserted that in the 'Details of Family' furnished by late Shri Brij Lal on 6.3.1981 he had mentioned the name of his wife only and not the name of the applicant (R-6). It is, therefore, their case that a combined reading of the aforesaid documents clearly indicates that the applicant is a married lady and not an unmarried girl and that the applicant has concealed this fact from the Tribunal.

8. We have carefully considered the rival contentions of the parties. As against the statement of the applicant and the certificate produced by her which itself is not an affidavit,

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there are documents of the applicant's father which do give a positive impression that the applicant had been married. These documents are themselves relevant in accordance with the provisions of Section 32 of the Indian Evidence Act, 1872 and cannot be ignored in the absence of an equally reliable evidence to the contrary. If so, only the son of the deceased Brij Lal remains in the family and he is admittedly employed and has also not sought any appointment with respondent No.1 on compassionate grounds.

9. The learned counsel for the applicant urged that a married daughter of a deceased Government servant is not debarred from seeking employment on compassionate grounds. While it is so, it has to be seen whether there is any one in the family to be supported on the death of the deceased Government servant. The widow has already died, daughter appears to be married and thus would be dependent on her husband, and the son is already employed.

10. Learned counsel for the applicant cited the following three cases :

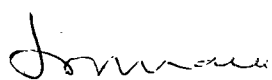
- (i) Smt. Sushma Gosain vs. Union of India :  
AIR 1989 (2) 435;
- (ii) Smt. Roshanara Begum vs. Union of India :  
1990 (2) ATJ 206;
- (iii) Mani Lal Vyas vs. Union of India & Ors.:  
1 (1990) ATLT (CAT) 341.

We find that the above three authorities do not help the applicant. In the case of Mani Lal Vyas (supra) bar of limitation had been raised which is not so in the case before us. Further, the respondents had taken the plea that the applicant's father had been offered alternative employment but he declined and as such the applicant was not entitled to any compassionate appointment. In the case before us there is also no such issue. In the case of Smt. Roshanara Begum (supra) the respondents had, inter alia, taken the plea that three sons of the applicant were employed and as such her condition was not indigent to justify the benefit of appointment

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on compassionate grounds of the fourth son. A Division Bench of the Tribunal held that the Mohamedan Law does not recognise the word 'joint family' in the O.M. dated 30.7.1987. In the case before us there is no one to be supported. In the case of Smt. Sushma Gosain (supra) the Supreme Court held that there should not be any delay and it is improper to keep such cases pending for years. The factor of delay also does not exist in this case as the applicant had been informed by the respondents of the rejection of her request as early as 1.7.1985.

11. It may be noted that in her affidavit verified on 21.2.1985 the applicant had stated that her father died leaving behind herself and her mother. It was also stated that she is the legal and lawful daughter of her deceased father and as such she was entitled for his dues (gratuity, pension, G.P.F. etc.). No mention is made in this affidavit about the existence of her brother and that he was un-heard of for the last 11 years. Similarly, while approaching the Tribunal she did not disclose that her appeal against the order of eviction had been dismissed by the Additional District Judge, Delhi on 29.10.1987 (Annexure-1) to the counter affidavit filed by the respondent No.2. In her rejoinder to this counter affidavit the applicant has stated that she does not remember to have received the aforesaid order dated 29.10.1987. This also prima facie is difficult to believe.

12. In view of the foregoing discussion, we are of the view that the application is devoid of merits and is accordingly rejected. However, in the circumstances and on the facts of this case we leave the parties to bear their own costs.

  
( J. P. SHARMA )  
MEMBER (J)

  
( P. C. JAIN )  
MEMBER (A)