

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 387
T.A. No.

198 6

DATE OF DECISION September 10, 1986

Shri Avtar Singh,

Petitioner

Shri N.Safaya,

Advocate for the Petitioner(s)

Versus

Union of India,

Respondent

Shri N.S. Mehta,

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Justice K.Madhava Reddy, Chairman.

The Hon'ble Mr. Kaushal Kumar, 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 to be circulated to other Benches ? *No*

K. Kumar
(Kaushal Kumar)

Member 10.9.1986.

K. Madhava Reddy
(K. Madhava Reddy)
Chairman 10.9.1986.

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
DELHI.

REGN. NO.CA 387/86.

September 10, 1986.

Shri Avtar Singh

Applicant.

Versus

Union of India

Respondents.

Coram:

Shri Justice K.Madhava Reddy, Chairman.

Shri Kaushal Kumar, Member.

For Applicant ...

Shri N.Safaya, counsel.

For respondents ...

Shri N.S. Mehta, Sr.Counsel.

(Judgment of the Bench delivered by
Shri Justice K.Madhava Reddy, Chairman).

This is a petition by one Shri Avtar Singh who was working as Junior Accounts Officer in the Office of the Chief Controller of Pay and Accounts, Ministry of Food & Civil Supplies for appointment of his son Shri Jitender Singh on compassionate grounds in terms of Office Memorandum No.14014/10/80-Estt.(D) dated the 18th March, 1982 issued by the Govt. of India, Ministry of Home Affairs, Department of Personnel & Administrative Reforms, New Delhi on his being declared completely and permanently incapacitated for service of any kind and superannuated on invalid pension w.e.f. 4.8.1984 afternoon. On the date of his retirement, he was 57 years old. When he applied for appointment of his son on compassionate grounds, he was asked in letter No.Admn./Food/Pension/AS.Bhatia/1481 dated 31.1.1985 of the Office of the Controller of Accounts, Ministry of Food & Civil Supplies, Department of Food, New Delhi to furnish particulars of his family members entitled for appointment and to furnish the requisite information in duplicate in the forms enclosed with the communication.

By another letter No.Admn./Food/Pension/Avtar Singh/84-85/1845 dated 16.3.1985, now impugned he was informed that "it is not permissible to employ sons/daughters of

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employees who retires on Medical grounds after attaining the age of 55 years, as you were 57 years of age at the time of retirement. Hence your case is not covered under the Rules".

The petitioner was obviously unaware of the subsequent instructions issued under O.M.No.14014/6/83-Estt.(D) dated 1.3.1984 by the Govt. of India, Ministry of Home Affairs, Department of Personnel & Administrative Reforms, New Delhi, which categorises applicants for appointment on compassionate grounds into the following three groups:-

- (i) Those who retired on medical grounds after attaining the age of 55 years prior to the date of issue of the O.M. dated 18.3.1982 but the requests for compassionate appointments were pending decision on 18.3.1982.
- (ii) Those who retired on medical grounds after attaining the age of 55 years on or after 18.3.1982, but before the revised orders had been circulated by the Ministry concerned to their sub-Ministry formations.
- (iii) Those who retired on medical grounds after attaining the age of 55 years on or after the date of communication of the revised orders by the Ministry concerned.

That O.M. directs action to be taken on the applications of the members of each of these groups as under:-

- (i) In the first category, where the retirement took place before 18.3.1982 Ministries/Heads of Deptts. may take a decision without applying the restriction imposed in the OM dated 18.3.1982.
- (ii) In the second category of cases, Ministries may examine the requests on merits of each case and make a reference to this Department only in those cases where they consider that it would be a fit case for recommending relaxation of the provisions of the OM dated 18.3.82.
- (iii) In the third category of cases attracting the provisions of OM dated 18.3.82 no request for compassionate appointment by relaxing its provision may be entertained.

The application made by the petitioner who retired on invalid pension w.e.f. 4.8.1984 clearly falls under the 3rd category and as directed under the O.M., no request



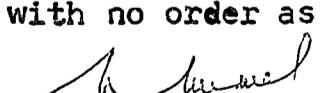
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for compassionate appointment by relaxing provision can be entertained.

It is, however, argued that the instructions contained in O.M.No.14014/10/80-Estt.(D) dated 18.3.1982 were not communicated to the concerned departments and as such his case falls under Group 2. We are unable to agree with this contention. Admittedly, O.M. dated 1.3.1984 was in clarification of the earlier orders issued on 18.3.1982 and the petitioner having retired on 4.3.1984 must be aware of both the O.Ms. Even in his application before this Tribunal, he had stated that he had submitted his representation (Annexure 'D'). In that he has specifically stated that the Department of Personnel and Administrative Reforms have recently issued instructions to the effect that the benefit of appointment on compassionate grounds may not be given to the sons/daughters/near relatives of the Govt. servants who are retired on medical grounds after attaining the age of 55 years. Obviously this is a reference to O.M. of 1st March,1984 which in terms refers to the earlier O.M. No.14014/10/80-Estt.(D) dated 18.3.1982. So at least by the date he applied for appointment on compassionate grounds this O.M. was within the knowledge of the petitioner and also the department to which he belonged. His case, therefore, does not fall under Group 2.

In O.M. dated 18.3.1982 the concession of appointing the sons/daughters/near relatives of the employee who has been retired on medical grounds was not extended to such employees who have retired on or after attaining the age of 55 years. Under the revised instructions in O.M.No.14014/6/83-Estt.(D) dated 1.3.1984, cases falling under Group 1 or Group 2 could be considered as stated therein. If the application for appointment on compassionate grounds was not pending on the day when the instructions dated 18.3.1982 were

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communicated to the concerned department, then such an application could not be considered and appointment ordered under either of O.Ms. Shri N.Safaya, learned counsel for the applicant contends that such a classification is discriminatory and violative of Articles 14 and 16 of the Constitution. Neither the first petitioner nor his son who has been impleaded subsequently can claim any right to appointment on the strength of either of the O.Ms. There is no service rule except the above referred to administrative instructions (O.Ms) which vests any right to appointment. How far such service rule and O.M. would be valid or violative of the provisions of Arts.14 and 16, it is unnecessary to consider in this petition. Assuming, such a provision is valid, the right, if any, emanates from those administrative instructions issued by the Government; it is not a fundamental or statutory right. These instructions relate to appointment on compassionate grounds. Neither the retiring employee nor a person who seeks employment under these instructions has any right to such appointment. Further persons retiring after attaining the age of 55 years form a distinct class by themselves and all such persons are being treated equally. This age is not arbitrarily fixed; but is fixed with reference to the date of the communication of the order. Persons whose applications were pending on that date are sought to be protected which cannot be said to be an arbitrary determination of the date. In our view, no question of discrimination, violative of Art.14 and 16 arises. In the circumstances, we hold that the first petitioner does not have any right to the appointment of the 2nd petitioner on compassionate grounds. The petition, therefore, fails and is accordingly dismissed with no order as to costs.


(Kaushal Kumar)
Member
10.9.1986.


(K. Madhava Reddy)
Chairman
10.9.1986.