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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 669/87. 198
T.A. No.

DATE OF DECISION 19.11.1987.

Smt. Usha Rani Sarkar Petitioner

Shri K.N.R. Pillai Advocate for the Petitioner(s)

Versus

Union of India & Anr. Respondent

Shri M.L. Verma Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Justice J.D. Jain, Vice-Chairman

The Hon'ble Mr. Birbal Nath, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ? ☒ *ye.*
2. To be referred to the Reporter or not ? *ye.*
3. Whether their Lordships wish to see the fair copy of the Judgement ? ☐
4. Whether to be circulated to all the Benches ? ☒

19/11/87
(BIRBAL NATH)
Member (A)

J.D. Jain
(J.D. JAIN)
Vice-Chairman

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PRINCIPAL BENCH
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DATE OF DECISION: 19.11.1987.

REGN. No. O.A. 669/87.

Smt. Usha Rani Sarkar & Anr. ... Applicants

Vs.

Union of India & Anr. ... Respondents

CORAM:

Hon'ble Mr. Justice J.D. Jain, Vice-Chairman.

Hon'ble Mr. Birbal Nath, Administrative Member.

For the applicants: Shri K.N.R. Pillai, counsel.

For the respondents: Shri M.L. Verma, counsel.

J U D G M E N T.
(delivered by Hon'ble Mr. Birbal Nath, AM).

Late Shri S.K. Sarkar was working as Foreman in the Government of India Press, Coimbatore when he died in harness on 19.8.1982. Her widow, Smt. Usha Rani Sarkar, per her application under Section 19 of the Administrative Tribunals Act, 1985, filed before the Tribunal in May, 1987, has prayed that the post of Book Binder or Lower Division Clerk or any other group 'C' post, for which her son, Shri Pradeep Kumar Sarkar, is eligible, be given to him in view of the instructions of the Government regarding provision of appointments to the son/daughter/near relative of deceased Government servants

on compassionate grounds.

2. Before noting the relevant facts of the case, the instructions of the Government on the subject may first be analysed. The Government policy with regard to provision, on compassionate grounds, of appointments to son/daughter/near relative of deceased Government servants was issued on 25th November, 1978 (Annexure A-2) and has been reiterated vide order dated 15th July, 1987 almost on the same lines. These instructions provide that applicants for compassionate appointment should be appointed only if they are eligible and suitable for the post in all respects under the provisions of the Recruitment Rules. It is further provided that in deserving cases, even where there was an earning member in the family, a son/daughter/near relative of a Government servant, who died in harness leaving the family in indigent circumstances, might be considered for appointment to the post. From the above, it will be clear that even for making compassionate appointments, conditions of eligibility and suitability must be fulfilled.

3. As already stated, late Shri S.K. Sarkar was working as a Foreman (M/C), Government of India Press, Coimbatore, when he died on 19.8.1982. This was a class 'C' post. His widow made a request the same year for a post of L.D.C./Copy Holder, for her son. She was informed vide Office Memorandum dated 5th October, 1983 (Annexure A3) that her

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son could not be appointed on compassionate grounds in Delhi Presses as no vacancy was available in any grade in Delhi Presses. Ultimately, she got a reply from the Directorate of Printing vide their O.M. dated 20th June, 1984 (Annexure A-5) that her request for employment of her son, Shri Pradeep Kumar Sarkar, had been considered for group 'D' post in nearby Delhi Presses. She was asked to give her willingness for appointment of her son against group 'D' post. She again made representations for giving her son a post of Binder and she was informed on 10th May, 1985 (Annexure A-6) that the employment of her son had been considered carefully but the same could not be acceded to. However, the following para. 2 was added in the said Memorandum:-

"2. However, when Shri Pradeep Kumar Sarkar completes his apprenticeship training in the trade of Binder his case for appointment as Binder could be considered in the Press where he is undergoing training according to the Rule."

The applicant then wrote a detailed letter to the Prime Minister on 5th March, 1985 and again apparently on 17th July, 1986. In reply to the applicant's representation, Joint Secretary to the Prime Minister informed her vide letter dated 21st July, 1986 (Annexure A8) as follows:-

"...your son's application for the post of Binder will be considered after the result of All India Trade Test of Apprenticeship is declared. In the meantime, an offer of appointment in the Group 'D' post on compassionate ground has already been sent to him."

4. In the meanwhile, the applicant's son, Shri Pradeep Kumar Sarkar, had joined Apprenticeship Training as Book Binder and he remained under ~~further~~ Apprenticeship training with the Government of India Press, Minto Road, New Delhi, from 18.5.1983 to 17.5.1985 and

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he was declared passed at the 44th All India Trade Test conducted by the National Council for Vocational Trades. He was awarded a certificate dated 15.9.1986 (Annexure A-4). It is clear from communication dated 29.9.1986 (Annexure 9) that a post of Binder was available against the compassionate ground quota. However, the applicant was refused this appointment on the ground that his case was considered but he was not found suitable.

5. At the bar, the learned counsel for the applicant argued that denial of this appointment to the applicant was a case of discrimination as one Shri Desh Rattan Gupta son of late Shri R.P. Gupta was given the job of Mono Operator on the death of his father whereas the applicant had been denied the similar relief. Similarly, a job was offered to Miss Parvati, ward of late Shri V. Doraikauv, Line Operator of the same Government of India Press, Coimbatore, who had died in November, 1983. He further argued that the letter dated 10th May, 1985 (Annexure A-6) issued by the Directorate of Printing that the case of Shri Pradeep Kumar will be considered for Book Binder in case he completes his Apprenticeship training and the letter of July 21, 1986 from the Prime Minister's Office to the same effect (Annexure 8) constitute assurance and the respondents could not go back upon the same. These arguments were vehemently resisted by the learned counsel for the respondents on the ground that at no time, the applicant was given an assurance of being given a group 'C' post. At the best, the applicant had been told that the case of Shri Pradeep Kumar would be considered and the same had been done but rejected on being found unsuitable. The applicant had been offered the job of group 'D' which she had not accepted for her

son. The learned counsel for the respondents further argued that there was no question of discrimination and the circumstances of the appointments of other candidates were different.

6. We have given careful thought to the pleadings and gone through the documents carefully. From the departmental file, we find that the case of the applicant was primarily rejected on the ground that two members of the family were in employment. These two members were daughters of the applicant. On behalf of the applicant, it was stated that both of them were married in April, 1986 and so, they could not be considered as providing succour and support to the family. We also find that the applicant was not considered suitable for the post of L.D.C. as he had passed the S.S.L.C. examination in three attempts. The following extract from the note recorded by the Under Secretary (P) on 9.1.1987 would indicate the reason for rejection of the applicant's case:-

"This case is about appointment on compassionate ground of Shri P.K. Sarkar, son of Shri S.K. Sarkar who was working as a Foreman in Govt. of India Press, Coimbatore and died on 19.8.1982. Shri Sarkar left behind 4 children - 3 daughters and 1 son. 2 of the daughters who were unmarried were already employed. The case of Shri P.K. Sarkar was considered by the Dir. of Ptg. and he rejected it because 2 members of the family had already been employed. Moreover, the mother of Shri P.K. Sarkar wanted employment in a Delhi Press. But according to the policy of the Dte. of Ptg. employment to a family member of a deceased Govt. servant is normally given in the same press in which he was serving at the time of his death. The widow of late Shri S.K. Sarkar had sought employment for her son as LDC/ Copy holder for which minimum qualification prescribed is SSLC/10th pass. The boy had passed SSLC examination in 3 attempts i.e. he cleared 3 papers in 1 attempt and the remaining 2 papers in 2 attempts

So far as the unsuitability of the applicant's son for the post of L.D.C. is concerned, there is nothing to support her claim. However, so far as the state of indigence of the family is concerned, the office note is factually incorrect as both the earning members of the family had been married nearly one year before the note was recorded and, therefore, the basis of rejection for considering her case

on compassionate ground does not exist. The note recorded by the Secretary and submitted to the Minister also makes an interesting reading. The same is extracted below:-

"The note above of U.S.(P) explains the position of the case. With two members of the family of the deceased already employed, the rigour of distress cannot be said to be high and compelling (several families do have unemployed grown up children and that by itself cannot be a ground for preference on compassionate grounds, in the case of a deceased employee to offer employment to a number of his children). Moreover, a person offered employment on compassionate grounds cannot be choosy and dictate that he should be offered a particular job - as a LDC or Binder in this case; if the distress is real, any employment which is more or less appropriate to the qualifications should be acceptable as it brings in some body needed income to the family in distress. While employment is provided as a relief to the family in distress that is one side of the coin; the other side is that the employer must have a reasonable assurance that the person employed will be able to do the job given and will not be a mere burden on the public exchequer.

In this case, it would have been better, of course, if the Directorate of Printing had not informed Smt. Sarkar (by a memo. of 10.5.1985, p. 146/Cor. of Vol. I of the file kept below) that her son's case for appointment as Binder in the Press where he was undergoing training as an apprentice, could be considered according to Rules after he had completed his apprenticeship training as a Binder. Though the words were "could be considered" and did not constitute any definite assurance or commitment, it did create a false hope. This could have easily been avoided by being a little careful in written expression.

Having regard to the overall facts and circumstances of the case, however, I don't think any deliberate injustice has been caused and I would, therefore, recommend that the case may be treated as closed."

From the above, it will be clear that the case of the applicant was rejected because a correct picture was not available about the status of the two earning members of the family, i.e. two daughters who were actually married in 1986 whereas the case was rejected finally in January/February, 1987. At no stage, she was informed that her son could not be provided Government service on compassionate grounds because her two daughters were earning hands and her family was not in distress economically. Rather an assurance was extended to her time and again that case of her son would be considered on completion of apprenticeship training. The respondents cannot, therefore, turn round and reject the applicant's claim on a totally new ground. There can be no two opinions that compassionate employment should not result in being a sheer burden on the public exchequer. The person employed should be able to do the job assigned to him. This part of the stand of the Government is unexceptionable. However, we find that the applicant's son has undergone the course of Book Binder successfully.

He is in possession of a certificate to that effect. We further find that a post of Book Binder is available against the compassionate quota, as per annexure 9, i.e. the note dated 29.9.1986. It is also brought out that recruitment to the post of Binder is made both by direct recruitment 25 per cent and by promotion which is through a higher percentage of departmental candidates. It will, therefore, appear that present is a deserving case where a job of Book Binder should be given to the applicant and his case is fully covered by the instructions on the subject. However, it was argued by the learned counsel for the respondents that giving of a job on compassionate grounds is discretion of the Government. In this connection, he relied on the judgment of the Allahabad High Court in the case of Arun Misra Vs. Union of India & Ors.¹ wherein it was held that the court could not direct the Government to give employment to a deceased employee's relative as it is the discretion of the Government. No doubt, it is discretionary for the Government to give a job on compassionate grounds, yet this discretion has to be exercised in a fair manner. In fact, all Government actions have to emanate from fair-play. We find that it will be a denial of justice and fair-play if the applicant's ^{son} is not given a job on compassionate ground, for which he is duly qualified, when his case is fully covered by the instructions issued by the Government and also when the respondents, including the Prime Minister's Office, have been holding forth assurances to the applicant.

7. In the facts and circumstances of the case, it is a fit case for the employment of the applicant's son on compassionate grounds as a Book Binder against 25 per cent direct recruitment quota. Accordingly, the application is allowed and the respondents are

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directed to employ the applicant's son as a Book Binder against direct recruitment quota, on compassionate grounds. This post may be made available to him either at Delhi or Combatore where the late Shri Sarkar was working as a Foreman. It may be mentioned here that compassionate appointment could be made within five years of the death of an employee. In this case, late Shri Sarkar had died on 19.8.1982 and the applicant was eligible for employment under the existing instructions, by August, 1987. However, the applicant No. 1 had filed this application before the Tribunal in May, 1987 when she had received a final rejection of her request vide the impugned O.M. dated 13th February, 1987 (Annexure A-1).

8. The application is accordingly allowed with no order as to costs. This order be implemented within three months of its receipt.

19/11/87
(BIRBAL NATH)
Member (A)

J.D. Jain
(J.D. JAIN)
Vice-Chairman