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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, DELHI.

Regn No. O.A. 1169/90

DATE OF DECISION: 22-11-1990.

Smt. Sudershan Kumari

... Applicant.

Shri S. C. Luthra

... Counsel for the Applicant.

V/S.

Union of India & Ors.

... Respondents.

Shri P. P. Khurana

... Counsel for the Respondent

CORAM : HON'BLE MR. P. C. JAIN, MEMBER (A)  
HON'BLE MR. J. P. SHARMA, MEMBER (J)

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 all Benches of the Tribunal? *No*

*J. P. Sharma*

( J. P. Sharma )  
Member (J)

*P. C. Jain*

( P. C. Jain )  
Member (A)

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JUDGMENT: Hon'ble Mr. P.C. Jain, Member (A).  
Hon'ble Mr. J.P. Sharma, Member (J).

(Judgement of the Bench delivered by  
Hon'ble Mr. P.C. Jain, Member (A).)

JUDGMENT

This is an application under Section 19 of the Administrative Tribunals Act, 1985, wherein the applicant who is widow of late Shri Gopal Krishan, who is stated to have died in harness on 6.11.88 while working as U.D.C. in Air Force Central Accounts Office, New Delhi, has prayed for the following reliefs: -

- i) To direct the respondents to provide the applicant a suitable job immediately even by creating a supernumerary post if there is no suitable post available for appointment
- ii) To award appropriate compensation to the applicant for unnecessary delay in the matter of withholding her appointment illegally which has resulted undue hardship and caused immense and agony to the applicant.

As an interim relief, the applicant also prayed for restraining the respondents from dispossessing her from Qr. No. K-100, Civil Zone, Subrato Park, New Delhi and allowing her to retain the same on normal rent.

2. The facts of the case, in brief, are as under: -  
The applicant's husband late Shri Gopal Krishan was working as U.D.C. in Air Force Central Accounts Office, New Delhi. He expired on 6.11.88. On his

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demise, the applicant applied on 18.11.88 for employment on compassionate grounds. Her application was finally rejected on the basis of comparative financial condition of the family, vide letter dated 30th August, 1989 issued by the AF Central Accounts Office, New Delhi (Annexure A-1). In the same letter, the applicant was also advised to vacate Qr. No.K-100, Civil Zone, Subroto Park, New Delhi, which had been allotted to the late husband of the applicant. Vide letter dated 4.4.1990 (Annexure A-2), she was permitted to retain the said quarter upto 31st March, 1990 on children's education grounds. The applicant filed the O.A. on 5.6.1990, praying for the aforesaid reliefs.

3. The case of the applicant is that she is eligible for appointment as L.D.C. having passed the Higher Secondary Examination, on compassionate grounds in terms of Government of India's O.M. No.1404/G/06-ESTT (C), dated 30.6.1987 from Department of Personnel & Training which provides for the compassionate appointment of a son or daughter or near relative of a Government servant who dies in harness leaving the family in immediate need of assistance when there is no other earning member in the family. She claims that she has three minor daughters aged 14, 10 and 6 years to support and has no source of income except getting a meagre family pension of Rs.750/- per month. She also states in her application that in the absence of her getting employment on compassionate grounds, she will not be able to retain Government accommodation, nor she will be able to provide proper education to her three children.

4. On M.P. 1424/90 of the applicant, the Tribunal vide its order dated 3.7.1990, ordered the status-quo as on that date with regard to the occupation of house No.K-100, Civil Zone, Subroto Park, New Delhi to be maintained subject to payment of prescribed licence fee.

etc., till the next date of hearing i.e., 3.8.1990. The case lingered on for one or the other reason till 28.9.90, when at the request of the respondents, the case was adjourned to 9.10.1990 for admission/hearing/direction and in the meanwhile the interim orders passed on 3.7.90 continued till further orders. Accordingly, on 9.10.1990, arguments of both sides were heard with a view to passing the judgement on the O.A. itself.

5. The case of the respondents is that the Department of Personnel & Training instructions as quoted by the applicant, only lay down the procedure for consideration of case for grant of employment and does not stipulate grant of such employment to the dependent of each deceased employee. The quota for employment on compassionate grounds is only 14.5% of the total Group 'C' vacancies arising in a year and as such, each Department has to take a selective approach and consider cases as per comparative financial assistance to those/are in the worst condition to the extent of availability of vacancies. The applicant could not be selected due to her comparatively better financial standing vis-a-vis those selected against the available vacancies. In the counter-reply, they have given details of the monetary benefits, other than the family pension which is Rs.750/- (total Rs.1035 including D.A.) per month with effect from 7.11.1988, as under: -

(a) CGEGIS	Rs.21,724.
(b) G.P. Fund (including Rs.10,000/- DLI)	Rs.32,158.
(c) DCR Gratuity	Rs.38,250.
(d) Leave encashment	Rs.12,054.

Thus, according to the respondents, the case of the applicant which has already been considered thrice

in consecutive quarters at Air Headquarters alongwith other similar cases but did not merit for employment due to comparatively better financial position, is not based on violation of rules and regulations on the part of respondents, nor any injustice has been done. They have also filed a copy of Ministry of Defence I.D. Note dated 25.5.90 (Annexure A-IV) on the subject of appointment on compassionate grounds in clarification of the judgement of Supreme Court in the case of Smt. Sushma Gosain Vs. Union of India, wherein it is laid down that such appointments are essentially discretionary in character subject to the considerations mentioned in the DCP&T's O.M. dated 30 June 87 and should be offered to the dependents of deceased Government servants only in really deserving cases where the family is in immediate need of assistance. Thus, according to the respondents, the applicant cannot claim employment as a matter of right. In regard to the quarter occupied by the applicant the respondents have stated that she did not vacate the quarter on expiry of the permissible period i.e., 31st May, 1990 and she was asked again to vacate the quarter by 20th June, 1990. Existing rules permit retention of the quarter by the family of the deceased Government employee for a period of six months from the date of death, employee. However, in accordance with Ministry of Defence letter dated 21st January, 1979, the applicant was eligible for ad-hoc allotment of accommodation provided she could get employment in an eligible office within a period of 12 months after the demise of her husband but the eviction cannot be delayed on consideration that the dependent is likely to get an appointment, except that the Area Commander may permit retention of accommodation for a further period not exceeding six months in consideration of the fact that dependent of the

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deceased is likely to get employment in an eligible office, as provided in the Ministry of Defence letter No. A/48475/Q3(B-i)/232-Q/D(Qtg), dated February 81, in which case, rent for the extended period will be payable at 10% of the last pay drawn by the employee or twice the assessed rent whichever is higher. Thus, according to the respondents, the applicant is not entitled to retain Government accommodation No.K-100, Civil Zone Area, Subroto Park, New Delhi.

6. We have gone through the material on the file and have heard the learned counsel for the parties.

7. The scheme of compassionate appointments was commenced in 1958. Since then, some changes in the scheme have been made inasmuch as the benefits admissible to the family of the deceased employee have been enlarged and orders simplified. Consolidated instructions were issued in Government of India, Department of Personnel & Training O.M. dated the 30th June, 1987 and O.M. dated the 17th February, 1988. The foundation of the scheme and orders issued thereon is that the family is in immediate need of assistance when there is no other earning member in the family. In this case, it is seen that the applicant was granted a family pension of Rs.750/- per month and with the D.A. / Dearness Relief admissible thereon, she was getting Rs.1035/- per month with effect from 7.11.1988. In addition, payment on account of CGEGIS, G.P. Fund, Deposit Link Insurance, DCR Gratuity and Leave Encashment amounted to nearly Rs.1,04,000/-. This amount on investment can get a monthly income of Rs.1,000/-, in addition to family pension of over Rs.1,000/-. Thus, the income of the family will be almost equal, if not more, to the emoluments which the deceased Government servant may have been drawing at the time of his death; he being a U.D.C. at that time would have been in the scale of Rs.1200 - 2040. In these circumstances, it is difficult to hold that the family of *lun*

the deceased Government servant was left in indigent financial condition.

8. It is not in dispute that compassionate appointments can be made only against vacancies which are in direct recruitment quota and that too in the case of the applicant who had applied for a Group 'C' post only against the 14.5 per cent quota for compassionate appointments in Group 'C' appointments. The respondents have produced a photostat copy of their file notings dated 11.9.1989. The said notes throw light on the procedure being adopted by them and how the prayer of the applicant which was considered in three consecutive quarters viz., (1) quarter ending December, 1988, (2) quarter ending March, 1989 and (3) quarter ending June, 1989, could not be accommodated. This also shows that 50 per cent of the Group 'C' posts available for compassionate employment are offered to dependents of Group 'D' employees and the remaining 50 per cent are equally allocated for dependents of Group 'C' employees and those of Service personnel. It further shows that during 1989, 115 Group 'C' posts were estimated to fall vacant and accordingly, compassionate employment could be offered to only 17 applicants, of which nine posts will go to dependents of Group 'D' employees and four each will go to dependents of Group 'C' employees and those of Service personnel. Accordingly, two dependents of Group 'C' employees were offered compassionate employment during the quarters ending March and June, 1989.

9. In the quarter ending December, 1988 also, two applicants were similarly offered compassionate appointments. The note also shows that the employment assistance is offered to applicants who are comparatively in the worst

financial condition and the information taken into account to decide the comparative financial condition comprises the amount of family pension, DCRG, GPF balance, CGEIS and the number of dependents. The two applicants who were offered compassionate appointment in the quarter ending December, 1988 had 3 and 4 dependents respectively. In the case of Akhilesh Kumar, family pension of Rs.406/- per month and an amount of Rs.3,000/- as balance in his GPF were sanctioned. He was not entitled to either DCRG or CGEIS. In the other case, family pension of Rs.375/- per month and payment of Rs.32,885/- on account of DCRG, PF balance and CGEIS were authorised. Thus, the comparative need of the applicant could not be said to have been greater than that of the two applicants who were offered compassionate appointment during the quarter ending December, 1988. Nand Lal and Meera Bayi were offered compassionate appointment in the quarter ending March, 1989. In the case of Nand Lal, there were seven dependents, family pension was at the rate of Rs.400/- per month and lump sum payments amounted to Rs.41,900/-. In the case of Meera Bayi, there were four dependents, family pension was at the rate of Rs.434/- per month and the lump sum payments amounted to Rs.5,018/-. Similarly, in the quarter ending June, 1989, Madhumati Bai and Kalawati were offered compassionate appointment. In the former case, there were four dependents; no family pension could have been sanctioned in that case and the lump sum payments amounted to Rs.29,402/-. In the latter case, there were six dependents, family pension was sanctioned at the rate of Rs.375/- per month and the lump sum payments were a little over Rs.42,000/-. Thus, it is clear that on the norms adopted, the case of the applicant could not be considered worse than those of others who were offered compassionate employment in preference to her. In such a

situation, giving preference to the applicant over others, on the basis of the norms adopted which cannot be said to be unreasonable, would have been an action amenable to levying the charge of arbitrariness in executive action and thus violative of Articles 14 and 16 of the Constitution.

10. The learned counsel for the applicant in the instant case, drew our attention to the fact that there is no earning member in the family. This is not in dispute. He also drew our attention to para 9 of the judgement of the Supreme Court in the case of Smt. Sushma Gosain and others Vs. Union of India and others (Judgment Today - 1989 (3) SC 570). The same is reproduced as below:

"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 grounds is to mitigate the hardship due to death of the breadearner 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."

In our humble view the judgment does not lay down that every claim for compassionate appointment must be acceded to; in fact, within the parameters of the scheme there is a limitation on the type of posts and the number of posts which can be filled by making compassionate appointments. The learned counsel for the applicant also cited the following three cases: -

- (1) Smt. Roshanara Begum Vs. Union of India & Ors. ATJ - 1990 (2) - 206.
- (2) Shri Satyavir Singh Vs. Union of India & Ors. (C.A. 618/90).
- (3) Smt. Vidya Devi Vs. Union of India & Ors. SLJ - 1989 (3) - CAT 22.

11. In the case of Smt. Roshanara Begum Vs. Union of India & Ors. (supra), the respondents had, inter-alia, taken the plea that three sons of the applicant were employed and thus.

as such her condition was not indigent to justify the benefit of appointment on compassionate grounds of the fourth son. The applicant who belongs to Muslim community alleged that her three elder sons were married and living separately. A Division Bench of the Tribunal held that there was nothing on record to indicate that all the sons are living under one roof with the applicant as head of the family and that the Mohammedan Law does not recognise the word 'joint family' in the O.M. dated 30.6.1987. This case is, therefore, not relevant for the case before us.

12. In the case of Satyavir Singh Vs. Union of India & others (*supra*), the applicant was the son of a labourer in the Minto Road Press of the Government of India at New Delhi and a Division Bench of the Tribunal came to the conclusion that the applicant is in indigent condition and should be considered for appointment. While doing so, they directed that vacancies available for compassionate appointment in all the Government of India Presses at Delhi should be taken into account but if there is a case of an employee who died before the applicant's father, the latter should have preference in the matter of appointment.

13. In the case of Vidya Devi Vs. Union of India & Ors. (*supra*), the request for compassionate appointment had been rejected on the ground of paucity of vacancies in the year 1987 and a Division Bench of the Tribunal directed that the applicant's case should be kept pending as if she were on the waiting list and consider her afresh as and when Group 'D' vacancy arose.

14. It hardly needs any reiteration that requests for compassionate appointments have to be treated expeditiously, sympathetically and with a 'sense of justice'. The factor of delay is not relevant in the case before us. The applicant's husband had died on 6.11.1988 and her case for compassionate appointment was considered in three consecutive

quarters, viz., in the quarter ending December, 1988 and in the first two quarters of 1989, and the applicant had also been informed of the ~~final~~ rejection of her request in August, 1989. This shows that there was no lack of sympathy but certain norms which have been laid down for consideration of such requests and which in themselves cannot be said to be either arbitrary or unreasonable, did not enable the respondents to meet the request of the applicant. However, we find that in this case, all the three children of the deceased Government servant are minor and are female. Whether we like it or not, our social system is such that such a situation results in greater anxiety and greater responsibility for the guardian who is their mother and the applicant in this case. What was the number of female members in the list of dependents in the other cases mentioned by the respondents in their note, referred to above, is not known to us. We are, therefore, of the view that the case of the applicant deserves a relook by the respondents in view of this fact. We, accordingly, direct the respondents to re-examine the prayer of the applicant for compassionate appointment in the light of this fact and take a decision within one month from the date of receipt of a copy of this order by them. Till then the applicant shall not be dispossessed from the quarter which had been allotted to her husband and which is still in her possession, but the applicant shall be liable to pay twice the standard/assessed rent for the quarter for the period from 1.6.1990 till 15 days after the communication of the order on reconsideration of her request for compassionate employment. For the period upto 31.5.1990 the applicant had been given permission to retain the same and the licence fee/rent etc. will be governed under those orders.

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15. The application is disposed of in terms of the above directions, leaving the parties to bear their own costs.

J. P. SHARMA  
(J. P. SHARMA)  
Member (J)

(C. C. 22/1/70)  
(P. C. JAIN)  
Member (A)