

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

(8)

Regn. No. OA 1572 of 1990

Date of decision: 16.4.91

Smt. Chameli Devi

Applicant

Vs.

Union of India

Respondents

PRESENT

Ms. Susham Lata Dhawan, counsel for the applicant.

Shri P.P. Khurana, counsel for the respondents.

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Hon'ble Shri Justice Ram Pal Singh, Vice-Chairman (J).

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

(Judgment of the Bench delivered by Hon'ble Shri Justice Ram Pal Singh, Vice-Chairman (J).)

This application has been filed u/s 19 of the Administrative Tribunals Act, 1985 (hereinafter called the 'Act') by Smt. Chameli Devi, wife of late Shri Banwari Lal, Packer Group 'D' in the Postal Department, who died in harness on 14.3.1988. She applied by her application dated 4.4.88, addressed to Post Master General, Haryana Circle, Ambala Cantt, for giving appointment to her son, Rajpal, on compassionate grounds. Vide Annexure A-2, Smt. Chameli Devi, the applicant, was informed by Senior Superintendent of Post Offices, Faridabad Division's letter dated 26.7.88 that the case of compassionate appointment to her son will be considered if he declares in writing that he will be willing to accept the post of a Postman. Reply to this letter was submitted by her son, Rajpal, on 26.9.88 vide Annexure A-3 that he should be appointed as Postal Clerk on the basis of his educational qualification. Thus, he rejected the offer made to him for his appointment in the post of Postman on compassionate grounds. Subsequently, the respondents by their letter dated 27.3.89

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informed Rajpal rejecting his claim to compassionate appointment on the ground that two sons of Smt. Chameli Devi and the deceased, Banwari Lal, were already in employment of the Government. Aggrieved by this letter (Annexure A-4), she represented her case to Director General, Department of Posts, Ministry of Communications, Government of India, vide her application dated 19.4.89 and since then she has been sending reminders for action on her application, but no response has been received by her so far. Hence, she filed this O.A. with a prayer that the respondents be directed to appoint her son, Rajpal, on compassionate grounds by relaxing departmental recruitment rules.

2. Respondents in their return raised the preliminary objection that the O.A. was filed beyond the period of limitation and that when compassionate appointment was offered to Rajpal, son of the deceased employee, Banwari Lal, and the applicant, Chameli Devi, then Rajpal refused to join the post of the Postman. Respondents further contended that an application was received from Shri Rajpal dated 26.9.88 that he has passed his 12th class examination and repeated the request for appointment as Postal Assistant. This letter was forwarded to Post Master General, Ambala, who by letter dated 27.3.89 informed that the application of Rajpal was considered by the Selection Committee and rejected on the ground that two sons of late Banwari Lal i.e. the two elder brothers of this Rajpal are employed in this Department. They further contended that the appeal of Shri Rajpal addressed to Director General of Posts, New Delhi, was received in the office and was forwarded to Post Master General, Ambala.

3. In the rejoinder, the applicant contended that compassionate appointment was the inherent right of Rajpal, son of the deceased employee; in the rejoinder it was further

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contended that Rajpal never rejected the offer of the respondents for his compassionate appointment as a Postman.

4. On 21.9.90, the applicant filed M.P. No. 2391/90 under Section 21 of the Act containing the prayer for condonation of delay in filing the application. This application was accompanied by an affidavit also. This M.P. was considered by this Bench on 15.3.91 and counsel of both the parties were heard who agreed that this M.P. should be heard at the time of the final hearing of the O.A. It has, therefore, to be decided whether the O.A. filed was within the period of limitation or not. According to Section 21 of the Act, the period of limitation provided for filing the O.A. is within one year from the date on which such final order which is to be challenged has been made and in case where an appeal or representation has been filed, then thereafter without such final order having been made within the period of six months. This O.A. was filed on 27.7.90 and the impugned order was passed on 27.3.89. Thus this O.A. was filed after a lapse of one year and four months, but the representation was filed on 19.4.89. Thus, the applicant is entitled also to get a period of six months. Still, the application has been filed after about a month's delay and setting aside the technicalities, and as we have also heard on merits of the O.A., we consider it just and proper to condone this delay.

5. We now proceed to decide the O.A. on merits. The stand taken by the applicant's counsel at the Bar was that the respondents were bound to appoint the applicant's son as prayed for by her, because it was the right of the applicant's son to get compassionate appointment. The law with regard to this is settled. In Smt. Har Dei Vs. U.O.I. & Others (OA 2267/89) decided by a Division Bench of this Tribunal, it has been held:

'Employment on compassionate ground cannot be claimed as a matter of right. When the competent

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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."

6. This Bench also considered the question whether it was the right of the applicant to get compassionate appointment after the death of the father in harness or not. In OA-1008/88, this Bench on 4.3.91 held that employment on compassionate grounds cannot be claimed as a matter of right. We, therefore, conclude that after the death of the father, it is not the right of Rajpal to get compassionate appointment in the Department. The appointment on compassionate grounds on the death of the father in harness is usually made so that the deceased employee's family may not lead the life of indigent. The sole purpose of providing compassionate appointment is to mitigate the hardship of the members of the family due to the death of the bread-earner employee of the family. That is why, appointments on compassionate grounds are made immediately after the death of the employee to redeem the deceased employee's family from distress. The applicant has carefully avoided to mention in the O.A. as to what was the amount of monetary benefits which the family received on the death of the employee. The same silence was also observed by the respondents in their return. Thus, no material has been produced before this Tribunal by either of the parties to provide details so as to assess the monetary problems the deceased employee's family is facing after the death of the deceased. But it can well be assumed that after his death, pension, gratuity, etc. must have been paid by the respondents to the applicant, Chameli Devi, and she must also be receiving family pension, monthly. The respondents cannot be said to have acted cruelly in refusing compassionate appointment

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to the son of the applicant, Rajpal, when they offered him compassionate employment on the post of Postman. Rajpal should have accepted this offer made on compassionate grounds and then should have proceeded to complete his studies. Annexure A-3 dated 26.4.88 indicates that Rajpal was not willing to accept the offer made to him at that time. He wanted a better post of a Postal Assistant and not that of a Postman. If the son of the applicant was so ambitious, then he should not talk of compassion, but should really on the strength of education and talent face competition.

7. Undoubtedly, the reach of compassion cannot be curtailed by technicalities, but the compassion once offered ought to be accepted without resistance because beggars cannot be choosers. Compassion is offered by the higher ups whose basis is mercy and to refuse the offer when made prohibits one from taking again. The respondents have rightly acted immediately in offering the post of Postman to Rajpal and when Rajpal did not avail the offer, the respondents cannot be blamed to have acted contrary to the rules of the Department.

8. The respondents have raised the plea not only in their counter, but also in the order that compassionate appointment cannot be given to Rajpal because his two elder brothers are already employed in the Department in which their father was serving. The plea taken by the applicant that they are separate, that they have different ration cards, that they are living away from the applicant's family, that they do not support their mother or younger brothers and sisters cannot be accepted. Compassionate appointment is offered only when there are no resources of the deceased employee's family. Two elder sons of the applicant are already in employment of the Department and hence the applicant's family cannot be said to be leading the life of indi-

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gent. We, therefore, conclude that this O.A. has no merit and, therefore, it is dismissed, but the parties shall bear their own costs.

(P.C. JAIN)
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MEMBER (A)

RAM PAL SINGH
(RAM PAL SINGH)
VICE-CHAIRMAN (J)