

Central Administrative Tribunal
Principal Bench: New Delhi

OA No.2429/91

New Delhi this the 29th day of November 1995.

Hon'ble Shri N.V.Krishnan, Acting Chairman
Hon'ble Shri D.C.Verma, Member (J)

Miss Alka Paliwal
R/o Qr. No.850, Sector 4, R.K.Puram
New Delhi-110 022.
(By Advocate:Shri S.N.Shukla)

...Applicant.

Versus

1. The Lt. Governor of Delhi
Raj Niwas Marg
Delhi-110 054.

2. The Director
Dte. of Education
Delhi Administration
Old Secretariat
Delhi-110 054.
(By advocate: Shri Rajesh Luthra)

...Respondents.

O R D E R

Hon'ble Shri D.C.Verma, Member (J)

This is an application by Miss Alka Paliwal for quashing the communication dated 26.12.89 (Annexure A-12 to the OA) by which she was informed that her appointment as a teacher on compassionate grounds has been considered and rejected.

2. Brief fact of the case is that father of the applicant who was a central government employee died in harness on 8th Sept. 1984 leaving behind the widow and the applicant. On 12.10.84, mother of the applicant made an application for appointment of her daughter as a Post Graduate Teacher (TGT) on compassionate grounds (Annexure A.1). As nothing happened, a reminder was sent on 5.2.85 (Annexure A-2). However, she was given an offer of appointment dated 1.7.85 to the post of LDC (Annexure A-4). The applicant accepted the offer and joined the post. However, subsequently she made a representation to the Prime Minister which has been filed during the course of the argument and the same was rejected by the impugned order (Annexure A-12). Hence this OA.

3. The main contention on behalf of the applicant is that less qualified persons namely Umesh Kanta and others (Annexure A-10) were given appointment as TGT (Trained Graduate Teacher) and the applicant has been discriminated though she was highly qualified for the post.

4. The submission on behalf of the respondents is that the applicant was given an offer of appointment which she accepted and joined the post in the year 1985 and for getting a better job, she made a representation in the year 1989 which was rejected by the impugned order. The respondents denied to have received the earlier representations. The main contention is that once a job has been accepted on compassionate grounds, the matter ends there and betterment of service and future prospects cannot be secured on the basis of compassionate appointment.

5. On this point, we may refer to a decision of the Hon'ble Supreme Court in State of Madhya Pradesh Vs. Ramesh Kumar Sharma (1995 SC case L&S P.192) wherein the Hon'ble Court has held that once a post of LDC is offered and refused, the higher post cannot be claimed even though one may have requisite eligibility qualifications. In the case before the Hon'ble Supreme Court, the son of the deceased employee was offered a post of LDC which he did not accept. When he approached the Tribunal for a direction to the State for appointment as APP Gr.II, the said application was allowed by the Tribunal. One of the grounds taken in the said case was that another person was appointed in similar circumstances as APP Gr.II. Mere assertion made on this point was not accepted and the Hon'ble Court held that "assuming Rajiv Dwivedi was similar to that of the respondent, the applicant has no right to any particular post of his choice. He can only claim to be considered for that post. It would ultimately be for the authority to decide if some common principle was involved in the case." With the

above observations, the appeal by State of M.P. was allowed.

6. The other case on the point is State of Rajasthan Vs. Umrao Singh reported in 1995 (1) All India Service Law Journal Page 132 wherein it has been held by the Hon'ble Supreme Court that the right to appointment on compassionate grounds comes to an end with acceptance of appointment in any post. In this case, an offer of appointment was given for the post of LDC and accepted. However the applicant therein made a representation for appointment as Sub Inspector to which post he was eligible. The High Court of Rajasthan granted the prayer but Hon'ble Supreme Court after holding that "once the right has been consummated as indicated earlier, any further or second reconsideration for a higher post on the ground of compassion would not arise" rejected the application. Learned counsel of the applicant before us has urged that Umrao Singh had made an application for appointment as SI or LDC according to the availability of the vacancy and he was offered the post of LDC which he accepted. In the present case, the applicant Miss Alka Paliwal made an application for appointment as PTG only and not for the post of LDC and therefore, the decision in Umrao Singh's case is not applicable, it has been submitted, in the case before us.

7. The applicant Miss Alka Paliwal was given an offer of appointment and it was for her to accept or not to accept the post of LDC. Once she accepted the post of LDC and joined the same, she lost her right for being considered to a higher post. The principle laid down in Umrao Singh case is that a right to appointment on compassionate grounds comes to an end with acceptance of appointment in any post. In the circumstances, in our view, the applicant has no case on this count.

8. Learned counsel for the applicant has further emphasised that there is a breach of provisions of Article 14 & 16 of the Constitution as the applicant has been discriminated vis-a-vis others like Smt Kanta and others who were not so qualified as the applicant for the post. It is not denied that the applicant cleared B.Ed. course in the year 1986 whereas she joined the post of LDC in the year 1985. This means that at the time of joining the post of LDC she was not qualified for the post of Post Graduate Teacher. It is also not the case that Smt. Kanta and others who were selected for the post of Teachers had joined any post earlier on compassionate grounds. The case of the applicant stands on a different footing, and grounds of discrimination cannot be taken as the applicant is not similarly situated.

9. We may also point out that appointment on compassionate grounds cannot be claimed as a right. It is merely a concession granted to meet out a situation which sometimes occurs in the family due to death of the only bread earner. In the case of Umesh Kumar Nagpal Vs. State of Punjab & Haryana & others reported in 1994 (3) JT SC Page 525, the Hon'ble Supreme Court has laid down the circumstance in the following words in which such appointment can be made:

"In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood."



10. In view of above, once an appointment on compassionate grounds has been accepted, the crisis, to tide over the situation arising due to sudden death of the bread earner is over, the matter ends there. Ground of compassion is gone. Plea for a better post thereafter, is not maintainable. In case the contention made on behalf of the applicant is accepted, there will be no end for better and still better post.

Learned counsel for the applicant has placed reliance in the case of Rajiv Kumar Sharma Vs. State of Haryana & others decided by Punjab & Haryana High Court (1995 (4) SLR page 723 wherein the petitioner was appointed as a clerk while some other persons similarly situated were appointed as Inspectors in the departments. The High Court directed the respondents to examine the case of the petitioner for appointment as Inspector and to pass necessary orders for appointment of the petitioner. In our view the various decisions of the Hon'ble Supreme Court cited above cover the case of the applicant before us and we need not, therefore, examine the case of Rajiv Kumar Sharma in detail and would follow the principle laid down by the Hon'ble Supreme Court.

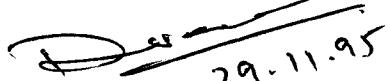
10. Learned counsel for the applicant has cited the case of Deodhar Ramchandra Shankar V. State of Maharashtra (S.C.) 1974 (1) SLR p.471 and drawn our attention to para 10 of the judgement wherein rejecting the point of delay in filing the petition, the Hon'ble Supreme Court held that " we do not think this contention should prevail with us. In the first place, it must be rememberd that the rule which says that the Court may not enquire into belated and stale claims is not a rule of law, but a rule of practice based on sound and proper exercise of discretion, and there is no inviolable rule that whenever there is delay, the Court must necessarily refuse to entertain the petition. Each case must depend on its own facts. The question as pointed by Hidayatullah, C.J. in Tilockchand Motichand V. H.R.Munshi (1) 'is one of discretion for this Court to follow from case to case...."

10. The Hon'ble Supreme Court in Deodhar case (Supra) was dealing the matter under Article 32 of the Constitution relating to claim of Fundamental Rights. In the case before us, as we have already found above, claim for a higher post on compassionate grounds is not a fundamental right. Besides it, claim to higher post on compassionate ground is denied to the applicant not on the ground of belated and being stale but on the ground that his claim for appointment on compassionate ground ceased to exist after appointment as LDC was accepted. Therefore, in our view, the decision in the Deodhar case (Supra) cited by the learned counsel for the applicant is of no help.

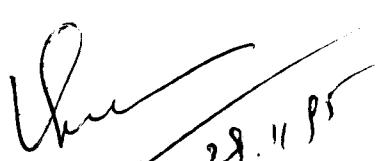
11. Considering all the circumstances and the discussions made above, in our view, the case has no merit and the OA is liable to be dismissed.

12. The OA is dismissed.

Costs on parties.


(D.C.Verma)
Member (J)

29.11.95


(N.V.Krishnan)
Acting Chairman

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