

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 503/
TAXN6.

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DATE OF DECISION

7.6.91

SMT. ATRI DEVI

Petitioner

SHRI R.V. SINHA

Advocate for the Petitioner(s)

Versus

UNION OF INDIA & OTHERS

Respondent

SHRI P.H. RAMCHANDANI

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. D.K. Chakravorty, Member (A)

The Hon'ble Mr. J.P. Sharma, Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement? *Y*
2. To be referred to the Reporter or not? *Y*
3. Whether their Lordships wish to see the fair copy of the Judgement? *Y*
4. Whether it needs to be circulated to other Benches of the Tribunal? *Y*

J.P. SHARMA

(J.P. SHARMA)
MEMBER (J)

D.K. CHAKRAVORTY

(D.K. CHAKRAVORTY)
MEMBER (A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

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OA NO. 503/1991

DATE OF DECISION 7.6.91

SMT. ATRI DEVI

....APPLICANT

VS.

UNION OF INDIA & OTHERS

....RESPONDENTS

CORAM

SHRI D.K. CHAKRAVORTY, HON'BLE MEMBER (A)

SHRI J.P. SHARMA, HON'BLE MEMBER (J)

FOR THE APPLICANT

....SHRI R.V. SINHA

FOR THE RESPONDENTS

....SHRI P.H. RAMCHANDANI

JUDGEMENT

(DELIVERED BY SHRI J.P. SHARMA, HON'BLE MEMBER (J))

The applicant's husband, Shri Babu Lal was working as a Safaiwala and he died in harness while under employment of respondent No.2, Director General, National Academy of Customs, Excise and Narcotics. The applicant belongs to Scheduled Caste community. It is stated in the application that the husband of the applicant, Babu Lal died on 7.4.1990 and at that time he was in active service of the respondent No.2. As per policy of the Government of India, if an employee dies in harness while in active service, appointment

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of the widow or one of the children of the deceased is to be made to rehabilitate the family of the deceased employee on compassionate ground according to their qualification. The applicant is the illiterate widow and the elder son of the applicant is married and lives separately. As such the applicant applied for the employment of her second son Gopal Dass who has also been looking after the applicant and liabilities of the deceased employee. The applicant sent a reminder also in August, 1990, but to no effect. The applicant was informed, however, in September, 1990 that for want of vacant posts, her son Gopal Dass could not be given compassionate appointment. It is also stated in the application that the applicant received meagre financial assistance from the respondents by way of death gratuity, insurance fund, G.P.F., leave encashment etc., which was too meagre to be sufficient for the livelihood for the family of the applicant after death of the sole bread earner, i.e., her husband. The applicant has no other source except the financial assistance received by her. The applicant and her son Gopal Dass are living in a rented house and by virtue of financial stringency, they have been forced to live

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in a state of miserable and hard conditions because of non appointment of her son Gopal Dass. The applicant has exhausted much of her financial assistance received after the death of her husband and the delay in the appointment of her son is causing unnecessary financial pressure and hardship to the applicant even to maintain her and family. The applicant has claimed the relief that a direction be issued to the respondents to give employment to her son Gopal Dass to a Group-D cadre post or in any other post for which he may be considered suitable.

2. The respondents contested the application of the facts, but it is stated in the reply that as there is no vacancy available, so the applicant could not be appointed and the matter was referred to the Finance Ministry with a request that as a result of cadre review of Group-D posts in the Central Excise and Customs Department, a number of new posts in the cadre of Sepoy are likely to be created and consequently vacancies in the cadre of Safaiwala/Farash/Chowkidar may be available and Gopal Dass may be considered for appointment against one of the consequential vacancies. The matter is still under consideration of the Government. It is further stated that compassionate appointments are essentially discretionary in character subject to the considerations laid down in Department's O.M. No.14014/6/86-Estt.(D) dated 30.6.1987,

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which inter-alia states that :-

- (i) compassionate appointments can be made only against direct recruitment quota and
- (ii) provided that regular vacancy exists and the person concerned is eligible and suitable for the job.

The respondents, however, do not deny the fact that the applicant's son Gopal Dass does not qualify for compassionate appointment. In fact the matter has been referred to the Finance Ministry to consider the appointment even in any other organisation under the Ministry to which decision is still awaited. It is further stated by the respondents that Babu Lal, the deceased husband of the applicant was a chronic patient of T.B. and he was unable to perform the duties of Safaiwala. When he was on leave, one daily wager namely Shri Mohan Lal belonging to Scheduled Caste community was appointed in the office from 1976. Said Mohan Lal has been given appointment against the leave vacancy of Shri Babu Lal. It is further stated that on the death of Shri Babu Lal, said Mohan has been regularised against the said post. It is further stated that there are 20 persons working on daily wages basis, some of them for more than 10 years and their cases for regularisation are to be considered as per DP & T's letter No.49014/2/86-ESTT. (C) dated 7.6.1988 read with Supreme Court decision dated 17.1.1986 in Surender Singh and Others Vs. Union of India.

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2. We have heard the learned counsel of the parties at length and gone through the record of the case. The respondents do not dispute that the compassionate appointment is to be given to Gopal Dass, but what is alleged in the reply is that there is no vacancy. The Hon'ble Supreme Court in the case of Smt. Sushma Gosain and Others vs. Union of India & Others, reported in AIR 1989 SC 976 observed as follows :-

"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 ground is to mitigate the hardship due to the death of the bread earner in the family. Such appointment, 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."

Again in the recent decision of Smt. Phoolwati vs. Union of India & Others, reported in 1991 AIR SCW 73, a direction was issued to the Union of India to take immediate steps for employing the second son of the appellant in a suitable post commensurate with his educational qualification within one month from the date of this order. Thus the latest decision of the Hon'ble Supreme Court leaves no scope on the respondents to say that the compassionate appointment is only discretionary in nature. When once the respondents have

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committed the compassionate appointment necessary, then mere recommendation to the Ministry of Finance would not absolve them from the responsibility and obligation as model employer and contrary to the principle of administrative decency.

3. During the course of the arguments, the learned counsel for the respondents pointed out that there is no vacancy available and already there are a large number of daily wagers who had been working since last 10 years and their cases for regularisation have to be considered, but the vacancy caused by the death of Babu Lal should have necessarily gone to the applicant's son Gopal Dass. The respondents have admitted in p-1 of their counter that the applicant Smt. Atri Devi applied for compassionate appointment for her son Gopal Dass on 26.4.1990 and this application was moved with the respondents only about 20 days after the death of Babu Lal on 7.4.1990. If the vacancy has been filled up in the same month by a daily wager, then it is the responsibility of the respondents themselves as otherwise that vacancy cannot go in any event to a daily wager who is to be regularised in clear vacancy and not in a leave vacancy. It is stated by the respondents that the daily wager Mohan Lal was working in a leave vacancy since 1976 which goes to show that since 1976 there must be several vacancies also available while Mohan Lal

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was picked up to be regularised against the vacancy caused by the death of Babu Lal, deceased employee, cannot be understood. If the respondents themselves have committed gross violation of rules, then it is they who are to be blamed. Chart Annexure-A will show that the deceased Babu Lal was on constant leave from October, 1989 to April, 1990 and earlier to this period, the deceased has worked for certain period and for certain period he was on leave. It cannot be said that Mohan Lal, daily wager who has been working since November, 1976 was exclusively working in the leave vacancy of the deceased Babu Lal.

4. The applicant further belongs to Scheduled Caste community and it was duty of the respondent No.2 to rehabilitate the family who has lost their bread earner and in not doing so and only recommending the case to the Ministry of Finance will not help them from eschewing from the responsibility and obligation passed upon them by the Government policy and the O.M. referred to above. When once the respondents themselves are of the view that the applicant's son deserved consideration for compassionate appointment, there is no justified reason for further delay on grounds of non availability of vacancy and in fact the respondents are estopped from raising such plea and the case

of the applicant is fully covered by the decision of the Supreme Court in Sushma Gosai and Phoolwati's case (Supra).

5. The plea of regularisation of daily wages workmen could have been further delayed after the vacancies arise in due course and the vacancy caused by the death of Babu Lal on 7.4.1990, should have been immediately filled in the same month on 26.4.1990 when the widow of the deceased employee applied for compassionate appointment of her son Gopal Dass. Instead of appointing the son of the applicant, the respondents chose to regularise the services of one Mohan Lal. This cannot be said to be just and proper. Already one year has passed and the application of the applicant has not been considered favourably.

6. Having given a careful consideration to the above facts, we are of the view that the present application be allowed. The respondents are directed to appoint the applicant in a category-D post within one month from the receipt of this order and if there is no vacancy existing, then by creating a super numerary post and taking post facto sanction from the Ministry of Finance. In the circumstances, the parties are left to bear their own costs.

J. P. SHARMA
(J.P. SHARMA) 7.6.91
MEMBER (J)

D. K. CHAKRAVORTY
(D.K. CHAKRAVORTY)
MEMBER (A)