

## IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 909 of 1991  
T.A. No.

199

DATE OF DECISION 26.11.91

<u>Yash Pal Saini</u>	Petitioner
<u>Shri D.R. Gupta</u>	Advocate for the Petitioner(s)
Versus	
<u>Union of India</u>	Respondent
<u>Shri P.P. Khurana</u>	Advocate for the Respondent(s)

## CORAM

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

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

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

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

JUDGMENT

The applicant has filed this application under Section 19 of the Administrative Tribunals Act, 1985, for a direction to the respondents to appoint him as Inspector on compassionate grounds and not as U.D.C. He has further prayed that he possesses similar qualifications to other appointees to the post of Inspector.

2. The applicant is the second son of one P.S. Saini who was employed as Superintendent in the office of the respondents i.e. in the office of Collector, Customs & Central Excise, New Delhi. The said P.S. Saini died on 14.2.88 in harness and the mother of the applicant by application dated 19.2.88 applied for appointment of the applicant on compassionate grounds for the post of Inspector, Customs & Central Excise. The respondents appointed the applicant as U.D.C. and the applicant joined the post. He subsequently filed a representation dated 12.11.90 (Annex. A-2) praying therein that instead of U.D.C.

he should have been appointed as Inspector because he was eligible to that post. According to the applicant, he is a graduate from M.D. University, Rohtak, and is doing his M.A. from Jaipur University through correspondence course. On the date of his appointment, he had completed M.A. previous course. In the representation, he also mentioned that S/Shri R. Ravi Chaudhari, Vandna Bhatia and Dhan Kumar Jain and Smt. Saroj Chadha and Ms. Kiran Bala having equivalent qualification were appointed to the post of Inspector and he should get justice. The respondents by their letter dated 4.3.91 (Annex. A-1) informed the applicant that the existing instructions on the subject in question do not provide for appointment to another post on compassionate grounds once the candidate accepts and joins a particular post.

3. The respondents on notice filed their counter affidavit and contended that the Central Board of Excise & Customs, after considering all the aspects for compassionate appointment, agreed to his appointment as U.D.C. They further contend that the applicant accepted and joined his duties on 30.6.89. They maintain that once a compassionate appointment offered has been accepted and the person joins the offered post, he cannot raise any objection in view of the instructions contained in Department of Personnel's O.M. dated 30.6.87. They have reproduced the said O.M.:

"When a person has accepted a compassionate appointment to a particular post, the set of circumstances which led to his initial appointment should be deemed to have ceased to exist and thereafter the person who has accepted compassionate appointment in a particular post should strive in his career like his colleagues for future advancement and claims for appointment to higher post on consideration of compassion should invariably be rejected."

They also raised a preliminary objection that against the rejection order of his representation, the applicant has not preferred any appeal to the Central Board of Excise and Customs. Thus, their sole contention is that once the applicant joined the post as U.D.C. voluntarily, he cannot claim, as of right, to be appointed in the post of Inspector.

4. The learned counsel for the applicant has cited a head note of the case of Smt. Kamla Gaind vs. State of Punjab & Others (1991 (16) A.T.C. 513), but the entire judgment is not available of

this case.

*lambhia*

5. Appointment on compassionate grounds is not a right, but is an act of mercy by the employers to ease the destitution of the deceased employee's family. If the applicant was not agreeable to join the post of the U.D.C., which was offered to him, then the applicant should have refused and appeared in the competition for the higher post. On the basis of O.M. dated 30.6.87, the applicant was offered appointment to ease his family's financial condition and he willingly joined it, thus accepting the offer and cannot complain that he was denied compassionate appointment by the respondents. No material on record has been placed by the applicant that he joined the post of the U.D.C. under protest. No doubt, he has raised the point in the O.A., but the same has been denied by the respondents. The sole criteria for appointment on compassionate grounds is the indigent condition of the family.

6. Another contention of the applicant that similarly situated persons, named hereinabove, were appointed as Inspectors, while he was discriminated by the respondents, does not appear to be proper because the applicant has not mentioned any datas or educational qualifications of R. Ravi Chaudhari, Vandna Bhatia, Dhan Kumar Jain, Smt. Saroj Chadha or Kiran Bala. What were the qualifications they possessed has not been mentioned in the O.A. anywhere. In the absence of any particulars, it cannot be adjudged as to whether the applicant was discriminated in the appointment on compassionate grounds to the post of U.D.C. Unless full particulars are provided by the applicant, the question of discrimination cannot be adjudged. If the act of the respondents was hit by the principles contained in Articles 14 and 16 of the Constitution, then the burden lies upon the applicant to show a clear case of discrimination.

7. We do not see any merit in this O.A. and, therefore, dismiss the same. The parties shall bear their own costs.

*D.K. Chakravorty*  
(D.K. Chakravorty)

Member (A)

*Ram Pal Singh*  
(Ram Pal Singh)  
Vice-Chairman (J)