

(8)

In the Central Administrative Tribunal
Principal Bench, New Delhi.

Regn. Nos.:

Date: 4.2.1992.

- | | |
|---------------|--------------------|
| 1. OA-2753/90 | 9. OA- 76/91 |
| 2. OA-2754/90 | 10. OA- 77/91 |
| 3. OA- 3/91 | ✓ 11. OA- 89/91 |
| 4. OA- 24/91 | 12. OA- 94/91 |
| 5. OA- 30/91 | 13. OA- 146/91 |
| 6. OA- 31/91 | 14. OA- 147/91 and |
| 7. OA- 35/91 | 15. OA- 290/91 |
| 8. OA- 69/91 | |

1. Shri Murari Lal s/o late
Shri Ram Datt Sharma
2. Shri Satya Narain Sharma
s/o late Shri Badri Prasad
3. Shri Sarej Singh
s/o late Shri Prem Singh
4. Shri Om Prakash
s/o late Shri Ballu
5. Shri Chander Prakash
s/o late Shri Balkishan
6. Shri Dharam Dev Singh
s/o late Shri Babu Singh
7. Shri Bir Singh Yadav
s/o late Shri Ram Prasad
Yadav
8. Shri Ram Tej
s/o late Shri Laltee
9. Smt. Rashma Devi
w/o late Shri Fateh Singh
10. Shri Kamal Grover
s/o late Shri Sat Pal
11. Shri Anand Prakash
s/o late Shri Narsing Dass
12. Shri Ramesh Kumar
s/o late Shri Ganga Pershad
13. Shri Ram Prakash
s/o late Shri Ram Asray
14. Shri Puran Parkash
s/o late Shri Gnaga Ram
15. Shri Daya Shankar
s/o late Shri Sita Ram

..... Applicants

Versus

Union of India

..... Respondents

For the Applicants

..... Shri D.R. Gupta, Couns

For the Respondents

..... Smt. Raj Kumari Chopra
Counsel

CORAM: Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)
Hon'ble Mr. D.K. Chakraverty, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*

(Judgement of the Bench delivered by Hon'ble Mr. P.K. Kartha, Vice-Chairman)

The applicants before us are seeking appointment on compassionate grounds in the Government of India Press, where their deceased father/husband had worked and died in harness. As common questions of law arise for consideration, it is proposed to deal with them in a common judgement.

2. At the outset, it may be stated that from 1985 to 1990, out of about 2000 employees working in the Government of India Press, Mint Road, New Delhi, as many as 85 employees have died in harness. In one of the recent judgements of this Tribunal to which both of us were parties, we had adverted to this fact and stated that of late, it has come to our notice that for some reason or the other, there have been several deaths in the Presses of the Government of India not only at Mint Road but at various other places and several applications filed by the legal representatives of the deceased Government employees for appointment on compassionate grounds are pending in the Tribunal. It was further observed that it is not known whether any study of the hazards attendant on working in the Press has ever been made. In case the death is due to the hazards in the

working, the cases for compassionate appointment require special consideration, notwithstanding the fact that due to modernisation, there has been reduction in the strength of staff of these Presses (vide judgement dated 6.9.91 in OA-1109/90 - Smt. Kanta Devi Vs. Union of India & Ors.).

3. The above observations were reiterated in the subsequent decision of this Tribunal in Smt. Asha Devi Shrivastava Vs. Union of India & Others dated 30.8.1991, 1992 (1) SLJ CAT 38. The respondents were directed in the aforesaid two cases to evolve an appropriate scheme for considering the request made for compassionate appointment at the various Presses. A panel of names of persons who deserve appointment on compassionate grounds, should be prepared and appointments be made strictly in accordance with the panel so prepared in the available and suitable vacancies. The applications were, therefore, remitted to the respondents for further consideration.

4. It appears that the problem has not been resolved even though some — solution had been ^{suggested} in the aforesaid judgements.

5. It is true that compassionate appointment is, by its very nature, discretionary and cannot be claimed as a matter of right. The contention of the respondents to this extent has force. In matters relating to the compassionate appointment, there is a social purpose

71
involved and the goal is to attain social justice and in this view of the matter, the proceedings before us are not adversary in nature. It is for the courts as well as the executive authorities to strive for doing social justice to the deserving persons.

6. Instructions had been issued from time to time by the Government laying down the principles to be followed in making compassionate appointments of sons/daughters/ near relatives of deceased Government servants. They have been consolidated in Office Memorandum issued by the Department of Personnel & Training on 17.2.1988 which has been reproduced in Swamy's Complete Manual on Establishment and Administration for Central Government Offices by Muthuswamy, 2nd Edn., pages 253 to 262. The basic consideration is that as a result of the death of the Government servant, his family which may be in immediate need of assistance, should be helped by giving appointment on compassionate ground to one of his dependents. Under the existing provisions, there is only a small percentage of posts earmarked for such appointment (i.e., 1 per cent only). This would not suffice in a department where there have been several deaths and the dependants are in immediate need of assistance.

7. In these applications, the basic stand of the respondents is that there has been a modernisation of the

Press, resulting as it does, in reduction of the strength of staff considerably. For example, in the Mint Road Press itself, the strength of staff has been reduced from 2585 to 1,072. The number of labourers has been reduced from 481 to 15.

8. Another plea raised by the respondents is that the ban imposed by the Government operates against making fresh recruitment.

9. We have gone through the records of these cases and have heard the learned counsel for both the parties. The learned counsel for the applicants fervently pleaded that the cases for compassionate appointment fall in a separate category for which neither the ban on recruitment nor the percentage fixed for recruitment, could directly be made applicable once the Tribunal comes to the conclusion that the cases deserve appointment on compassionate grounds. In this context, he relied upon the decisions of the Supreme Court in Smt. Sushma Gosain Vs. Union of India, A.I.R. 1987 S.C. 1976, and in Smt. Phoolwati Vs. Union of India & Ors. decided on 5th December, 1990 (Civil Appeal No. 5967/90).

In Sushma Gosain's case, the Supreme Court has held as under:-

"It can be stated unequivocally that in all claims for appointment on compassionate grounds there should ~~be~~ not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner 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."

13

10. In view of the above, the Supreme Court directed the respondents to take immediate steps for employing the second son of the appellant in a suitable post commensurate with his educational qualifications within a period of one month from the date of the order. The appellant was also permitted to stay in the said quarter where she was residing with the members of her family.

11. In Phoolwati's case, the Supreme Court followed its decision in Sushma Gosain's case and directed the respondents to take immediate steps for employing the second son of the appellant in a suitable post commensurate with his educational qualifications within a period of one month from the date of the order. The appellant was also directed to be continued in the Government accommodation, where she was residing.

12. Following the aforesaid decisions of the Supreme Court, the Tribunal has directed the appointment of dependants of deceased Government servants on compassionate grounds in several cases. One such instance referred to by the learned counsel for the applicants is the decision dated 17.12.1991 of the Principal Bench of the Tribunal presided over by the Hon'ble Chairman in OA-46/88 - Dharam Pal Vs. Union of India through Secretary, Ministry of Defence and Others.

13. It is pertinent to mention that Phoolwati's case referred to above, also related to the Government of India Printing Press.

14. In our opinion, the decisions of the Supreme Court and of this Tribunal relied upon by the learned counsel for the applicants, cannot be blindly applied to all cases of compassionate appointment in the Government of India Press located at various places in the country. The respondents have a genuine problem in accommodating such persons in view of the reduction in the strength of staff and the ban imposed by the Government on recruitment.

15. We are, however, impressed by the argument of the learned counsel for the applicants that the plea of non-availability of vacancies should not be raised in cases of compassionate appointment. The Government servants who have died in harness, have rendered valuable services to the Government while they were in service. Rehabilitation of the dependants needing assistance in the form of employment, is an obligation of the Government, which is to function as a model employer.

16. The respondents have contended in some of the counter-affidavits filed by them that in case any more appointment is made in their offices, it will amount to engagement of surplus staff for which there is no provision (vide OA-2753/90, OA-35/91, OA-76/91, OA-77/91, OA-94/91, OA-146/91, and OA-147/91). In the Central Government, there is in existence a scheme for redeployment of surplus staff. Those who have been rendered surplus

α

in one department, are borne on the strength of a Surplus Cell with a view to their redeployment in other departments and in suitable posts and no fresh recruitment can be resorted to without absorbing the surplus staff. The position of the applicants is somewhat analogous. Those who deserve appointment on compassionate grounds, will have to be accommodated in the various offices of the respondents and till this is done, there should be direct ~~no~~ recruitment of persons through Employment Exchange or otherwise.

17. Taking a realistic view of things, we are of the opinion that a viable scheme should be prepared by the respondents on an All India basis to give relief in such cases to the deserving persons. We have been told that the Government of India has got as many as 23 Presses located at various places in the country and, in our opinion, all of them should be treated as a single unit for the purpose of making compassionate appointments. In order to give immediate relief to the deserving persons, the respondents should reduce the direct recruitment quota of the categories concerned as a one-time measure in favour of the dependants of deceased Government servant needing compassionate appointment. Such a step would, to our mind, not amount to discrimination or violation of the

constitutional provisions, as interpreted by the Supreme Court in a catena of decisions. While preparing the scheme, the respondents should provide for giving priority to more deserving cases than the others, having regard to the size of the family, the circumstances in which the Government servant died, the level of the post which he had held and similar other relevant factors. While the scheme may provide for posting of the persons concerned in any of the offices of the respondents at Delhi or elsewhere, the female dependants should not, as far as possible, be disturbed from the place where they ^{may} be residing after the death of the Government servant concerned.

18. The respondents are directed to prepare a scheme on the lines broadly indicated above within a period of three months and consider the cases of the applicants before ^{and those similarly situated} us for appointment in their offices located in Delhi or elsewhere, depending on the availability of vacancies.

19. In the light of the aforesaid directions, we propose to consider the merits of the individual cases before us.

OA-2753/90

20. The applicant's father, who had worked as a Machineman in the office of the respondents, died on 17.10.1985 in harness. His son, who is the applicant before us, is in receipt of a Family Pension of Rs.600/- per month, but he is unemployed. He has passed matriculation examination and also holds diploma in vocational training course. He claims to be an outstanding sportsman. He does not own any property. He is praying for appointing him to a Class III post.

OA-2754/90

21. The applicant's father, while working as a Composer, died in harness on 5.8.1989, leaving behind his widow, the elder son who is in employment, and the applicant who is ^{the} ~~the~~ second son without employment. The eldest son is living separately with his wife and two daughters. The family is in receipt of Rs.750/- per month as Family Pension plus Rs.383/- as relief on pension. They have also received a sum of Rs.85,000/- towards retirement benefits. The applicant has stated that the above mentioned amount has been spent for purchasing a house. The applicant's father died of cancer and the family had to spend considerable amount on his treatment. The applicant has passed B.Com. Examination and is claiming appointment in a suitable Class 'C' post.

DA-3/91

22. The applicant's father was a labourer at the time of his death in harness on 25.3.1989. He has studied upto 5th standard. The respondents have stated in their counter-affidavit that his request for appointment in a suitable Group 'D' post as labourer, etc., is under their active consideration.

DA-24/91

23. The applicant's father was working as a labourer at the time of his death in harness on 13.2.1989. He has left behind his widow, one son, one daughter-in-law, and one grandson. He has studied upto 9th standard. He is seeking compassionate appointment in a suitable Group 'D' post. Here again, the respondents have stated that the family is in receipt of Family Pension of Rs.470/- per month and that a sum of Rs.40,000/- has been paid to them by way of retirement benefits. The applicant has stated that the amount so received has been spent for the maintenance of the family.

DA-30/91

24. The applicant's father was working as a labourer (Binder) at the time of his death in harness on 18.9.1987. He has left behind his widow and the applicant, apart from a married daughter. The applicant has studied upto 6th class. He is claiming appointment to a suitable Group 'D' post.

DA-31/91

25. The applicant's father was working as a Binder at the time of his death in harness on 5.10.1989. He has left behind his widow, three sons, and one daughter. A married son of his is living separately. The applicant is a graduate and is seeking appointment to a Group 'C' post. The family is in receipt of Family Pension of Rs.600/- per month.

DA-35/91

26. The applicant's father was working as a labourer at the time of his death in harness on 7.10.11 has left behind his widow, three sons and a married daughter. At the time of his death, the applicant was a student. The applicant has stated that his mother is near blind. He has studied upto 5th standard and is seeking appointment to a suitable Group 'D' post. The family is in receipt of a meagre amount on account of Family Pension. The amount of gratuity received was also meagre.

DA-69/91

27. The father of the applicant was working as a Machineman at the time of his death in harness on 25.12.1984. He has left behind his widow, one son and one daughter. The applicant belongs to the Scheduled Caste community. He claims appointment in a suitable Group 'D' post.

DA-76/91

28. The applicant's husband was working as a labourer in harness at the time of his death on 29.7.1988, leaving behind the applicant and her four minor children. She has studied upto 5th class and is seeking appointment to a suitable Group 'D' post.

DA-77/91

29. The applicant's father was working as a Binder at the time of his death in harness on 13.10.1986. The applicant is the only surviving member of the family. He has passed B. Com. Examination and is seeking appointment in a Group 'C' post.

DA-89/91

30. The father of the applicant was working as a Composer at the time of his death in harness on 28th July, 1981. He left behind his widow and three minor children. His mother applied for compassionate appointment of her first son which was considered by the respondents and rejected on the ground that the school certificate furnished by her, was a fake one. The respondents have stated that the prayer for appointing the applicant, who is a second son of the deceased Govt. servant, has been made after a lapse of 10 years. The applicant is seeking employment in a suitable Group 'D' post.

OA-94/91

31. The father of the applicant was working as a Binder at the time of his death in harness on 29.10.87, leaving behind his widow and two sons who were unemployed. The applicant has studied upto 8th class and is seeking employment in a Group 'D' post.

OA-146/91

32. The applicant's father was working as a Machineman at the time of his death in harness on 20.9.1987. He has left behind his widow, one son, and three unmarried daughters. The applicant is seeking appointment in a suitable Group 'C' post. The respondents have stated that he was considered for appointment to the post of L.D.C. but for want of vacancy, was not appointed.

OA-147/91

33. The father of the applicant was working as Assistant Binder at the time of his death in harness on 9.10.1988, leaving behind ~~his widow, one son and two daughters~~ his widow, one son and two daughters. The applicant is seeking appointment in a suitable Group 'C' post.

OA-290/91

34. The applicant's father, while working as a Monoca died in harness on 3.2.1987, leaving behind his son and daughter. The applicant is seeking appointment to a

.....

(2)

suitable Group 'D' post. The respondents have stated in their counter-affidavit that a sum of Rs.74,889/- has been paid to the family by way of retirement benefits.

35. We have duly considered the aforesaid applications. In our view, all the applicants in the above applications deserve appointments on compassionate grounds in accordance with the scheme to be prepared by the respondents as directed hereinabove. Such appointments ^{should} ~~will~~ be commensurate with the educational qualifications of the persons concerned and wherever necessary, the same should be relaxed as also the age-limit prescribed for the post. Till such a scheme is prepared and the applicants are appointed in suitable posts, the respondents shall allow the applicants in OA-2754/90, OA-3/91, OA-31/91, OA-77/91 and OA-147/91 to continue in the Government accommodation in their possession, subject to their liability to pay the normal licence fee, in accordance with the relevant rules.

36. The applications are disposed of on the above lines. There will be no order as to costs.

37. Let a copy of this order be placed in all the 15 case files.

(D.K. Chakraverty)
Administrative Member

4/2/92

(P.K. Kartha)
Vice-Chairman(Judl.)

4/2/92