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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 182/2004

New Delhi this the 27th day of January, 2004

Hon'ble Shri R.K.Upadhyaya, Member (A)

Shri Bijender Kumar,
S/O late Shri Iqbal Singh,
R/O Qtr.No.901, Z-Type, Timarpur,
Delhi-110054

..Applicant

(By Advocate Shri Sachin Chauhan)

VERSUS

1. Union of India through
The Comptroller & Auditor General
of India, O/O the Comptroller and
Auditor General of India,
10, Bahadur Shah Zagar Marg,
New Delhi.
2. Sr.Administrative Officer (E),
O/O the Comptroller & Auditor General
of India, 10, Bahadur Shah Zafar Marg,
New Delhi.
3. Administrative Officer (E),
O/O the Comptroller & Auditor General
of India, 10, Bahadur Shah Zafar Marg,
New Delhi-110002

..Respondents

O R D E R (ORAL)

Hon'ble Shri R.K.Upadhyaya, Member (A)

This Original Application has been filed under Section 19 of the Administrative Tribunals Act, 1985 seeking a direction to set aside the order dated 26.2.2003 (Ann.A.1) and order dated 16.9.03(Annexure A-2) by which the applicant's mother was informed that the applicant could not be offered compassionate appointment.

2. It is stated by the learned counsel of the applicant that applicant's father Shri Iqbal Singh was an employee with the respondents and died in harness on 5.8.2001. It is further stated that the deceased is

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survived by five sons and one daughter besides his widow. According to the applicant, his two elder brothers S/Shri Virender Kumar and Suraj Bhan are living separately. His sister Mrs. Sudershana is married but two of his other brothers and mother are living together. This family consisting of the applicant, his two brothers and his mother were dependent upon the income of the deceased employee, Shri Iqbal Singh. Therefore, the applicant's mother made a request for appointment of the applicant which has been rejected by the respondents by a non-speaking order. The order dated 26.2.2003 (Annexure A 1) reads as under:-

"To
Smt. Phool Samandri,
Quarter No.901, Z-Type,
Timarpur, Delhi-54

Sub ; Compassionate appointment.

Madam,

I am directed to inform you that your request for appointment of your son Shri Bijendra Kumar on compassionate grounds has been considered keeping in view the Government of India instructions on the subject. We regret to inform you that it is not possible to accede to the request.

Yours faithfully,
Sd/-
(DINESH KUMAR)
ADMINISTRATIVE OFFICER (E)

Similarly, letter dated 16.9.2003 (Annexure A-2) reads as under:

"To
Smt. Phool Samandri,
Quarter No.901, Z-Type,
Timarpur, Delhi-54

21/3/2003

(M)

Sub :-Appointment of Shri Bijendra Kumar, son of late Shri Iqbal Singh on compassionate grounds.

Madam,

A reference is invited to your representation dated 13.8.2003 on the above subject and to state that your request was considered carefully as per the provisions of the DOPT's O.M. No.14014/6/94-Estt.(D) dated 9.10.98 and it could not be acceded to.

Yours faithfully,
Sd/-

(R.K.Malaker)

SR. ADMINISTRATIVE OFFICER (E)

Learned counsel stated that on the face of it both these rejection orders are not speaking orders and they should be quashed and set aside.

3. After hearing the learned counsel of the applicant, it was pointed out to him that the date of birth of the applicant as per the details furnished in OA is 7.9.1971. In other words, he was more than 25 years at the time of death of his father. Therefore, in terms of definition of the dependent family as given in Appendix II of Swamy's Compilation, the applicant could not be stated to be a dependent family member. This definition of dependent family has to be read along with the definition of the family as per Rule 54, sub-rule 14 (b) which provides that the son who has not attained the age of 25 years can only be said to be included in the family. This matter was examined in detail by the Jodhpur Bench of this Tribunal in OA 230/2003 in the case of Hari Singh Vs. UOI and Ors. The order of the Jodhpur Bench of this Tribunal dated 27.9.2002 reads as follows:-

"The further question arises as to who could be included in the family of the

Amrinder Singh

Government servant for the pensionary purposes. As per Rule 54 sub-rule 14(b), the family means as under:-

"(b) "family" in relation to a Government servant means-

(i) wife in the case of a male Government servant, or husband in the case of a female Government servant.

(i a) a judicially separated wife or husband, such separation not being granted on the ground of adultery and the person surviving was not held guilty of committing adultery.

(ii) son who has not attained the age of (twenty five) years and unmarried daughter who has not attained the age of (twenty five) years, including such son and daughter adopted legally".

Reading the aforesaid rules together, a son who has attained the age of 25 years cannot be said to be dependent on a Government servant once he cannot be included in the very family of the deceased Government servant for the purpose of grant of pensionary benefits. Thus the son (including adopted son) as included in the definition of dependent family member would not include a son who has attained the age of 25 years and we are required to give this interpretation as per the rules of harmonious construction of the statutes. Once the son who has attained the age of 25 years cannot be said to be dependent and is also not entitled for grant of any pensionary benefits as per the pensionary rules, he could not be said to be dependent for the purpose of compassionate appointment also. In the present case, the applicant had attained the age of 28 years at the time of death of his Father and by now he is of 31 years of age. Thus he cannot be said to be dependent family member of deceased Shri Kishan Singh. And if that be so the applicant would not be entitled for consideration of appointment on compassionate ground. Hence, the Original Application deserves dismissal on this count alone".

4. Learned counsel of the applicant invited our attention to the power of relaxation as provided in the Scheme for Compassionate appointment. According to the learned counsel, the matter has to be examined first by the respondents whether they consider the applicant not eligible for appointment because he is over aged.

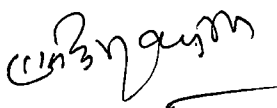
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According to the learned counsel, unless the respondents are directed to examine this aspect the prayer of the applicant cannot be rejected by the Tribunal at this stage.

5. After hearing the learned counsel of the applicant and after examining the facts of this case, it is held that the applicant was not a dependent member of the deceased employee at the time of his death as has been held in case of Hari Singh (supra). The question of relaxation of age may or may not be relevant in this case because it has to be decided whether the applicant was the dependent member of the family. If he was not dependent family member at the time of death of the deceased employee, the applicant had no right to seek appointment on compassionate grounds.

6. In view of what has been stated in preceding paragraphs, this Original Application is rejected at the admission stage without issue of notice to the respondents and without any order as to costs.


(R.K.Upadhyaya)
Member (A)

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