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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA 1417/92

29.07.1992

SMT. GUDDI DEVI

...APPLICANT

VS.

UNION OF INDIA & ORS.

...RESPONDENTS

CORAM :

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

FOR THE APPLICANT

...SHRI RANJAN MUKERJEE,
COUNSEL

FOR THE RESPONDENTS

...SHRI K.S. DHINGRA,
SENIOR ADMINISTRATIVE
OFFICER, DEPARTMENTAL
REPRESENTATIVE

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

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

The applicant, Smt. Guddi Devi is the widow of Shri Dalbir Singh, who was employed with the respondents as Dafty in the Office of Remount Veterinary Services and he died in harness on 8.4.1985 leaving behind the applicant widow and two sons. The younger son of the applicant, Ravi was prompted by the applicant for compassionate appointment, but the request for compassionate appointment did not find favour with the respondents and the same was rejected by the order dt. 5.7.1985. The applicant is getting Rs.670 p.m. as family pension. The applicant has applied on 8.1.1991 to the respondents for giving her compassionate appointment accusing that her both the sons are giving her utmost pains and

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discomforts and that she is still retaining the quarter allotted to her husband for her residence. She has therefore, prayed for her appointment, though in an advanced stage of above 50 years, the learned departmental representative for the respondents fixed the age at 55 years. The respondents turned down this request of the applicant by the speaking orders dt. 12.3.1992 and 30.3.1992. She has, therefore, filed this application for the relief that she should be given compassionate appointment and as an interim relief, she has prayed that she should be allowed to continue in the Government Quarter No.216, Sector-II, Sadiq Nagar, New Delhi pending disposal of this application.

I have heard the learned counsel for the applicant, Shri Ranjan Mukerjee. On 29.5.1992 a notice was issued to the respondents. On 24.7.1992, Shri K.S. Dhingra, departmental representative appeared for the respondents and opposed admission. On the request of the learned counsel on that day, the matter has been adjourned for further hearing today on admission. It may be stated that the learned counsel for the applicant has emphatically insisted that the respondents should be directed to file a reply and then the matter be disposed of. Normally this request is fair and just, but when the pleadings placed before the Bench are exhaustive and sufficient to make a firm affirmation about the maintainability of an application, then such a request for asking the respondents to file the reply is not justified in

the circumstances of the case, when the respondents themselves argued the matter opposing admission. The basic point to be seen is that the applicant is entitled to be considered for compassionate appointment of her own or of other legal heir of the deceased and it appears that immediately after the death of the bread earner, Dalbir Singh, her husband, she applied for compassionate appointment of her younger son, Ravi. At that time she was also living in the quarter allotted to her husband during the course of his service. That request for employing the son was dismissed in July, 1985. Since July, 1985 she has been pulling on the pensionary benefits she got along with the two sons. Though there is a mention in para 4.3 that for the last four years, i.e., from 1988, the sons have left her. However, this statement also cannot be said to be in line with the ration card, the photocopy of which has been filed which goes to show that on 31.1.91, the applicant's was the sole name entered in that card. Be that it may be. When she has already consented to the employment of her son on compassionate ground and the compassionate or indigent nature of the family was considered by the respondents in 1985, then again applying after a gap of six years, to my mind, will not in any event change the earlier view taken regarding the indigent nature of the family. The compassionate appointment is given to a family of a deceased in indigent circumstances. After the order of 1985, though the applicant continued to reside in the same premises, but she did not assail that order nor any time in 4 years before, from the date of the present

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application, when it is alleged by her that both of her sons have deserted her, moved an application to the respondents for compassionate appointment. The present application, therefore, cannot be said to be a bonafide application moved by a lady of 55 years of age and it appears to be a comou fledge to retain the premises allotted to her husband so that the said premises can be retained on one pretext or the other.

The learned counsel for the applicant has referred to the case of Moti Lal Padampat Sugar Mills, 1979(2) SCR 641 where a distinction has been placed in waiver and estoppel. He has also referred to the case of Associated Hotel Vs. Sardar Ranjit Singh, AIR 1968 SC 933 on the point of waiver and another case of Madem Setty Satya Naraina Vs. Yellogi Rao, AIR 1965 SC 1405. All these authorities relate to the point of waiver. The contention of the learned counsel is that waiver is a defence and has to be pleaded specifically by the respondents, who want to take advantage of the same. However, in the present case, the question is that widow has a primary right for applying for compassionate appointment and she very well knew that right and knowingly that she can be given an appointment on compassionate ground, preferred her younger son, Ravi and made him to apply for compassionate appointment soon after the death of her husband. This special feature of the case by itself goes to show that she has waived her right in favour of her son. Waiver as legal terminology may not be so much material in this case.

As said earlier, the main point is whether at the time of the death of the employee, the family was indigent or not. If the contention of the applicant is accepted without reservation, then when her younger son's application was rejected, she should have assailed the same in a competent forum which she is doing now in 1992. Secondly she is now all alone a lady of 55 years of age and getting Rs.670 p.m., so as pension and ~~recd~~ other benefits also, which is sufficient for the sole member of the family. The plea taken that both sons have deserted her also appears as an after thought. This appears to be opposed to commonsense and totally unbelievable. This gives rise to a correct inference that the present application is not bonafide and is a common fledge to retain the Government quarter.

In view of this fact, I find that the present application *prima facie* does not have any substance or case and is dismissed 'in limini' at the admission stage after hearing both the parties leaving them to bear their own costs.

J. P. Sharma
(J.P. SHARMA)
MEMBER (J)
29.07.1992