

80

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

O.A. No. 377/92

Date of Decision : 06.11.92

Smt. Sudha Aggarwal

...Applicant

vs.

Union of India & Ors.

...Respondents

CORAM

Hon'ble Shri J.P. Sharma, Member (J)

For the Applicant

...Shri O.P. Sead

For the Respondents

...Shri M.L. Verma

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

JUDGEMENT

Smt. Sudha Aggarwal is the widow of Shri Rajeshwar Kumar, who was employed as Senior Store Keeper in the Central Ordnance Depot, Delhi Cantt. and while in active service he did not return to his home on 7.5.1982 though he left for duty in the morning. A report in this connection was also lodged on 28.6.1982 by the applicant. Said Rajeshwar Kumar has not been since heard of and besides the widow there are four sons between the age of 10 to 18 years and one unmarried daughter, aged 23 years.

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The applicant has made repeated requests to the respondents to provide employment assistance so as to enable her to provide bread to the children and this request has ultimately been rejected by the respondents on 2.5.1986. The applicant continued to make representations for assistance in employment after relaxation to normal rules of recruitment and in fact the applicant was also called on 20.11.1989 to fill up certain documents and again on 15.1.1990, the son of the applicant, Vinit Aggarwal was asked to visit the ~~report~~ <sup>depot</sup> with original certificates of educational qualifications and affidavit for movable and immovable property and annual income earned by the family duly certified by the district authorities. Inspite of this, the respondents have not given any assistance in compassionate appointment. So she has prayed in this application, filed on 5.2.1992 that compassionate appointment be given to the applicant on the post of LDC/Store Keeper.

2. The respondents contested the application and the main plea taken by them is that compassionate appointment

10

cannot be claimed as of right and also referred to the existing policy communicated vide Army Head Quarter's letter No. 93679/Pol./OS-8.C(I) dt. 8.6.1989 that/missing employees are not eligible for employment in relaxation of normal rules. It is further stated that the said instructions are based on the Department of Personnel and Training's letter, which is applicable to all the branches of Ministry of Defence. It is further stated that Shri Rajeshwar Aggarwal absented himself on 27.5.1982 and disciplinary case was initiated against him and after conducting proper inquiry under Rule 4 of OCS (OCA) Rules, 1965, he was awarded the penalty of compulsory retirement and thereafter he was struck off from the strength w.e.f. 4.4.1986. It is further stated that on the basis of FIR lodged with SHO, Delhi Cantt., the husband of the applicant was presumed to be dead and necessary sanction of the competent authority has been obtained and as a result of the same and subsequent declaration of death on 11.8.1987, the wife of the employee has been given family pension w.e.f. 27.8.1987, DCRG and COEGIS. It is stated that as per instructions on the subject wards of missing persons are not entitled to appointment in normal relaxation of rules.

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3. The applicant filed the rejoinder and reiterated her stand taken in the application.

4. I have heard the learned counsel for both the parties at length and have gone through the record of the case. The respondents have not filed the copy of the letter of the Army Headquarter of 1989, referred to in para-1 of their counter. However, there is Department of Personnel and Training OM No.1/17/86 P&W dt. 29.8.1986 wherein it has been laid down that the wards of the missing employees may also be given the benefit of compassionate appointment subject to fulfilment of normal rules. Thus the above OM of Department of Personnel and Training clearly lays down that the matter for compassionate appointment of the ward of the missing employee subsequently declared dead can also be considered. The respondents in the impugned order of 1986 did not give out any reason as to why the assistance in employment cannot be given to the ward of the deceased employee, Shri Rajeshwar Aggarwal. Even after this letter till 15.1.1990, one of the sons of the applicant was called with original certificates etc. and it normally means employment in relaxation to the normal

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rules. It appears that the only hurdle remained with the respondents because of the Army Head Quarter's letter dt. 8.6.1989, which is said to have been based on the instructions issued by the Department of Personnel and Training. However, the instructions of Department of Personnel and Training dt. 29.8.1986, referred to above, on the subject appear to be still in force as nothing has been referred to by the respondents that the same has since been overruled or amended by any subsequent instructions. When the death of the applicant has been presumed as a civil death, as he has not been heard of for a number of years by kith and kin, since the employee, Shri Rajeshwar Aggarwal did not reach the age of superannuation, he should have been presumed to have died in harness. The matter has come up before the Hon'ble Supreme Court in the case of Sushma Gosai vs. Union of India as well as in the case of Phoolwati vs. Union of India, reported in AIR 1989 SC p-1976 and 1991 RLR p-115 respectively. The learned counsel for the applicant has also referred to the case of Chandran vs. Union of India, 1990 (2) SLJ p-336 and the decision of Allahabad High Court in the case of Harbans Sahai vs. State

of U.P., 1990 (1) SLJ 160 where the request for compassionate appointment has been favourably considered.

5. In view of the above facts, the applicant has made out a case that either she or one of her sons may be given compassionate appointment on any Group 'C' or Group 'D' post having a vacancy.

6. In view of the above facts and circumstances, a direction is issued to the respondents to give compassionate appointment to the applicant, Smt. Sudha Aggarwal or one of her sons, Shri Vinit Aggarwal, who has also been interviewed by the respondents, within a period of three months, from the date of receipt of the copy of this order. In the circumstances, the parties shall bear their own costs.

(J.P. SHARMA)  
MEMBER (J)