

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

O.A. No. 1393/93

(17)

New Delhi, this the 17th day of January, 1994.

SHRI J.P.SHARMA, MEMBER (J).

1. Smt. Hanifa Begum,
wife of late Shri Muksood Ahmed.
2. Shri Mutluba Hussain,
son of late Shri Maksood Ahmed.†

Both residents of Q.No.I/DS/127, Ordnance
Factory Estate, Murad Nagar,
Distt. Ghaziabad (UP).

...Applicants

(By advocate: Shri V.P.Sharma)

VERSUS

1. Union of India, through
The Secretary,
Ministry of Defence, Govt. of India,
New Delhi.
2. The Director-General,
Ordnance Factory Board,
10-A, Auckland Road, Calcutta.
3. The General Manager,
Ordnance Factory, Murad Nagar,
Distt. Ghaziabad, U.P.

...Respondents

(By advocate: Smt. Raj Kumari Chopra)

O R D E R (ORAL)

Late Maksood Ahmed was employed as a painter in the Ordnance Factory, Murad Nagar at Ghaziabad under respondent no.3. He died in harness on 18-5-92 leaving behind widow, applicant no.1; unmarried son, applicant no.2; 2 married sons Mahboob Hussain and Margul Hussain; and one mentally retarded son Gyaar Hussain and one unmarried daughter. She made a request to respondent no.3 in July 1992 for giving compassionate appointment to the unmarried son Matluba Hussain on which details and bio data was called for and after the same has been furnished, the Administrative Officer by the order dated 12-6-93 informed the

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applicant no.1 that the case has been considered according to relevant rules and seeing to the terminal benefits paid to the family of the deceased, the request for compassionate appointment could not be acceded to. In June 1993, the applicant filed the present application praying for a relief that the respondents be directed to give compassionate appointment to applicant no.2 and to quash the impugned order dated 12-6-93.

2. The applicants also claimed an interim relief for non-eviction from the premises allotted to the deceased quarter no. I/DS/127, Ordnance Factory Estate, Murad Nagar, Ghaziabad. On 14-7-93, an interim order was granted not to evict the applicant till the disposal of the application.

3. A notice was issued to the respondents who contested the application and in the reply stated that the case of the applicant has been rightly considered by the authorities and seeing to the retirement benefits of about Rs.76,000 and a monthly benefit to the extent of Rs.1507, the family cannot be said to be indigent requiring rehabilitation by way of assistance in compassionate appointment. It is further stated that there are two earning members in the family who have the first responsibility to maintain their kith and kin. Certain decisions have also been cited in favour of the respondents where the request for compassionate appointment was allowed.

4. The applicant has also filed the rejoinder and distinguished the judgments on the basis of decided

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cases of Phool Wati and Sushma Gosain decided by Hon'ble Supreme Court reported in 1991 SC(2) p.469 and 1989 SC p.1976, respectively.

5. I heard the learned counsel for the parties at length and perused the records. The learned counsel for the applicants highlighted a circular issued by the respondents on 28-9-92 annexed to the application (Annexure 11) whereby the Ministry of Personnel clarified the earlier O.M. issued on this subject in 1987 and observed that the application for compassionate appointment should not be rejected merely on the ground that the family of the deceased Govt. servant has received certain retirement benefits under various welfare schemes. The case of compassionate appointment should be decided basically seeing to the liabilities of the family, the surviving members of the deceased family with respect to their age and the needs and status of the family at the relevant time.

6. A compassionate appointment is not a right but at the same time a Government servant dieing in harness by virtue of years of service he has put in in the Government entitles his dependent wards to be rehabilitated when they are left in lurch on the death of the sole bread-winner. The welfare scheme introduced by the Govt. is not for a back door appointment but securing living gracefully of the deceased family. Rs.76,000 as retirement benefits and Rs.1.065 as family pension has been considered by the respondents as sufficient to hold that the family

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is not indigent. Counsel for the respondents, with reference to decided case of Principal Bench of which I was a Member, pointed out that judicial review cannot be on the standard of appellate authority. However, the fact remains that one of the sons is mentally retarded who has to be subsidised till he survives. The family pension is such case though prescribed but it is not on record whether in view of the family pension, that has been sanctioned. Otherwise, a mentally retarded person is entitled throughout the life the pension of retiree. Counsel for the respondents interrupting in the course of the dictation pointed that under Section 19 of the Administrative Tribunals Act, 1985, the Tribunal has not to give any finding on this account. The cases filed in the Tribunal are decided basically on the basis of pleadings. A point raised in the application not specifically denied ^{/be} has to be given its own meaning. In any way, this is a cursory observation to find out the inference drawn by the respondents for the applicant in ^{not} providing assistance for compassionate appointment. The learned counsel for the applicant /argued that the rejection order /does not give out any reasons whatsoever, thereby showing non-application of mind. When an application is preferred, it is expected that the administrative orders too must be reasoned to show that every aspect desired by the aggrieved person has been fully considered to reach to a particular conclusion.

7. Regarding 2 other earning members, they have their own families. They are married undisputedly.

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The applicant no.2 is unmarried and seeing to the nature of the society in this part of the country, married sons take little care as they are involved in their own families.

8. Learned counsel for the respondents has referred to certain judgments. In the case of Murti Devi decided by Division Bench in July 1988 has a binding force on the Single Bench but while concluding the conclusion, the Bench observed that even if one member is already employed, it enables appointment to be made of the other also. However, the Bench did not like to interfere in the circumstances of that case. In the other judgment of the Principal Bench, there was only one person to be given support while other persons were duly settled in life and on this account, the application was not allowed for compassionate appointment. In the case of Ram Rati, the application was treated as barred by time having been moved after a lapse of considerable period observing that rehabilitation means immediate after the death of the deceased bread winner of the family. In the case of Surjeet Kaur decided by Chandigarh Bench which has also been annexed with the counter, it has been observed that it is not a right and each case has to be considered on its own. That is also a judgment by a Division Bench and has a binding force. Having considered the relevant law on the point, coming to the case in hand, the widow Hanifa Begum applicant no.1 has another retarded son to be supported as well as applicant no.2. There is also unmarried daughter in the family. In view of the ^{/above} facts and circumstances,

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it was expected of the respondents to rebut the needs of the applicants by showing certain reasonable grounds which should be apparent on the order itself. The learned counsel for the applicants pointed out that the respondents cannot take a stand in their reply in order to improve the impugned order which has not been the basis for rejection of his prayer for compassionate appointment.

9. In any case, the application is party allowed and dispose of in the manner that the respondents shall consider the case of the applicant for compassionate appointment on the basis of observations made in the body of the Order and the O.M. of Ministry of Personnel issued in September 1992 where the terminal benefits given to the family of a deceased employee should not be taken as the sole basis for rejection of a claim for compassionate appointment. The respondents have also not to take rigid view of the fact that two of the other married sons are employed as they have got their own families. The respondents have specifically to consider the case of the mentally retarded son of the deceased after due inquiry, if they so desire. The respondents to dispose of the matter within a period of three months from the date of receipt of a copy of this Order and communicate the result to the applicants. In the circumstances, parties to bear their own costs.

J. P. Sharma

(J.P.SHARMA)
MEMBER(J)

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