

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

HON. SHRI R.K. AHOOJA, MEMBER (A)

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NEW DELHI, THIS 29th DAY OF MAY, 1997.

OA_NO.2385/1993

SHRI PRADEEP KUMAR
S/o lt. Sh. Sant Kumar
664 Gulabi Bagh
DELHI

...APPLICANT

(By Advocate - Shri B.S. Charya)

VERSUS

1. Delhi Administration
5 Alipur Road
Delhi
(through its Chief Secretary)

2. The Secretary (Services)
Delhi Administration
5 Alipur Road
Delhi

..RESPONDENTS

(By Advocate - None)

ORDER

The applicant's father who was working as LDC under the Delhi Administration died in harness on 21.12.1991. He was survived by his wife, one son - the applicant - and three daughters. The applicant had applied for compassionate appointment but the same was delayed. Consequently, O.A. No.400/93 was filed before this Tribunal. During the pendency of that O.A., the respondents offered a post of LDC, Group IV post of DASS cadre, on compassionate grounds and it was accepted by the applicant under protest since on the basis of his educational qualifications, he had represented for appointment in a Grade II post of Delhi Administration Subordinate Services (DASS) cadre. That O.A. was dismissed as withdrawn with liberty to the applicant to agitate the matter on a fresh cause of action that

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might arise, if so advised, that is, for consideration for compassionate appointment to Grade II post. The present O.A. is a fall-out of that order.

2. The case of the applicant is that in similar other cases where persons had the appropriate qualifications, compassionate appointments were given directly into Grade II of the DASS cadre in the pay scale of Rs.1400-2300 and the action of respondents in giving him a grade IV post is therefore discriminatory and violative of Articles 14 and 16 of the Constitution. He also challenges the instructions in O.M. dated 17.2.1988 (P-1) issued by the Delhi Administration regarding compassionate appointment of children of deceased employees on the ground that the same conferred unlimited and unguided powers on the respondents to give compassionate appointment in lower pay scales even where the incumbent possesses qualifications for a higher pay scale. The respondents in reply however state that the applicant has already accepted the compassionate appointment and for his further promotion he is to be governed by the normal service rules. As for his allegation of discrimination, they say that each case is examined on the basis of its own facts and circumstances and that the applicant cannot claim parity in this respect.

3. I have heard the applicant's counsel Shri B.S. Charya at some considerable length. None appeared for the respondents. I am however convinced that the applicant has no case whatsoever. Compassionate appointment is in relaxation of the normal Recruitment Rules and is thus not an enforceable right. The purpose of providing compassionate appointment is to mitigate the hardship of a family due to the death of the bread-earner. It is to this end that a provision even exists in the relevant instructions of respondents that in deserving cases relaxation, albeit on temporary basis, may even be granted in respect of educational qualifications. But that does not imply that the appointment

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of the applicant must be made in accordance with his educational qualifications. The applicant has already accepted the post of LDC, even though he says he did so under protest. The purpose of relieving the immediate hardship and distress of the family has thus been achieved. No further right even for consideration remains to the applicant for adjustment in a higher grade.

4. The ld. counsel has drawn my attention to the cases mentioned in the O.A. wherein compassionate appointment was made to Grade II of the DASS cadre. The respondents say that each case has been considered on its own facts and circumstances and no parity can be claimed by the applicant. I am in agreement with the respondents. Equality of opportunity in matters of employment is available to all eligible candidates, but only when the appointments are made in accordance with statutory rules and not in cases where relaxation is resorted to. The purpose of relaxation here is the adverse stress on a family which has lost its bread-earner, and not the interest of the ward who is being offered employment. It is not necessary for this Tribunal to go into each and every case where such appointment to Grade II was made in order to adjudge whether the same criteria would have been applicable in the case of the applicant also. There can be no discrimination where the very foundation of a right does not exist.

5. The point regarding unguided powers of the respondents under instructions dated 17.2.88 has not been pressed by the ld. counsel, but even otherwise I would see no merit in such a contention.

6. In the facts and circumstances of the case, the O.A. being devoid of merit is dismissed. No costs.

R.K. Ahooja
(R.K. AHOOJA)
MEMBER (A)