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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

...

O.A.No.2677 of 1993

Dated New Delhi, this 12th day of December, 1996.

HON'BLE SHRI A. V. HARIDASAN, VICE CHAIRMAN (J)

Wahid Khan
S/o Late Shri Nishar Khan
Gram Sikri
2 Hissa, Fatehpur Sikri
AGRA.

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... Applicant

By Advocate: Dr M. P. Raju

versus

1. Union of India, through
Secretary
Ministry of Human Resources Development
Department of Education and Culture
Shastri Bhawan
NEW DELHI.
2. The Director General
Archaeological Survey of India
NEW DELHI. ... Respondents

By Advocate: Shri S. M. Arif

O R D E R (Oral)

Shri A. V. Haridasan, VC(J)

The applicant is the second son of Late Shri Nissar Khan, who while serving as Garden Attendant under the 2nd Respondent, died on 2.5.1988. He was survived by his first son Shri Syed Khan who was even prior to the death of Shri Nissar Khan, employed as a physically handicapped person married and settled with his family in a different place, and two sisters aged 18 and 10 apart from the applicant. The mother of the applicant had pre-deceased the father. Shortly after the death of Shri Nissar Khan, the applicant on 20.12.1988 represented for employment assistance on

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compassionate grounds detailing the indigent circumstances to which the family was reduced on the sudden and unexpected death of the bread winner. The respondents first informed the applicant by letter dated 18.9.1990 (Annexure-II) that the matter was under consideration and the outcome would be intimated in due course. He again got a reply on 21.12.1990 from the Deputy director(Accounts) stating that his request had been examined, but it was not found feasible to accede to it. The applicant preferred an appeal to Director General on 6.10.1991 which was followed up by reminders, but without result. The case of the applicant was brought to the notice of the then Minister of Human Resources Development, Shri Arjun Singh who, it is averred, had directed appointment of the applicant on compassionate grounds. As the above direction was not carried into action, the matter was further agitated by the applicant and a letter by Shri Ajay Singh, former Deputy Minister for Railways informed the Human Resources Development Minister that the direction had not been complied with. In spite of all these, the applicant did not get employment assistance on compassionate grounds and is therefore aggrieved. He prays for a direction to respondents to appoint him on compassionate grounds.

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2. The respondents resist the application on the ground that the applicant's many members of the family are employed in Archaeological Survey of India and also that the applicant himself is working and therefore the case does not merit appointment of the applicant on compassionate grounds. The respondents also seek support from the ruling of Hon'ble Supreme Court in the matter of LIC of India Vs. Mrs Asha Ramchhandra Ambekar & Anr. reported in JT 1994 (2) SC-183 to say that the Tribunal cannot give a direction to appoint a person on compassionate grounds.

3. I have, with meticulous care, gone through the pleadings and the materials available on records. I have heard Dr M. P. Raju, the learned counsel for the applicant and Shri S. M. Arif, the learned counsel for the respondents. The claim of the applicant for compassionate appointment is resisted merely on the ground that the elder brother of the applicant is employed and many members of the family are working. It is not a fact in dispute that the elder brother of the applicant is employed. It is also not disputed that the said brother of the applicant who is employed had been living separately from the family with his own family consisting of wife and children in a different place altogether. The applicant

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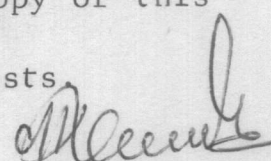
is a Muslim and is governed by the Mohammedan law.

The concept of a joint family is not there in Mohammedan society. To decide whether there is any earning member in the family, one has to give proper consideration to the concept of family according to the law to which the parties are subject. Can a married and separated son of a deceased father be considered to be a member of the surviving family of a deceased Muslim - I am of the considered view that it cannot be. The allegation in the application that the applicant's elder brother who got employment prior to the death of the father, is having a separate family and is living separately away from the family, ^{even before his father's death} is not disputed in the reply. Therefore, the fact that the elder brother who cannot be considered as a member of the family is employed, cannot be a good reason to deny the claim of the applicant for appointment on compassionate grounds. There is a vague contention in the reply that many of the members of the family of the applicant are working in Archaeological Survey of India, but there is no specific averment as to which member of the family is so employed and if so, on what post. Neither the applicant nor any one of his sisters is employed. The contention that the applicant himself is working also is vague because where and on what post is he working is not stated in the reply. The claim of the applicant for

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compassionate appointment was considered by the then Minister for Human Resources Development who directed appointment is not specifically denied in the reply. All these aspects of the case lead to the irresistible conclusion that the case of the applicant for compassionate appointment has not been considered in the right perspective by the competent authority. Therefore, I am of the considered view that the matter has to go back to the competent authority for reconsideration taking into account the entire background of the family of the applicant, namely, the financial position, the number of dependent members and the girls to be married etc.

4. In the light of what has been stated above, the application is disposed of with the direction to the respondents to have the case of the applicant for compassionate appointment considered by the competent authority in the light of the observations made above and to take an appropriate decision and also if the competent authority on such consideration finds that in the circumstances the applicant deserves to be appointed, to consider his appointment on a post within a period of four months from the date of receipt of a copy of this order. There shall be no order as to costs.



(A. V. Haridasan)
Vice Chairman(J)