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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA-681/93

New Delhi this the 3rd day of September, 1997.

Hon'ble Sh. S.P. Biswas, Member(A)

Sh. Pawan Kumar Gupta,
S/o Sh. K.L. Gupta,
R/o C/o Section 876-890,
Central Translation Bureau Hostel,
Ministry of Home Affairs,
Pushp Vihar,
New Delhi. Applicant

(through Sh. B.B. Raval, advocate)

versus

Union of India through

1. Secretary,
Ministry of Home Affairs,
North Block,
New Delhi.
2. The Director,
Intelligence Bureau,
Ministry of Home Affairs,
North Block,
New Delhi. Respondents

(through Sh. V.K. mehta, advocate)

ORDER (ORAL)

The short issue for determination is whether an employee, originally appointed in the grade of LDC on compassionate grounds following the death of his harther in harness, can subsequently seek better placement which was due to him at the initial stage itself because of possessing requisite qualifications but not given to him for reasons best known to respondents.

2. It is not in dispute that the applicant had the minimum qualification for appointment in the

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grade of ACIO-II or JIO-I. The applicant in an attempt to get appointed subsequently in one of his two grades preferred an application vide Annexure A-4 dated 13.1.92. Against several applications of the applicant in this respect, respondents decided to turn a Nelson's eye. The standard reply of the respondents has been that once a person is appointed on compassionate grounds on any post, he cannot be considered for appointment on a higher post on the same grounds. The applicant has come up with a few examples where the respondents have allowed appointments in the higher grades of ACIO-II or JIO-I at the initial stage of appointment. Being aggrieved of Annexure A & B orders dated 27th March and 14th May 1992 respectively, the applicant is before us for the following reliefs:-

- (i) Quash the impugned orders;
- (ii) Direct the respondents to consider him for higher appointment to the post of Assistant Central Intelligence Officer Grade II (General) (ACIO-II(G)/Assistant at the first available opportunity with seniority fixed up nationally from the date of appointment as L.D.C.

As per the counsel for the applicant, in January 1988, the family was in immediate need of succour and could not wait longer to bargain or seek

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higher placement since the family had to be immediately rescued from the financial distress. Any attempt to ensure a better placement in life of an official is an inherent right and such a right has been upheld by the Hon'ble Supreme Court in the case of C.S.I.R. Vs. K.G.S. Bhatt (1989(3)JTT 573); 1989(2) Scale 395; 1989(4) SCC 635; AIR 1989 SC 1972.

In the counter, learned counsel for the respondents submits that once an appointment on compassionate grounds has been accepted, the applicant cannot turn back and claim a higher post. Placing reliance on the decision of the Hon'ble Supreme Court in the case of Umesh Kumar Nagpal Vs. State of Haryana (1994(4) SCC 138), the counsel argued that once an official has accepted an appointment, it gets consummated and cannot be revived to suit the benefit of the official.

What is not denied is that some appointments were made in the higher grade at the initial level. What is also not indispute is that the applicant was eligible for consideration at the time of initial appointment when he joined on 1.1.1988. We find that the Apex Court while examining the case of appointment of Post Graduate Teachers in the case of Shri Ravi Narain Vs. State of Orissa; State Private College Lectures Association & Others Vs. U.O.I. (AIR 1982 SC 677), held that special circumstances may justify special treatement. The Apex Court has allowed relaxation of rules in cases

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of (i) Bhagwati Prasad Vs. Delhi State Mineral Development Corporation (1990(1) SCC 361); (ii) J.M. Puthuparamoil & Ors. Vs. Kerala Water Authority & Ors. (1991(1) SCC 28); (iii) Rakinarayanan Mohapatra Vs. State of Orissa (AIR 1991 SC 1286) and (iv) All Manipur Regular Posts Vacancies Substitute Teachers Accosiation Vs. Statte of Manipur (AIR 1991 SC 2088).

In the light of details above, I find that it is a fit case where the applicant's case deserves to be considered in terms of the direction given by the Supreme Court in the aforesaid cases. At the same time, I am aware of the directions of the Hon'ble Supreme Court in the case of U.O.I. & Ors. Vs. Bhagwan Singh (1995(6) SCC 476) wherein it has been held that "Even after the Court reaches a conclusion that the applicant has made out a case, all that the Court/Administrative Tribunal can do is only to direct the authority concerned to consider the claims of the applicant in accordance with rules or law, if any. I, therefore, allow the application with the following directions:-

- (a) That the respondents shall consider the case of the applicant for placement in the higher grade of either in ACIO-II or JIO-I subject to his entitlement and fulfilment of all conditions laid down.

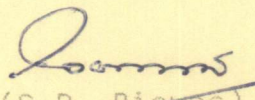
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(b) This shall be done within a period of four months from the date of receipt of a certified copy of this order and the applicant be communicated accordingly.

(c) In case the appeal of the applicant is considered favourably, consequential benefits like fixation of seniority shall be done only in terms of rules laid down on the subject.

The O.A. is disposed of as above. No costs.


(S.P. Biswas)
Member (A)

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