

11

12
2

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH.

...

O.A. No. 1223 of 1992

Dated: 07 June, 1995.

Bineet Kumar Srivastava, son of late
Sri Vishwanath Srivastava,
R/o Opposite Engineers' Building
near police Station Tiwaripur,
District Gorakhpur. Applicant.

(By Advocate Sri Tarun Verma)

Versus

1. Government of India, Ministry
of Finance through Chairman,
Central Board and Direct Taxes,
New Delhi.
2. Chief Commissioner, Income Tax
(Administration), Lucknow.
3. Commissioner Income Tax,
Allahabad.
4. Commissioner, Income Tax,
Varanasi.

(By Advocate Sri Amit Sthaleker)

O R D E R

(By Hon'ble Mr. S. Das Gupta, Member(A))

The applicant's father was working as Inspector in the Income Tax Department at Varanasi and while in service, he died on 25.1.1977 leaving behind his wife and three minor children including the applicant himself. The applicant's mother applied to the respondent no.3 for her own employment on compassionate ground. A copy of the application dated 20.5.1977 is at Annexure- A 1. She had interalia mentioned in the application that she was suffering from paralytic attack. This application was rejected by a letter

W

- 2 -

dated 3.6.1977 (Annexure- A 2) on the ground that being physically handicapped, she could not be given any appointment in the department of the respondent no. 3. In July 1987, his mother made a request to the respondent no. 2 that the applicant be given appointment on compassionate ground. A copy of this letter is at Annexure-A 3. She was, however, informed that a fresh proposal be sent only after the applicant attains the age of 18 years. On 6.9.1988, he submitted an application to the respondent no.2 requesting that he be given employment on compassionate ground. A copy of the application is at Annexure-A 5. He was asked to fill up the form and he complied with the formalities in compliance with the directions of the authority. As he did not hear anything in this matter from the authorities, a reminder was sent by the mother of the applicant. A copy of the reminder dated 24.4.1989 is at Annexure-A 7. Thereafter the mother of the applicant received a communication dated 2.6.1989 in which certain clarifications regarding educational qualification of the applicant had been sought. She was also asked to indicate the source of income of the family after the death of her husband. The communications in this regard ^{are} at Annexures-8A, B & C. The mother of the applicant gave necessary clarification and thereafter the decision of the Board rejecting the application was communicated vide letters at Annexure- 10-A & 10 B. Meanwhile, the applicant had written another letter to the authorities to examine his case sympathetically informing that his mother has

ST

since expired and after several reminders, he received a letter dated 28.5.1992 (Annexure- A 14) from the Dy. Secretary to the Government of India, Department of Revenue, Central Board of Direct Taxes stating that the request of the applicant for appointment on compassionate ground cannot be accepted to in view of the existing instructions of the Government. In these circumstances, the applicant has filed this O.A. under Section 19 of the Administrative Tribunals Act seeking relief of a direction to the Respondents to give appointment to the applicant on compassionate ground on the post of Upper Division Clerk.

2. The groundstaken by the applicant are that his request for compassionate appointment has been rejected in an arbitrary manner making a reference to the office memorandum dated 30.6.1987 under which the applicant's case is not barred and that in similar circumstances, the authorities have given appointment to one Manoj Kumar Gupta whose father expired on 15.9.1992 and thus the applicant has been discriminated against and such discrimination is violative of Articles 14 & 16 of the Constitution. It is further stated that the applicant's mother had requested for her own employment immediately after the death of the applicant's father ~~who~~ but this application was turned down on the ground that she was handicapped and later when she applied for the applicant's employment, she was told that she could not be employed until he attains 18 years of age.
- W.R.

3. The respondents have filed counter affidavit contesting the claim of the applicant. It has been stated therein that the applicant's father had expired on 25.1.1977, whereas, the applicant requested for compassionate appointment only on 19.9.1988 i.e. after more than 11 years and as such, the present application is barred by limitation. It has been further stated that in the office memorandum dated 30.6.1987 containing certain guidelines regarding belated request for appointment on compassionate ground, it has been inter alia laid down that the very fact that the family has been able to manage for many years since demise of the Government Servant would normally be adequate to show that the family had some dependable means of subsistence. It is stated that the said office memorandum further lays down that the examination of such cases call for also greater circumspection and that the decision in such cases has to be taken at the level of the secretary. Since there was a gap of more than 11 years between the date of demise of the applicant's father and his request for appointment on compassionate ground, after duly considering the case of the applicant in the light of the instructions contained in the said office memorandum, the Board of Direct Taxes which is a competent authority decided that it was not a fit case for providing appointment on compassionate ground. As regards the case of Manoj Kumar Gupta, it has been stated that his father had expired on 15.9.1982 and the

Wf,

application seeking appointment on compassionate ground was received by the respondents on 25.11.1987 i.e. within a period of 5 years from the date of death of the Government Servant. At that time, although Manoj Kumar Gupta was still a minor, he was a graduate which was a pre-requisite for giving appointment on compassionate ground. In the case of the applicant, his father died on 25.1.1977 whereas, he became a graduate only in the year 1987 i.e. after expiry of 10 years and as such, the provisions of the office memorandum dated 30.6.1987 are applicable to the case of the applicant but not to the case of Manoj Kumar Gupta.

4. The applicant has filed a rejoinder affidavit reiterating the contentions made in the O.A.

5. I have heard the learned counsel for the parties and carefully gone through the pleadings of the case.

6. It is clear from the averments that the applicant's mother had applied for employment on compassionate ground shortly after the expiry of her husband. This application, however, rejected on the ground that she was handicapped. There is nothing on record to show that the respondents had caused any medical examination of the applicant's mother to ascertain the extent of her handicap and whether it was so severe that she could not have been given any employment. Admittedly, the applicant

Dr.

- 6 -

his brother and sisters were minors at that time and could not have applied for compassionate appointment. However, when he and his mother did apply in Junly 1987 for compassionate employment of her son, she was told that she should apply afresh only after the applicant had attained 18 years. In these circumstances, the respondents cannot take the plea at this stage that the application is highly belated and rejected on that ground. In any case, the application before me can in no way be considered as barred by limitation, since the same was filed on 28.8.1992 challenging a letter dated 28.5.1992 by which his application was rejected.

7. The principles which should govern the considerations of a request for employment on compassionate ground have recently been laid down by the Supreme Court in several judicial pronouncement. There is no doubt that the employment on compassionate ground circumventing the normal procedure for appointment is an exceptional measure which should be resorted to only in very deserving cases to provide immediate assistance to the dependents of a family left in penury by the death of the sole breadwinner. In the case of Umesh Kumar Nagpal Vs. State of Haryana, SCC (L&S) 931, the Supreme Court inter alia held;

"The whole object of granting compassionate employment is to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of

w/c

- 7 -

an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crises that a job is to be afforded to the eligible member of the family."

8. It is clear from the averments made in the original application which have not been denied by the respondents that the applicant's father died in harness leaving behind the widow and three minor children including a girl child. Prima-facie, it was a fit case for sympathetic consideration to provide succour to the family in the form of employment on compassionate ground. All the three offsprings of the deceased were minor and, therefore, the question of offering employment to them did not arise. The widow admittedly applied for the employment but the same was refused on the ground that she was handicapped and there was no suitable employment for handicapped persons in the respondent department. Even at that time the instructions of Government of India were extant under which the handicapped persons would have been employed and for them, the Government had provided a quota of the vacancies for Group-C and Group-D. Later when the request was for the applicant's employment, the same was rejected on the ground that it was barred by limitation, having not been made within 5 years from the death of his father. It is clear that the

uL

applicant would in no way apply for employment on compassionate ground within 5 years of his father's death since he had not attained the age of majority and the application would have been rejected on that ground alone.

9. The respondents have taken the plea that they they have rejected the applicant's representation for employment in terms of the provisions contained in the office memorandum dated 30.6.1987. The respondents have not annexed the said O.M. We have, however, perused the relevant provisions in this regard from Swamy's Compilation and the relevant orders. These provisions do not bar consideration of belated requests for employment on compassionate ground but it only provides that such requests should be examined with a great deal of circumspection as there would be a presumption that the family of the deceased had some dependable means of subsistence enabling the members to survive during the intervening years. It does not appear from the averments made in the counter affidavit that an examination of the requestion of the applicant was made apart from rejecting it mechanically on the ground of its being a belated application. The Hon'ble Supreme Court has laid down in Unesh Kumar Nagpal (*Supra*) that the authority concerned has to examine the financial condition of the family of the deceased, and it is only y

W.L.

- 9 -

if it is satisfied, that but for the provision of employment, the family will not be able to meet the crises that a job is to be afforded to the eligible member of the family. Had the respondents carried out an inquiry into the financial condition of the dependents of the deceased employee in the present case and thereafter had come to a conclusion that the request for employment do not deserve to be accepted, there would have been nobody for any interference in the order passed by the respondents. In the absence of any such averments in this regard, we cannot but hold that the request of the applicant for employment on compassionate ground do not receive proper consideration by the respondents.

10. In view of the foregoing, I direct the respondents to cause an inquiry to be made into the financial condition of the applicant and the other dependents of his deceased father and thereafter decide whether the request for compassionate appointment should be accepted or rejected after proper application of mind to the report of the inquiry. In case it transpires from the inquiry that the applicant and the other children of the deceased employee are living in penurious condition, the applicant shall be considered for employment on a suitable post for which he is found to be fit. In case, however the respondents decide after such inquiry to reject the request, such rejection be communicated to the applicant by a reasoned order. This direction shall be complied with within a period of 4 months from

5/6

20

12/11

- 10-

the date of communication of this order. There
will be no order as to costs.


Member(A)

(n.u.)