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THE CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD

-10:-

O.A. No. 323 of 1993

Rajendra Kumar ... Applicant

v.

Union of India and others ... Respondents

HON'BLE MR MAHARAJDIN, MEMBER-C

This is the application under Section 19 of the
Administrative Tribunal Act seeking the relief by the applicant
for compassionate appointment.

The relevant facts giving rise to the application
are that father of the applicant Shyam Lal was working as Line
Mistry, who died in harness on 06-09-89. The applicant moved
application earlier to this application which was registered as
O.A.No.742/91. The said application was allowed with the direction
to the respondents (General Manager) to pass fresh order with
reasons upon the application of the applicant and communicate the
same to the applicant within a period of three weeks from the
date of passing of the same.

In compliance of the order of this Tribunal, the
respondents passed the impugned order dated 07-01-93 (Annexure-1).
Against this order the applicant has come up again before this
Tribunal seeking the relief as mentioned above.

[Signature]

that the applicant is not entitled for compassionate appointment mainly on the ground that the surviving sons of the applicant received the terminal benefits. The details of the payments made to the applicant and his elder brother are given in para 10 of the Supplementary Affidavit. The major amount of the terminal benefits were received by the elder son of the deceased as the applicant being minor, was not eligible to receive the payments. He was, however, paid Rs.14,319/- on 18-02-91. A large sum besides the pension as a terminal benefits, has gone to the elder brother of the applicant and the applicant. The said amount was not paid in lumpsum rather the same were paid on different dates right from October 1989 to February 1991. In the impugned order (Annexure -1) it has been said that the applicant was paid more than Rs.50,000/-, therefore, on this ground also he is not entitled to get compassionate appointment. The elder son of the deceased is suffering from Tuberculosis so the amount paid on different dates must have been utilized towards medical treatment.

It has been argued on behalf of the respondents that elder brother is getting Rs.555/- per month besides the Dearness Allowance. This amount of pension is also not sufficient to meet the requirements of a family consisting of two persons and particularly when one of them is suffering from the serious ailment. The respondents have referred (1990)2 A.T.Cases 328 (Calcutta) : Anil Kumar Sen versus Union of India and others, in which it was held that :

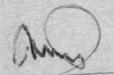
"The applicant's family consisted of 4 members including

himself. His eldest son was employed in State Bank of India. That apart, the applicant has immovable property of approximately Rs.25,000. He also receives pension at the rate of Rs.360/- p.m.. It is undisputed that in 1985, he received Rs.11,000/- as Death-cum-Retirement Gratuity and Rs.642/- as General Provident Fund. The applicant cannot be considered as an indigent person nor can the condition of his family be regarded as in great distress. Such being the position, the question of extending the benefit of compassionate appointment to his youngest son does not arise."

The facts of the case, referred to above, are different than the facts of the present case, therefore, the case law cited by the learned counsel for the respondents is not applicable.

As against this the learned counsel for the applicant has relied on 1992-S.C.C.-L & S - 135 : Phoolwati (Smt) versus Union of India and others in which it has been observed that :

" 3. This Court issued a notice on 23-10-1990 and also directed that pending decision of this application she be permitted to continue her stay with her sons in the said quarter. The State has filed an affidavit stating that the appellant received an amount of Rs.21,000/- as D.C.R. gratuity. She also received CGE Insurance amounting Rx to Rs.10,926 and GPF amounting to Rs.1717 of her deceased husband. She is also getting a Family Pension of Rs.390/- per month, and as such, she cannot continue to stay in the quarter. This Court repeatedly requested the learned counsel appearing on behalf of Union of India to consider the provisions that when an employee dies in harness, one of his legal representatives will be provided with an employment on compassionate ground. In spite of time being given repeatedly by this Court to consider this aspect of the matter and to take



necessary instructions from Union of India, the counsel states before this Court that he has been instructed by the Government of India that it is not possible to provide her second son with an employment in the said press where her husband was previously employed. In a similar case, Sushma Gosain (Smt) vs. Union of India, this Court has held as under."

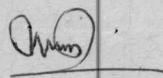
(SCC p. 470, para 9).

Besides the learned counsel for the applicant has relied on the report of Senior Labour Officer (Annexure CA-1) filed by the respondents. This report was submitted in the month of October 1989. The Senior Labour Officer on making the spot enquiry has reported that the applicant's family is running in indigent circumstances. They were occupying the rented house and paying rent at the rate of Rs.40/- p.m. He has also specifically mentioned in the report that the applicant could not pay the rent of several months as such, the arrears of rent was due to be paid by him. He has also said that the family of the applicant needs immediate assistance. Thus from the report of the Labour Officer of the respondents itself it is borne out that the applicant is in indigent and distress condition and needs employment.

The respondents in Counter Affidavit has said that both the sons of the deceased employee Shyam Lal are over-age as per declaration certificate submitted by the deceased. The copy of the declaration certificate is not on record so this fact cannot be verified. The respondents in para 10 of the Supplementary Counter Affidavit has given

the date of birth of the applicant Rajendra Kumar as 26-04-71, according to which he has become 22 or 23 years of age at present. This fact also finds support of the assertion made by the respondents in their Counter Affidavit that the applicant could not be paid the terminal benefits and as such the major portion of the terminal benefits was paid to the elder son of the deceased employee. Thus the plea taken by the respondent that the applicant is over-age is incorrect.

In view of the discussions made above, the application of the applicant for compassionate appointment is allowed with the direction to the respondents to provide employment to the applicant on compassionate ground on the post for which he is found eligible and suitable within a period of three months from the date of communication of this order. There will be no order as to cost.



MEMBER - J

DATED: A LLAHABAD:August 16,1993.

• (VKS PS)