

RESERVED

BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLD. BENCH,
ALLAHABAD

DATED : ALLD. ON THIS 15th DAY OF SEPTEMBER, 1998

ORIGINAL APPLICATION NO. 340 OF 1993

CORAM : HON'BLE SHRI S.L.JAIN, MEMBER (J)

1. Smt. Prabha Devi W/o Sri Pran Mohan Prasad
R/o 100/69, Attarsuiya, Allahabad-211 003.
2. Prabhat Chandra S/o Sri P.M. Prasad R/o
100/69, Attarsuiya, Allahabad-211 003. Applicants

C / A : Shri A.K.Gaur, Advocate

Versus

1. Union of India through the Secretary, Ministry
of Personnel, Public Grievances and Pension,
Administrative Reforms & Public Complaints Deptt.
Sardar Patel Bhawan, Sansad Marg, New Delhi.

2. The Accountant General (Audit),
Indian Audit and Accounts Deptt., U.P., Allahabad.
..... Respondents

C / R : - Shri N B Singh, Advocate.

O R D E R

(By Hon'ble Shri S.L.Jain, Member (J))

This is an application filed under section 19 of the Administrative Tribunals Act, 1985 to quash the order dated 27.02.92 passed by the respondent No.2 with a direction to the respondents to give the suitable appointment to one of the Sons of the applicant.

1) There is no dispute between the parties in respect of the facts that Shri Pran Mohan Prasad, the husband of the applicant no.1 and father of the applicant no.2 was a Senior Auditor in the office of the Accountant General, U.P., at Allahabad and retired on 23.08.1989 under rule 38(1) of the CGS (Pension) Rules, 1972 from service. The applicant no.1 represented before the respondents to seek appointment of one of her son, lastly she represented the matter to the Minister

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of State for Personnel Public Grievance and Pension , New Delhi on 02.11.1991 vide annexure-4 and the respondents vide annexure-5 informed that the matter was considered and it is found that as Shri Pran Mohan Prasad retired after the age of 55 years on medical ground, hence it did not find favour with the authorities.

2. It is also not in dispute that Shri Pran Mohan Prasad made an application on 08.03.1989 to the respondent no.2 seeking retirement on invalid pension as he was not keeping good health, the respondent no.2 on 13.04.1989 requested the Chief Medical Officer, Allahabad to examine him by the Medical Board vide annexure-1. The medical board examined him and submitted the report on 29.5.1989 stating therein that Shri Pran Mohan Prasad has lost his earning capacity vide annexure-2 and in pursuance of the report the respondent no.2 on 23.08.89 retired Shri Pran Mohan Prasad with immediate effect vide annexure-3.

3. The applicant's case in brief is that order dated 27.02.1992 is arbitrary, unjustified and unreasonable as Shri Pran Mohan Prasad was declared unfit on 29.05.1989 but retired on 23.08.1989 , compassionate appointment is a social welfare measure to provide earning and livelihood to the family of the retired employee, the Govt.order cannot be interpreted strictly so as to negative the very purpose and philosophy of compassionate appointment .

4. The respondent denied the allegations and requested for dismissal of the O.A.with the costs.

5. O.M.No.140114/6/86-Estt(D) dated 30-06-1987

Para 1(b) is as under:-

"In exceptional cases when a Department is satisfied that the condition of the family is indigent and is in great distress, the benefit of compassionate appointment may be extended to a son/daughter/near relative of a Govt.servant retired on medical grounds under Rule 38 of Central Civil

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Services(Pension)Rules,1972, or corresponding provisions in the Central Civil Services Regulations before attaining the age of 55 years . In case of Group 'D' employees, whose normal age of superannuation is 60 years, compassionate appointment may be considered where they are retired on medical grounds before attaining the age of 57 years."

6. In case of Shri Pran Mohan Prasad , as he was not a Group 'D' employee, the age of retirement on medical ground is less than the age of 55 years. Admittedly, he retired at the age of 55 years and 2 months (para 5(iv) of O.A). Thus, the order passed by the respondent no.2 is neither arbitrary nor unjustified or unreasonable ^{nor but} or it is in accordance with the above referred O.M.

7. It is true that law regarding compassionate appointment is a social welfare measure and the object is to provide earning and livelihood to the family of retired employee. This object is to be achieved only by complying the instructions , when issued in this behalf. The respondents are not at liberty to pass any order ignoring the instructions issued by them , which has a force of law. In absence of the instructions, only the object can be a consideration but existence of the instructions leads me to conclude that such object is to be achieved only in the way in which it is prescribed.

8. Whenever there is a cut off date prescribed by any law, rule or instruction,certainly in border line cases, this can be said that the instructions, law or rule should not be followed strictly. This argument holds no water for the reason that if a relaxation is to be made, once relaxation is provided to 55 years and one day, on subsequent occasion relaxation is claimed for 55 years and two days, later on for 55 years and 3 days and there would be no end of this relaxation. Hence, such an arguments, though appears pleasing but cannot be accepted.

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9. In the result, there is no ground to quash the order dated 27.02.1992 passed by respondent no.2 and order them to provide job to any one son of the applicant. Hence, O.A. is liable to be dismissed and is dismissed accordingly with cost of Rs.650/- (Rs. 500/- Legal Practitioner's fee plus Rs.150/- other expenses) payable by the applicants to the respondents within one month of the order.

SC. O. 110
MEMBER (J)

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