

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

Original Application No: 58 of 1993

Rohit Mishra Applicant.

Versus

Union of India & Ors. Respondents.

Hon'ble Mr. T.L.Varma, Member-J

The applicant of this D.A. is the son of late Shri Ram Kishore Mishra who died in harness on 16.9.1991 while serving as Office Superintendent in the office of the Branch Small Industries Service Institute, Industrial Estate, Varanasi. This application has been filed by him for a direction to the respondent to appoint him as Lower Divisional Clerk on compassionate ground. The applicant's mother had made several representations to the Director (Administration) Development Commissioner, SISI New Delhi (respondent No. 2) with copies to respondents No. 3 & 4 to redress ~~her~~ grievance. The first of these representation is dated 23.4.1992 (Annexure-1). The matter of appointment of the applicant while, was under consideration of the competent authority, further representations were made, on 24.8.1992, 9.10.1992 and 11.11.1992 to the Development Commissioner SISI New Delhi for appointment of the applicant, by his mother. The decision of the Development Commissioner that the Government has imposed a ban on filling up group 'C' and group 'D' posts even on compassionate grounds was communicated to the mother of the applicant, Smt. Shanti Mishra by letter dated 28.10.1992 (Annexure-10). The mother of the applicant was further informed that as and when recruitment is allowed and after meeting the requirement

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of staff identified as surplus in the organisation her request would be taken given due consideration for the appointment of her son Rohit Mishra.

2. The applicant has relied upon the decision of the Supreme Court in Smt. Sushma Gosain & Ors. Vs. Union of India & Ors. reported in AIR 1989 Supreme Court page 1976. The Supreme Court in Sushma Gosain's case has held;

"It can be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is ~~an~~ improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant."

In view of the principle of law enunciated by the Supreme Court in the decision referred to above, I am in agreement with the argument of the learned counsel for the applicant that appointment on compassionate ground cannot be denied on the ground that there is ban on recruitment to a candidate who is otherwise eligible for such appointment, ~~according to~~ ²¹ ~~to~~ ~~the~~. The Supreme Court in the decision referred to above has gone to the extent that a supernumerary post should be created if a vacancy is not available for appointing an eligible candidate.

3. The Supreme Court has however, explained the principle laid down in Sushma Gosain's case in the decision entitled Umesh Kumar Nagpal Vs. State of Haryana & Ors. reported in Judgements Today 1994 (3) Supreme Court page 525. The Hon'ble Supreme Court has observed in the

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said case that;

"We are also dismayed to find that the decision of this Court in Sushma Gosain & Ors. Vs. Union of India & Ors. (1989) 4 SLR 327 has been misinterpreted to the point of distortion. The decision does not justify compassionate employment either as a matter of course or in employment in posts above Classes III and IV."

It has further been observed that "the only ground which can justify compassionate employment is the penurious condition of the deceased family". For these reasons, the compassionate employment cannot be granted after a lapse of reasonable time which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The following observations of the Hon'ble Supreme Court in the case of Life Insurance Corporation of India Vs. Mrs. S Asha Ramchandra Ambekar & Ors. reported in Judgements Today 1994 (2) Supreme Court 183 is extracted for convenience of reference;

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"Of late, this Court is coming across many cases in which appointment on compassionate ground is directed by judicial authorities. Hence, we would like to lay down the law in this regard. The High Courts and the Administrative Tribunals cannot confer benediction impelled by sympathetic consideration. Yielding to instinct will tend to ignore the cold logic of law. It should be remembered " law is the embodiment of all wisdom". Justice according to law is a principle as old as the hills. The Courts are to administer law as they find it, however, inconvenient it may be. The Courts should endeavour to find out whether a particular case in which sympathetic considerations are to be weighed falls within the scope of law. Disregardful of law, however, hard the case may be, it should never be done. In the very case, itself, there are Regulations and Instructions which we have extracted above. The Court below has not even examined whether a case falls within the scope of these statutory provisions. Clause 2 of sub-clause (iii) of Instructions makes it clear that relaxation could be given only when none of the members of the family is gainfully employed. Clause 4 of the Circular dated 20.1.1987 interdicts such an appointment on compassionate grounds. The appellant Corporation being a statutory

Corporation is bound by the Life Insurance Corporation Act as well as the Statutory Regulations and Instructions. They cannot be put aside and compassionate appointment be ordered. Further it is well-settled in law that no mandamus will be issued directing to do a thing forbidden by law. It is true that there may be pitiable situations but on that score, the statutory provisions cannot be put aside. For aught one knows, there may be other cases waiting already for appointment on compassionate grounds. Thus, apart from the directions as to appointment on compassionate grounds being against statutory provisions, such decisions does not take note of this fact. Whatever it may be, the Court should not have directed the appointment on compassionate grounds. The jurisdiction under mandamus cannot be exercised in that fashion. It should have merely directed consideration of the claim of the 2nd respondent. To straightway direct the appointment would only put the appellant Corporation in piquant situation. The disobedience of the fact that the appointment may not be warranted. This is yet another ground which renders the impugned judgement dated 19.10.1993 unsupportable."

4. I find from para 9 of the Counter of the respondent that the matter of appointment of the applicant is under reconsideration of respondent No. 2 and the petitioner will be communicated the decision as early as possible.

5. Shri Amit Sthalekar learned counsel appearing for the respondent has submitted that mere death of an employee in harness does not by itself entitle his dependants to job. Financial condition of the family must be taken into account for determining the entitlement for appointment on compassionate ground. As held by the Supreme Court in the case of Umesh Kumar Nagpal (supra) as a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. ... However, to this general rule there are some exceptions carved out in the interests of justice and one such exception is in favour of the dependants of an employee dying in harness and leaving

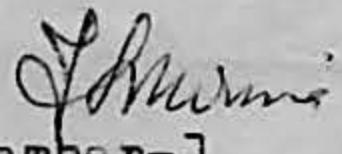
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his family in penury and without any means of livelihood. The main object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. It has further been held that the Govt. or the public authority concerned has to examine the financial condition of the family of the deceased and it is only if it is satisfied that but for the provisions of employment the family will not be able to meet the crisis ~~that~~, a job is to be offered to the ~~an~~ eligible member of the family. The respondents have in para 5 of the Counter Affidavit given the details of the payments made to the mother of the applicant as the terminal benefits. The total amount given to her comes to Rs. 2,14,060/- in addition to the family pension. The learned counsel for the respondent has submitted that the amount placed at the disposal of the family of the deceased Govt. servant by way of terminal benefits is so substantial that it cannot be said that the family will not be able to meet the crisis resulting from the death of the only bread earner and as such in the facts and circumstances of the case, the application for appointment ~~is~~ ^{is without} ~~on~~ merit ~~is without merit~~. 2

6. In view of the averments made in para 9 of the Counter Reply that appointment of the applicant on compassionate ground is under reconsideration of respondent No. 2 and the petitioner would be communicated the decision as early as possible, ~~it~~ ^{pre-empt} would not be appropriate to ~~post~~ the decision of the respondent ^{or otherwise} No. 2 by recording a finding as to the ~~eligibility~~ of the applicant on the ground of his poor financial condition.

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7. In the light of the judgements of the Hon'ble Supreme Court referred to above and in view of the averments of the respondents in para 9 of their Counter Reply, I deem it appropriate to dispose of this application with a direction to the respondent to take a final decision in the matter of appointment of the petitioner on compassionate ground within a period of 3 months from the date of communication of this order in accordance with law and the rules framed in that behalf, and intimate the same to the petitioner soon thereafter. There will however, be no order as to Cost.


Member-J

Allahabad Dated: 27.6.94
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