

4

A2  
3

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH.

...

Registration O.A. No. 1025 of 1993

Kripa Shanker and others ... .. Applicants.

Versus

Union of India  
and others ... .. Respondents.

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

In this Original Application No. 1025 of 1993 filed under section 19 of the Administrative Tribunals Act, 1985, the applicants have prayed that the respondents be directed to appoint the applicant No. 1 on compassionate ground.

2. The brief facts of the case are that the father of the applicants who was working as 'Mali' in the office of the respondent no.2 died in harness on 8.3.1993 leaving behind 4 sons and 2 daughters. One of the daughters is married while the other is minor and so is the youngest brother. The wife of the deceased had pre-deceased him. On the death of his father, the respondent no.3 who is the eldest son of the deceased applied for compassionate appointment and on consideration of the same, the respondents decided to appoint him accordingly. The applicants represented to the respondents that the applicant no.1 who is the second son of the deceased be given the compassionate appointment instead of the elder son on the ground that the latter

Contd...2p/

wf

is not supporting the family and is living separately. The representation were turned down and hence, this application.

3. The applicants have contended that even before the death of their father, the respondent no. 3 had been staying away from the family and was not maintaining any relation with other members of the family though he was already appointed in the office of the respondent no. 2. In support of their contention, they have produced a copy of the certificate given by the Gram Pradhan which is filed as Annexure-A 3. They have alleged that the appointment of the eldest son on compassionate ground would be totally against the policy/instructions framed by the Government governing compassionate appointment. They also alleged Malafide on the part of the respondent no. 2 in as much as the respondent no. 3 is allegedly working in the Banglow of the respondent no. 2.

wf

4. The respondents, in their counter have averred that the respondent no. 3 has been engaged in the office of the respondent no. 2 on purely casual basis on a daily rate for Mazdoor. He was often engaged for only a few days in a week. The appointment is purely casual and does not confer any right on him for continuous full time regular appointment. This position continues even after the death of his father. They have also contended that the respondent no. 3 used to live in the Government accommodation

allotted to his father which is in the office compound and even after the death of the father, he continues to live in the same accommodation. They have, therefore, denied the allegation that the respondent no.3 has no relation with the other members of the family. In this regard, they have pointed out that the deceased Government Employee got the name of the respondent no. 3 entered in the C.G.H.S. Card and also made nomination in his favour along with other brothers in respect of the retiral benefits. They have also pointed out that the respondent no. 3 has given an undertaking that as and when he is appointed on regular basis, he would pay a share of his income to his brothers and sisters.

5. In a separate counter, the respondent no.3 has made similar contentions as made by the other respondents. He has also stated that the applicant Nos. 1 & 4 are earning as Motor Truck Driver.

6. In this case, the fact that the family of the deceased should be given assistance by way of compassionate appointment of a member of the family is not in dispute. The respondents are ready to give employment to a member of the family. The dispute, however, is as to whether the employment should be given to the eldest son or to the second son who is the first applicant in this case. A reference to the guidelines in this regard issued by the department of

W.P.

Personnel and Training by their office dated 30.6.1987, an extract of which has been placed as Annexure-A 1 reveals that the compassionate appointment may given be to a son or daughter or near relatives of a Government servant who dies in harness leaving behind the family in immediate need of assistance when there is no other earning member in the family. There is also provision that in deserving cases, even where there is an earning member in the family, a son/daughter/near relatives, may be considered for appointment with prior approval of the secretary of the department concerned.

7. I have given my anxious consideration to the pleadings of the applicants that the respondent no.3 does not have any concern for them and, therefore, will not support them once given regular employment by the respondent no.2. The fact which, however, weighed against <sup>m</sup>going to such a conclusion is that the deceased Government <sup>n</sup>Servant nominated the eldest son as a co-sharer in his retiral benefits. Had the elder son really been <sup>living</sup> leaving separately having no concern for either his father or his brothers and sisters, it is unlikely that the deceased Government Servant would have retained him as co-sharer in DCRG and as a nominee for his provident fund accumulation. Even as late as in January, 1982, the deceased Government servant nominated the respondent no.3 as co-sharer of Central Government Group- Insurance Scheme benefit. Had the eldest son proved recalcitrant, the father had ample time before his death in 1993 to change the nominations depriving the eldest son

W.P.

8

A2  
6

of any share. This would, therefore, lend support to the contention of the respondents that the eldest son was living with the family and had relation with other family members, the certificate rendered by Gram Pradhan notwithstanding.

8. The applicant sought to rely on the decision in the case of Smt. Kamla Rani Mehrotra and another Versus Union of India and others, (1989) 2 UPLBEC 77 (Tri.) which was decided in favour of the applicant.

In this case, the respondents refused to provide compassionate employment to the second son on the ground of alleged suppression of the fact that the eldest son was already gainfully employed. This case can be distinguished from the instant case on facts and as such, the decision of this case will be of no avail to the applicant in this case. In the instant case, the dependents who are really in need of financial support from the bread earner of the family, are the applicant Nos. 2 & 3 who are minors. The other 2 applicants are grown up and can look after themselves.

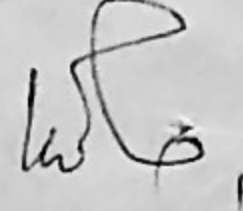
WJ

9. In view of the foregoing discussions, the petition is dismissed. However, the respondents are directed that in case there is any complaint that the respondent no. 3 is not maintaining his minor brother and sister, as per his own undertaking (Annexure- C.A. 4 of the respondent nos. 1 & 2) the respondent no. 2 would cause such complaint

6

to be investigated and take appropriate  
action based on such investigation.

10. There will be no order as to costs.



Member (A)

Dated: 25 November, 1993.

(n.u.)