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Regd. No. 129

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

Original Application No: 1193 of 1993

P.K.Srivastava Applicant.

Versus

Union of India & Ors. Respondents.

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

This application has been filed under Section 19 of the Administrative Tribunal Act for a direction to the respondents to appoint the applicant on any class II/Class III post for which he is qualified on compassionate ground.

2. Late Shri Ram Srivastava, father of the applicant was posted and working as Deputy Post Master Head Post Office Etawaha on the date of his death on 24.9.1980. The applicant was aged about 16 years of age on the date of the death of his father. His mother, Smt. Vimlesh Kumar made an application on 16.10.1990 to the Superintendent Post Offices Etawaha to give suitable appointment to the applicant on compassionate ground by relaxing the rules with regard to the minimum age vide Annexure A-1. The application of the mother of the applicant, however, was not processed on the ground that the applicant was minor at that time and a reply accordingly was sent to her by letter dated 19.9.1981 (Annexure A-2).

3. The applicant attained majority in December 1982. Smt. Vimlesh Kumar Srivastava filed another application on 24.11.1982 for considering the case of the applicant for appointment on compassionate ground vide Annexure A-3.

Thereafter a number of reminders on 14.6.83, 23.8.83, 5.1.84, 21.11.84, 15.9.87 and 21.3.89 were sent by the mother of the applicant to different authorities for appointment of the applicant on compassionate ground. Photo copy of the reminder dated 5.1.84 (Annexure A-5) and copy of letter forwarding the above representation (Annexure A-5 and A-6 respectively). As no action was taken on the representations made by the mother of the applicant, a representation (Annexure A-7) was sent to the then Prime Minister of India on 1.5.1989. The said representation was sent to the Post Master General U.P. Circle by Government of India for examination and direct reply to the representationist by Annexure A-8. As no further action was taken on the representations submitted by the mother of the applicant, she again submitted a representation on 8.10.1989 to the then Prime Minister of India with a copy to the Communication Minister Central Government vide Annexure A-9. As no action was taken on the above representation mother of the applicant sent another representation dated 28.3.1992 to the Prime Minister (Annexure A-10). The said representation dated 28.3.92 has again been forwarded to the Post Master General U.P. Circle Lucknow vide Annexure A-11 and A-12. By letter (Annexure A-12), the Chief Post Master General has asked Superintendent Post Offices Etawah Circle to examine the matter regarding appointment of the son of late Shri Ram Srivastava who died in harness on compassionate ground and submit the report with necessary Annexures within one month from the date of receipt of the letter. Nothing so far, it is stated, has been done, hence this case for the reliefs as mentioned above. The claim

of the applicant has been contested by the respondents.

It has been averred that after the death of Shri S.R. Prasad question for appointment of his son P.K. Srivastava on compassionated ground was considered by the Circle Selection Committee and rejected on the ground that the family of the deceased Government servant was not living in indigent circumstances or in distress justifying appointment of the applicant on compassionate ground.

4. It was submitted by the learned counsel for the respondents that as per the instructions of the Govt. of India Department of Personnel and Training O.M. No. 14014 /6/86-Establishment (D) dated 30.6.1987 appointment on compassionate ground can be made, in exceptional cases when the department is satisfied that the condition of the family is indegent and is in great distress, even in respect of his son/daughter near relative of Govt. retired on medical grounds, before actual age of superannuation. It was submitted that the rejection of the prayer of the widow of late S.R. Prasad for appointment of his son ^{on} compassionate ground was based on the guidelines given in the instructions referred to above and as such cannot be interfered with by the Court.

5. In view of the pleadings of the parties, the first question that arises for consideration is wheather the satisfaction of the department that the applicant is not living in indegent condition to warrant appointment of the son of the deceased on compassionate ground is justified or not.

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

"It can be stated unequivocally that in all claims for appointment on compassionate ground, 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 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."

The Supreme Court has explained the decision in Sushma Goasain's case in the case of Umesh Kumar Nagpal Vs. State of Haryana & Ors. reported in Judgements Today 1994 (3) Supreme Court page 525. The Supreme Court has observed that;

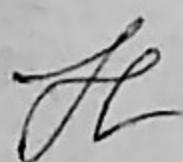
"We are also dismayed to find that the decision of this Court in Sushma Gosain & Ors. vs. Union of India and Ors. (1989) SLR 327 has been misinterpreted to the point of distortion. The decision does not justify compassionate employment in posts above Classes III and IV."

It has further been observed that "the only ground that can justify compassionate appointment 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 observation of the Hon'ble Supreme Court in the case of Life Insurance Corporation of India Vs. Mrs. Asha Ram Chandra Ambedkar & Ors. reported in Judgements Today 1994 (2) Supreme Court page 183, extracted here below for convenience of reference, also are pertinent for mention here:-

"Of late, this Court is coming across many

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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 ... Yieling 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 a law as they find it, however, inconvenient it may be. The Courts should endeavour to find out whether a particular case in which sympathetic consideration are to be weighed falls within the scope of law. Disregrdful of law, however, hard the case may be, it should never be done. In the very case, itself, there are Regularions and instructions which we have extracted above. The Court below has not even examined whether a case falls within the scope of these statutory provisons. Clause 2 of sub-clause (ii) of Instructions make 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, they may be even harder than that of the 2nd respondents. 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 exercded in that fashion. It should not 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 this direction will entail contempt notwithstanding the fact that the appointment may not be warranted. This is yet another ground which renders the impugned judgement dated 19.10.1993 unsupportable."



In the instant case, the father of the applicant died on 24.9.1980. The representation for compassionate appointment of the applicant was rejected and communicated to the mother of the applicant under letter No. Bharti M-S/35/84/7 dated 16.1.1985 (Annexure R-3) through Superintendent Post Offices Etawaha and this application was filed in 1993 i.e. approximately 8 years after the rejectiin of the prayer. This fact primafacie

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supports the contention of the learned counsel for the respondents that this application is barred by limitation.

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7. In view of the principles laid down by the Supreme Court in the decisions mentioned above the applicant is required to establish, ^{that} the financial condition of the family of the deceased was such the immediate employment of one of his wards was necessary to mitigate the hardship due to death of the bread earner in the family. It is not in dispute that the deceased Govt. servant has died leaving behind his widow, 3 sons and one unmarried daughter.

Of the 3 sons, ^{of} the deceased Govt. servant, 2 are gainfully employed. It is also not in dispute that besides the family pension terminal benefits to the tune of 31,313 have been paid to the family of the deceased Govt. servant, ^{besides} ~~in addition to~~ ^{to} show the family has 20 Bighas of agricultural land in the name of the deceased as shown by the applicant in the performa submitted by him for appointment (Annexure R-2). These, above facts, thus, make it clear that the family of the applicant was not living in indigent condition as to warrant appointment on compassionate ground interms of instructions issued by Govt. of India Department of Personnel and Training under O.M. No. 14014/6/186 Est. (D) dated 30.6.1987.

8. In the light of the judgements of the Supreme Court referred to above and having regard to the fact that this application has been filed 8 years after the applicant became eligible for appointment on compassionate ground and also having regard to the fact that the deceased has left 20 Bighas of agriculture land, family pension and other retiral benifits, I find that this application for appointment on compassionate ground has no merit.

In the above, the application for the reasons stated above, is denied.

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In the result, this application for the reasons
stated above, is dismissed. There will be no order as
to costs.

J. M. M.
Member-J

Allahabad Dated: 27-6-91

/jw/

Reptd/Ans

Reptd/Ans
30/11/95

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Recd.
11/12/95

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For N. A. Kept

Regd
01-12-95

D. No 1919/95/X

Section XI
SUPREME COURT OF INDIA
NEW DELHI.

DATED:- 02/11/95

6-12-95

From:-

The Registrar
Supreme Court of India,
NEW DELHI.

To ~~py.~~
The Registrar
~~High Court of~~

✓ Central Administrative Tribunal
Allahabad Bench Allahabad U.P.

PETITION FOR SPECIAL LEAVE TO APPEAL CIVIL No. 10998 195

(Petition under Article 136(1) of the constitution of India from
the Judgment and Order dated 27/6/1995

C. A. T.

in O. A. No 1193 of 1993

P. K. SRIVASTAVA

... PETITIONER(S)

vs -

U.O.I. & ORS.

... RESPONDENT(S)

Sir,

I am directed to inform you that the petition above mentioned
filed in the Supreme Court was dismissed
by the Court on 21/05/95

Yours faithfully

Mr. Andes
For Registrar

COPY TO

MR. PRAMOD SWARUP (Adv)

*Shri Battacharya
for Mr. Adv
Shrivastava*