

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD

Original Application No. 996 of 1994

Allahabad this the 30<sup>th</sup> day of March 1999

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

Kripal Ram, son of Late Jasodh Ram, Resident of  
Village Jainali, Pilkholi, District Almora.

Applicant

By Advocates Sri B.D. Upadhyaya  
Sri A.K. Dave

Versus

1. The Union of India through the Secretary,  
Ministry of Defence, New Delhi.
2. The Engineer-in-Chief, Engineer-in-Chief's  
Branch, Army Head-Quarters, D.H.Q., P.O.,  
New Delhi.
3. The Garrison Engineer (M.E.S.) Ranikhet,  
District Almora.

Respondents

By Advocate Sri Amit Sthalekar.

ORDER

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

This is an application under section 19  
of the Administrative Tribunals Act, 1985 for a  
direction to the respondents to consider the matter  
of the applicant afresh in accordance with law and  
appoint the applicant on the basis of dying <sup>in</sup> and  
harness rules.

2. There is no dispute between the parties in respect of the following facts;

- (i) The father of the applicant who was a confirmed employee serving on the post of Blacksmith under the direct control of the Garrison Engineer, (MES), Ranikhet, Almora, died on 27.10.1972 leaving behind the applicant, his widow - the mother of the applicant.
- (ii) At the time of death of the said Jasbdha Ram - father of the applicant, the applicant was aged about 1½ year old only.
- (iii) The applicant's mother on 21.6.89 made an application to the respondent no.3 praying therein compassionate appointment of the applicant.
- (iv) Again on 1/2nd May, 1991, the mother of the applicant submitted another application to the Chief Army Staff, New Delhi praying therein compassionate appointment of her son.
- (v) On 10.7.1991, the respondent no.2 passed the order to the effect that the employment of the applicant on compassionate ground is not considered deserving at this belated stage as the case is not covered under extent Govt. instructions on the subject.
- (vi) Thereafter the mother of the applicant submitted another application to the respondent no.1 who on 25.3.92 passed the similar order as on 10.7.91.
- (vii) Again on 10.8.92, the respondent no.1 passed an order to the effect that it is not possible to provide employment assistance at this belated stage .

98

(viii) On 30.5.93, representation was made to the Additional Director General Organization, ORC - 4(Civ) (Women Cell), Army Headquarters, P.O., New Delhi-11 for appointment of the applicant on compassionate ground.

(ix) On 20.3.93, the mother of the applicant sent a letter to the respondent no.2 in respect of appointment of the applicant on compassionate ground which was answered vide order dated 10.1.1994 and in reply to the same, the mother of the applicant submitted a reply dated 10.2.94.

3. The applicant's case in brief is that the applicant is entitled for appointment on a compassionate ground as he is a poor person having no source of income and, as such, he could not approach the Tribunal for the relief claimed in the present application earlier.

4. The respondents denied the said allegation and stated that the application is barred by time, compassionate appointment cannot be claimed as a matter of right, the applicant's case was duly considered in accordance with law and hence, prayed for disposal of the Q.A. with cost.

5. As the admitted facts disclose that for the first time on 10.7.91, the applicant's case for compassionate appointment did not find favour with respondent no.2, hence it was ordered that at this belated stage the case is not covered under extant Government instructions on the subject. Again on 25.3.92, 10.8.92 and lastly on 10.1.1994, the

:: 4 ::

applicant's case did not find favour of the respondents.

6. As the applicant's case did not find favour of the respondents on 10.7.91, further applications or representations do not extend the time for filing O.A. as successive representations are of no use. The O.A. is filed on 17.5.94, thus, the O.A. is barred by time as it is to be filed within one year of the cause of action arises, i.e. to say 10.7.92.

7. The respondents counsel relied on (1994)27 Administrative Tribunals Cases 537 Umesh Kumar Nagpal Versus State of Haryana and Others with Anil Malik Versus State of Haryana and Others for the object of compassionate appointment and relied on paras from 2 to 6 which lays down as under:-

" 2. The question relates to the considerations which should guide while giving appointment in public services on compassionate ground. It appears that there has been a good deal of obfuscation on the issue. As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration the fact that unless some source of

live

liveliness is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government of 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 provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependant of the deceased employee in such posts has a rational nexus with the object sought to be achieved, viz., relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erst-while employment which are suddenly upturned.

24/11

3. Unmindful of this legal position, some Governments and public authorities have been offering compassionate employment sometimes as a matter of course irrespective of the financial condition of the family of the deceased and sometimes even in posts above Classes III and IV. That is legally impermissible.

4. It is for these reasons that we have not been in a position to appreciate judgments of some of the High Courts which have justified and even directed compassionate employment either as a matter of course or in posts above Classes III and IV. We are also dismayed to find that the decision of this Court in Sushma Gosain Vs. Union of India 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. In the present case, the High Court has rightly pointed out that the State Government's instructions in question did not justify compassionate employment in Class II posts. However, it appears from the judgment that the State Government had made at least one exception and provided compassionate employment in Class II post in the specious ground that the person concerned had technical qualifications such as M.B.B.S., B.E., B.Tech etc. Such exception, as pointed out above, is illegal, since it is contrary to the object of making exception to the general rules. The only ground which can justify compassionate employment is the penurious condition of the deceased's family. Neither the qualifications of his dependant nor the post which he held is relevant. It is for this reason that we are unable to understand the following observations of the High Court in the impugned judgment:

"We are of the view that the extraordinary situations require extraordinary remedies and

Pym

it is open to the Government in real hard cases to deviate from the letter and spirit of the instructions and to provide relief in cases where it is so warranted. To hold as a matter of law that the Government cannot deviate even minutely from the policy of providing appointment only against Class III and Class IV posts, would be to ignore the reality of life these days. It would be ridiculous to expect that a dependant of a deceased Class I officer, should be offered appointment against a Class III or IV post. While we leave it to the Government to exercise its discretion judiciously in making appointments to Class I or II posts on compassionate grounds, yet a word of caution needs to be struck. It is to be noted that such appointments should be ordered in the rarest of rare cases, and in very exceptional circumstances, As a matter of fact, we would recommend that the Government should frame a policy even for such appointments."

5. It is obvious from the above observations that the High Court endorses the policy of the State Government to make compassionate appointment in posts equivalent to the posts held by the deceased employees and above Classes III and IV. It is unnecessary to reiterate that these observations are contrary to law. If the dependant of the deceased employees finds it below his dignity to accept the post offered he is free not to do so. The post is not offered to cater to his status but to see the family through the economic calamity.

6. For these very reasons, the compassionate employment cannot be granted after a lapse of a reasonable period 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 object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over."

8. The applicant's counsel relied on (1992)21 Administrative Tribunals Cases On Prakash Sharma Vs.

S. M. -

Union of India and Others and argued that in a case when son on attaining the majority of 16 years later and immediately thereafter making request for compassionate appointment, such request cannot be said to be belated one. In the said authority it is further mentioned that such a pre-position is permissible only when in absence of any ascertainment by the department that the widow was both eligible and suitable for any group 'C' or group 'D' post. In the present case there is an ascertainment from the side of the department that <sup>deceased-Jasodha Ram</sup> widow of the ~~deceased~~ never applied for compassionate appointment. Further more after the pronouncement of the Judgment by the Apex Court of Law in Unesh Kumar Nagpal Vs. State of Haryana and others alongwith Anil Malik Vs. State of Haryana and Others, the said authority is of no assistance to the applicant.

9. In 1996 Supreme Court Cases (L & S) Jagdish Prasad Vs. State of Bihar and another, it has been held as under:-

"It is contended for the appellant that when his father died in harness, the appellant was minor, the compassionate circumstances continue to subsist even till date and that, therefore, the Court is required to examine whether the appointment should be made on compassionate grounds. We are afraid, we can not accede to the contention. The very object of appointment of a dependant of the deceased employees who die in harness is to relieve unexpected immediate hardship and distress caused to the family by sudden demise of the earning member of the family. Since the death occurred way back in 1971, in which year the appellant was four years old, it cannot be said that he is

Page -

15

:: 9 ::

entitled to be appointed after he attained majority long thereafter. In other words, if that contention is accepted, it amounts to another mode of recruitment of the dependant of a deceased government servant which cannot be encouraged, do hors the recruitment rules."

10. In the circumstances, the case of the applicant is barred by time for the reason that on 10.7.91 his case for compassionate appointment was rejected by the respondents and he agitated the matter for the first time on 17.5.94 by filing the original application. After a lapse of one year, the matter stands barred by time.

11. In the result, the O.A. is liable to be dismissed and is accordingly dismissed. Looking to the facts and circumstances of the case, when a matter barred by time is agitated and delay is sought to be condoned only on the ground his economic condition was such that he could not agitate the matter being a poor man, it do not find favour with the Tribunal because no sufficient reasons or facts placed before the Tribunal, it is ordered that the applicant shall bear the cost of the respondents amounting to Rs.650/- (legal practitioner's fee Rs.500/- plus other expenses Rs.150/-), the same may be paid within three months of the receipt of the order.

*M. M. J.*  
Member ( J )

/M.M./