

(8)  
(Reserved)

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH, ALLAHABAD

O.A.No.998/94

Allahabad, this the 25<sup>th</sup> day of Feb., 1999

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

Sri Roop Singh Bisht, S/o. Late Madho Singh Bisht,  
resident of Village Tanwarni, Post Office Bhaisali,  
District Almora, U.P.

.....Applicant

(By Shri B.D.Upadhyay, Advocate)  
& Shri A.K.Dave, Advocate)

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 Headquarters, D.H.Q., PO- New Delhi.
3. The Garrison Engineer, (M.E.S.),  
Ranikhet, District Almora.
4. The Chief Engineer (M.E.S.), Bareilly Zone,  
Sarvatra Bhawan, Station Road, Bareilly Cantt.  
Bareilly.

.....Respondents

(By Shri A. Sthalekar, Advocate)

O R D E R

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

This is an application under Section 19 of  
the Administrative Tribunal Act, 1985 for a  
direction to the respondents to consider the matter  
of the applicant afresh in accordance with the law  
and appoint him on the basis of Dying In Harness  
Rules.

S.L.J. contd..../2p

2. There is no dispute between the parties in respect of the fact that the father of the applicant named Madho Singh Bisht was Lower Division Clerk under the direct control and supervision of Garrison Engineer (M.E.S.) Ranikhet, Almora, who died in the month of December, 1968 when he was in service. The applicant's mother on 14-8-87 made an application to the respondent No.4 for appointment of the applicant on compassionate ground, the respondent on 15-9-1987 after considering the said application passed the order rejecting the application on the ground that too old case as the death of late Madho Singh Bisht took place on 11-12-1968.

3. On 27-11-1989 a letter was received by the mother of the applicant from the Officer of the respondent No.3 directing the mother of the applicant to forward the documents mentioned in the said letter. On 10-12-1989 the mother of the applicant submitted all the documents as required by the said letter, but since then no order has been passed by respondent No.1. Therefore the mother of the applicant again submitted a representation on 21-2-90. Further representations on 30-7-91, 10-8-91. Secretary Central Secretariate Group 'B' Employees Association also represented the matter vide letter dated 25-2-92, but in vain.

4. It is claimed that at the time of death of late Madho Singh the applicant was in his mother's womb and on attaining the age of 17 years his mother persuaded the matter as stated above. Hence this O.A. for the above said relief.

5. The respondents denied the said allegations and submitted that compassionate appointment is provided as immediate relief to the family which falls in indigent circumstances due to sudden death of the Govt. servant and employment assistance is not

J.S.D. contd....., 3/p



available as a matter of routine or as a hereditary right. As the application was submitted after 19 years it cannot be said to be a case of extreme financial crisis, distress or hardship warranting appointment on compassionate grounds. Application is barred by time. The applicant's mother Smt. Kunti Devi has not sought an appointment on the death of her husband late Madho Singh. The applicant submitted an application on 14-8-87 through his mother and in response of their application suitable reply was given by answering by the respondents on 2-3-87 vide annexure CA2. Again an application was submitted, but no action was taken. Hence prayed for dismissal of O.A. alongwith cost.

6. As the facts do reveal that Madho Singh expired in December, 1968 and the application was moved for the first time in 1987 for compassionate appointment after a lapse of about 19 years, the mother of the applicant Kunti Devi never desired a compassionate appointment, apparently a case of not extreme hardships to the family due to sudden death of Madho Singh Bisht.

7. The respondents counsel relied on (1994) 27 Administrative Tribunals Cases 537 Umesh Kumar Nagpal Verses 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

*Sum* contd.... /4p



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 taking into consideration the fact that unless some source of livelihood 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 relief 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



12

given to such dependent 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 erstwhile employment which are suddenly upturned.

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 judgements 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 V. 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

contd...../6p



(12)

Class II posts. However, it appears from the judgement 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 rule. 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 judgement :

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

Sd/-

contd...../7p



deceased employee 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 238 Om Prakash Sharma Vs. Union of India & Ors 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 proposition 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 Smt. Kunti Devi never applied for compassionate appointment. Further more after the pronouncement of the judgement by the Apex Court of Land in Umesh Kumar Nagpal Vs. State of Haryana and others along with Anil Malik vs. State of Haryana & others, the said authority is of no assistance to the applicant.

9. Applicant's counsel relied on 1993 (Supplementary) E.S.C. 37 (Allahabad) Sunil Kumar Srivastava Vs. Collector District Magistrate, contd...../8p



Sultanpur & others for the proposition that in case of social legislation rules should be laid in the light of its preamble and object, object as to provide employment to dependant of a deceased family, hence that rule should not be strictly construed, if deceased public servant expired prior to the cut off date. I entirely agree with the said proposition of law but even applying the same applicant is not entitled to any relief in view of the judgement of the Apex Court of the Land referred above.

1996 Supreme Court cases (L&S) 303 Jagdish Prasad Vs. State of Bihar and another, it has been held as under :-

para 3 "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 affraid, 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 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, de hors the recruitment rules."

10. In the circumstances the case of the applicant is barred by time for the reason that on 15-9-87 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

Sd/- contd...../9p



16

Original Application. After a lapse of one year the matter stands barred by time.

11. His claim that he received a letter on 27-11-89 was in response to seeking of not compassionate appointment, but employment assistance. Hence the correspondence in the said respect has no relevance to the matter of compassionate appointment.

12. In the result Original Application is liable to be dismissed and is dismissed. Looking to the facts & circumstances of the case when a matter barred by time is agitated, the applicant has not come with clean hands before the Tribunal and the rule is cost follows the incident, it is ordered that applicant shall bear the cost of the respondents amounting to Rs.650/= (legal practitioner's Fee .500/= plus other expenses Rs.150/=), the same may be paid within three months of the receipt of the order.

S. S. S. -

MEMBER (J)

|satya|