

RESERVED

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

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Allahabad : Dated this 19th day of December, 1997 *Tammany* 98

Original Application No. 1027 of 1995

District : Allahabad

CORAM:-

Hon'ble Mr. D.S. Baweja, A.M.

Amar Chand son of Late Sri Hira Lal,
Resident of Village & Post Basuwar,
Tahsil Chail, District Allahabad.

(By Sri Ranjeet Saxena, Advocate)

. Applicant

Versus

1. Union of India
Through the Secretary
Ministry of Defence, Govt. of India,
New Delhi.
2. Union of India,
Through the Chief Engineer,
Central Command, Lucknow.
3. Union of India,
Through the Chief Engineer,
M.E.S., Lucknow Zone, Lucknow.
4. The Chief Engineer,
Air Force, Bamrauli,
Allahabad.

(By Sri V. Gulati, Advocate)

. Respondents

ORDER

By Hon'ble Mr. D.S. Baweja, A.M.

This application has been filed seeking relief of quashing the order dated 9-8-1995 and to direct the respondents to appoint the applicant on the post of Safaiwala or on any other suitable post on compassionate grounds.

2. The father of the applicant Late Sri Hira Lal while working as Safaiwala under G.E. Air Force, Bamrauli, Allahabad died on 9-2-1990. The deceased

employee left behind the family comprising of his widow and five sons out of which two ^{were} ~~are~~ married. The widow made an application on 20-3-1990 with a request to give compassionate appointment to her 3rd son i.e. the applicant in the present OA. The applicant also made a representation dated 14-5-1990 in reference to his mother's application dated 20-3-1990. The applicant submits that a meeting of the Board of Officers was held on 15-5-1990 for considering the case of the applicant for compassionate appointment and the Board gave recommendation in favour of the applicant for giving compassionate appointment in relaxation of the normal rules of recruitment. Subsequently, respondent no.4 i.e. Chief Engineer (Air Force), Bamrauli vide letter dated 24-8-1991 sent a call letter for the compassionate appointment. However, hereafter nothing further was done and the applicant did not receive any intimation ^{in spite} ~~in respect~~ of repeated representations by the applicant as well as her mother. Feeling aggrieved, the applicant filed OA No.380/1994- Amar Chand Vs. UOI. This OA was decided as per the order dated 3-7-1995 with the direction that the respondents shall finally decide the representation of the applicant for compassionate appointment. In pursuance of the direction of the Tribunal, the Chief Engineer, Air Force, Bamrauli passed an order dated 9-8-1995 rejecting the request of the applicant for compassionate appointment. The request has been rejected on the ground that it lacks merit. The present application has been filed being aggrieved by the impugned order dated 9-8-1995 on 22-9-1995.

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3. The applicant has sought the relief as detailed above on the following grounds:-

- (a) Once the respondents themselves recommended the case of the applicant for compassionate appointment, they cannot take a different view subsequently while deciding the representation of the applicant on direction issued by the Tribunal. The respondents are bound by principle of Estoppel.
- (b) The impugned order is illegal and arbitrary as the observation to the effect that the application lacks merit for appointment on compassionate ground is wholly incorrect and baseless and no reasons for the same have been disclosed.
- (c) The applicant deserves compassionate appointment in view of affidavit being given by the elder brothers who are living separately and not supporting the widow mother and the other family members.
- (d) The applicant alleges that the respondents are prejudiced against the applicant for agitating the matter before the Tribunal and, therefore, the request for compassionate appointment has been rejected.

4. The respondents have filed counter reply contesting the claim of the applicant. The respondents submit that the Board of Officers^{/meeting} held was just to check up the suitability of the applicant for the post applied for and the recommendation of the Board of Officers is in no way binding on the competent authority for considering the recommendation for the purpose of compassionate appointment keeping in view the extant instructions on the subject. Referring to the instruction^s dated 30-6-1987, the respondents

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contend that the employment on compassionate ground may be offered to the widow or son or daughter of the Government servant dying in harness only if there is no earning member in the family. The compassionate appointment cannot be claimed as a matter of right and the competent authority has to consider all the aspects as per the extant rules laid down. In the present case both the elder sons of the deceased employee are earning members in the family as admitted by the widow. This fact was not disclosed in the application which was made for compassionate ground appointment and only on further enquiry this fact was revealed by the widow. In fact the applicant in his application for compassionate appointment had claimed to be the elder son who is required to support the entire family. The respondents further contend that no objection certificate given by the two elder sons in favour of the third brother is nothing but manipulation in order to secure compassionate appointment. The respondents have further submitted that at no stage promise was given to the applicant that compassionate appointment will be given to the applicant. As per the direction of the Tribunal in the order dated 30-7-1995 in OA No.305/1995, the competent authority has carefully considered the request for the compassionate appointment of the applicant and the same has not been found to be having any merit.. In view of these facts, the respondents ^{made} ~~made~~ a plea that the ^{application} ~~application~~ does not have any merit and the same deserves to be dismissed.

5. The applicant has filed a rejoinder affidavit controverting the submissions of the respondents

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and reiterating the grounds taken in the OA.

6. The respondents have also filed supplementary counter affidavit contesting the averments made in the rejoinder affidavit. The respondents have relied upon the judgement of the Hon'ble Supreme Court in the case of Umesh Kumar Nagpal Vs. State of Haryana and Ors., J.T. 1994 (3) S.C. 525.

7. I have heard the arguments of Shri Ranjeet Saxena and Sri V. Gulati, counsel for the applicant and the respondents respectively. A careful consideration has also been given ^{to} the material brought on record.

8. Learned counsel for the applicant has relied on the following judgements during the course of hearing:-

- (a) S.N. Mukherjee Vs. UOI, A.I.R. 1990, S.C. 1984.
- (b) Padma Biswas Vs. UOI & Ors, 1996 (32), A.I.C. 432.
- (c) Rishalo & Anr Vs. UOI, 1995(30) A.I.C. 351.
- (d) K Krishna Kumar Vs. UOI, 1992(21) A.I.C. 142.
- (e) S.S. Sharma, & Ors. Vs. Delhi Admn, 1993(23) A.I.C. 616.
- (f) ^{CP} Susheela B. Bhakta Vs. Karnataka State Road Transport Corpn, 1995 (2), SLR 571 (Karnataka HC).

9. The first plea taken by the applicant is that the respondents themselves recommended the case of the applicant for compassionate appointment and, therefore, cannot take a different view subsequently, while rejecting the representation of the applicant. The applicant contends that the respondents are bound by the principles of estoppel. The applicant has taken this plea on the strength of the recommendation of

the Board of Officers brought on record at Annexure-4. The respondents have contended his claim stating that the recommendations of the Board of Officers are not binding on the competent authority and it is for the competent authority to accept or reject the recommendations keeping in ^{view} the extant rules. The applicant has not brought out as to how the recommendations of Board of Officers at Annexure-4 ^{have} been procured by the applicant. The applicant has not made any averments as to whether the recommendations were conveyed to the applicant. The recommendation of Board of Officers is an internal document for consideration of the competent authority and no reliance can be based on such internal documents. It is the final order based on the recommendation of by the competent authority and conveyed to the employee which will only determine whether any right has been acquired by the ~~employee~~ ^{applicant} and whether the principles of estoppel will apply. In the present case, it is the final order which has been conveyed to the applicant, will be of consequence. The learned counsel for the applicant during the arguments relied upon two orders of the Tribunal in case of K. Krishna Kumar Vs. UOI and S. S. Sharma and Ors Vs. Delhi Admn as referred to earlier in para 8 to support his claim that the denial of the appointment to the applicant is barred by promissory estoppel. In the case of K. Krishna Kumar, it is noted that the applicant was offered compassionate appointment after undergoing test and interview subject to medical examination and police

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verification. However, subsequently, the appointment was cancelled. The Tribunal on the facts and circumstances of the case held that denial of appointment is barred by promissory estoppel. In the present case, no such appointment offer was made and the proposal was only at the consideration stage. In view of this, what is held in this order, ~~it is not of any help~~ ^{is not of any help} ~~it is not of any help~~ ^{is not of any help} in the applicant's case. In the case of Shri S. S. Sharma and Ors, the facts of the case are distinguishable from the present case. In this case also, the applicant had been given appointment after due process of selection and the applicant has also accepted the offer with the conditions laid down. Thereafter, the appointment was cancelled. As indicated earlier, this is not the situation in the present case and, therefore, this case also does not come to the rescue of the applicant. In the light of the above deliberation, I am not persuaded to find any substance ~~from~~ ⁱⁿ the plea of promissory estoppel taken by the applicant.

10. The second ground taken is that the impugned order rejecting the request of the petitioner for compassionate ground appointment does not indicate any reason as to why his request for appointment lacks merit and, therefore, the impugned order is illegal and arbitrary. I have carefully gone through the impugned order dated 9-8-1995 at Annexure-15 and ~~am~~ of the opinion that it does indicate application of mind though a specific reason ^{has} ~~is~~ not been indicated. The order reflects the same, when it is mentioned that compassionate appointment in relaxation of normal recruitment rules cannot be allowed and it lacks merit. Obviously,

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the merit is ^{not} ~~based~~ ^{to be} on the detailed instructions laid down by the department for considering compassionate appointment. The learned counsel for the applicant has relied upon the judgement of the Hon'ble Supreme Court in the case of S.N. Mukherjee as referred to in para 8 above. I have carefully gone through this judgement and note that their Lordships of the Hon'ble Supreme Court have held that except in the cases where requirements have been dispensed with expressly by necessary implications, and administrative authorities exercising judicial or quasi-judicial function is required to record reasons for its decision. As indicated earlier, it is conceded that the impugned order does not elaborate the reasons based on which the request of the applicant lacks merit but the reasons are implicate as the proposal has been examined based on the extant rules. In any way, even if the contention of the applicant is accepted, I am of the opinion that remanding the case back to the competent authority to reconsider the proposal for compassionate appointment may not serve much purpose as the respondents in their counter affidavit have indicated the reasons based on which the request of compassionate appointment has been rejected. Further, such a ^{direction may only} ~~re-examination~~ may prolong the litigation. Keeping in view this, I consider it expedient to go into the merits of the case as the purpose of compassionate appointment is to mitigate immediate hardship of the deceased employee's family and with the flux of time, the need for compassionate appointment does not remain.

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11. Now coming to the merits of the case, the applicant has contested that the applicant was entitled for compassionate appointment as his elder brothers are living separately and are not supporting the family. The applicant has relied upon the orders of the Tribunal in ~~few~~ cases of Padma Biswas Vs. UOI and Rishalo & Anr Vs. UOI where the Tribunal has held that the rejection on the request for compassionate appointment did not indicate application of mind and it was directed that taking into account the family circumstances, the respondents were directed to consider the case for compassionate appointment. In the case of Padma Biswas, the Tribunal directed to give appointment to the applicant considering the family circumstances and the fact that the husband of the widow was discharged from service without pensionary benefits on account of medical unfitness. In the matter of compassionate appointment, each case has to be considered on its own merit, taking into consideration the facts and circumstances of the case and the extant instructions laid down by the department. The ratio of any order cannot be applied directly/^{as} each case is decided on the fact of a particular case. The Hon'ble Supreme Court in the case of Umesh Kumar Vs. The State of Haryana, 1994 SCC L&S 930/^{relied by the respondents} has articulated the considerations for compassionate appointment as under :-

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"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 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 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."

From the above it is quite clear that the case of compassionate appointment has to be considered on merits of each case. Keeping in view what is held by the Hon'ble Supreme Court, the present case will be examined subsequently ~~as~~ to identify, if there is any merit in the same.

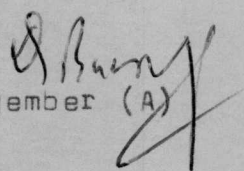
12. The respondents have relied upon the instructions laid down as per order dated 30-6-1987 for grant of compassionate appointment towards of the deceased Govt. servants. The respondents have brought out that the mother of the applicant in the OA, while making a request for compassionate appointment did not indicate that any of the sons of the deceased employee were not employed. The applicant also made a representation himself in which he indicated that he is the elder son in the family and has to cater for the requirements of the entire family. On going through the Annexures-A-3 and A-4, I find that the submissions of the respondents are confirmed. Referring to the particulars given in the proceedings of the Board of officers at Annexure-A-4, it is noted that the

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widow has indicated that there is no member in the family who is employed. In the proforma filed by the applicant at Annexure-A-6, it has been^{also} indicated that none of the members of the family are employed. It is perhaps, on this basis, the Board of officers recommended the case of the applicant for compassionate appointment. However, on subsequent scrutiny of the proposal by the competent authority, further enquiries were made and the mother of the applicant came out that the elder two sons are already employed and also took a plea that they are staying separately and are not supporting the family. She also submitted an affidavit from the elder sons that they have no objection to giving of the compassionate appointment to their third brother. From these facts, it is quite clear that the applicant as well as the widow had not disclosed full facts with regard to the elder two sons being employed. Only on making further queries, this fact was revealed. The plea taken by the applicant that the elder brothers have given the affidavit that they have no objection to the compassionate appointment being given to the applicant, cannot be of much help, after suppressing the information with regard to ^{- then} ~~compassionate~~ employment and staying separately. Any affidavit filed subsequently may be with a purpose knowing fully that such an affidavit may entitle employment to another brother on compassionate ground, even though they are employed, ^{and} ~~they~~ may be staying with the family. Taking into account these facts and the material on ^{the} record, I am inclined to endorse the submission of the respondents. On going through the instructions dated 30-6-1987, in para 4(e), it is noted that^{also}

it is provided that compassionate appointment is to be given only if there is no earning member in the family, but even if there is earning member, the case could be considered taking into account the distress condition of the family. In the present case, as brought out earlier, it has been established that two sons of the deceased employee were already employed and this information was not disclosed when the request for compassionate appointment was made. ~~In~~ The judgement of Karnataka High Court in the case of Susheela B. Bhakta, is not of help to the present case. In this case no enquiry was conducted with regard to financial condition of the family. But this is not the situation in the present case as the competent authority had made inquiry even though the widow and the applicant had not disclosed that the sons were employed. In the light of these observations, I am of the opinion that the competent authority has rejected the claim of the applicant for lacking merit keeping in view the extant instructions and no judicial interference is called for.

13. In the result of the above, there is no merit in the application and the same is dismissed. ^{Accordingly} No orders as to costs.


Member (A)

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