

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

ALLAHABAD

Allahabad this the 26th day of May 1997.

Original Application no. 1035 of 1995.

Hon'ble Mr. S. Dayal, Administrative Member.

Smt. Sabdwati Devi, W/o late Shive Narain Gupta,
r/o 675, K.L. Kydganj, Shankerlal Bhargava Road,
Allahabad.

... Applicant.

C/A Shri S. Dwivedi, Shri A. Dwivedi

versus

1. Union of India through the Secretary, Ministry of Defence, Government of India, New Delhi.
2. The Director General Ordnance Service, Army Headquarter DHQ PO NEW DELHI-110011.
3. The Commandant, Ordnance Depot, Fort, Allahabad.

... Respondents.

C/R Shri V. Gulati.

O R D E R

Hon'ble Mr. S. Dayal, Member-A

This is an application under section 19 of the Administrative Tribunals Act, 1985.

The applicant has sought through her application the relief of compassionate appointment for her son on a Group C post of Clerk/Storekeeper as her son had completed his graduation.

The applicant has mentioned that her husband, a permanent Upper division clerk, died on 06.03.94 while in service leaving behind the applicant and three sons aged 25, 23 and 19 years. It is claimed that they were in critical financial condition because there was no other source of income. The applicant sent a application on 10.05.94 to Respondent no. 3 seeking appointment of her son to the post of Clerk/storekeeper which was consistent with his educational qualification. The respondent no. 3 sought information along with requisite documents which was duly supplied. The respondent sent a reply dated 29.07.95 stating that it was not possible to consider the case for compassionate appointment as limited vacancies existed.

The applicant has challenged the rejection of the compassionate appointment of her son as it was arbitrary, discriminatory, malafide, unreasonable and unjustified in law. It is claimed that the apex court in Smt. Sushma ~~Gusain~~ and others vs Union of India and others, 1989, SCC (L&S) 662 had cast responsibility upon the respondents to ~~create~~ supernumerary posts for employment in such cases. It is also claimed that the applicant's son is fully qualified and entitled to get appointment on compassionate grounds.

The respondents in their counter reply have contested the claim of the applicant that there was no source of income for survival of the family and has stated that the applicant was paid more than Rs. two lakhs as terminal benefits and was also getting pension with dearness relief amounting to more than Rs. 1800 per month.

The learned counsel for the respondents has also explained the system of judging comparative merit of a request for compassionate appointment by an objective system of award of marks for number of minor children and unmarried daughters, number of dependents, the number of years of service left and assessment of monthly income. The learned counsel for the respondents has quoted from the judgment of the Supreme Court in a recent case of Life Insurance of India vs Mrs. Asha Ramchangan to state that courts cannot direct respondents to appoint on compassionate grounds in contravention of instructions/law on the subject on grounds of sympathy.

The arguments of Shri Dwivedi for the applicants and Shri Vikram Gulati for the respondents were heard. The written pleadings of the case have also been considered.

The applicant's claim for relief is clearly based on her interpretation of law on compassionate appointment as one which creates entitlement if an official dies in harness and a dependent of such a person makes application for compassionate appointment for a Group C or D post for which he fulfills qualifications on a mere claim by the applicant that the family was experiencing economic distress. A family of an official who superannuates and starts receiving pension also experiences similar economic hardships but would not create any entitlement in favour of the dependents for compassionate appointment. The vital question to be examined by the authority competent to make compassi-

onate appointment is whether any indigence results involving the family on account of the death of the breadwinner. Only after this question can be answered in the affirmative will the question of creating any superannueary post will arise if posts are not available otherwise. The respondents have mentioned in their counter reply that the income from terminal benefits and pension would amount to Rs. 3800 per month. A family having this level of income can not be termed as indigent. The selection of those eligible for compassionate appointments on the basis of marks has also made the respondents reach a similar conclusion. The rejection of the application is, therefore, not established as arbitrary, discriminatory, malafide, unreasonable and unjustified by the applicant.

The ratio of decision of Smt. Sushma Gosain's (Supra) is not applicable to the present case as the applicant has not been considered as entitled for compassionate appointment by the respondents. The apex court has in a subsequent case of Umesh Kumar Nagpal v State of Haryana, J.T 1994 (3) SC 525 has clarified the true objective of considering compassionate appointment and criterion on which it should be allowed. The apex court has unequivocally stated that the only ground which can justify compassionate appointment is the pernicious condition of deceased's family and that compassionate appointment should not be offered as a matter of course.

// 5 //

I, therefore, hold that the applicant has failed to make out any valid case for grant of relief claimed. The application is, therefore, dismissed.

There shall be no order as to costs.

Sd/-
A.M.

Compared
W.M.

/pc/