

Reserved.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH, ALLAHABAD.

....

original Application No. 165 of 2000.

this the 29th day of May 2001.

Hon'ble Maj. Gen. K.K. Srivastava, Member (A)

Uddeept Kumar Bansal, S/o late Nami Chand, R/o G-193, Kamla Nagar, Agra.

Applicant.

By Advocate : Sri C. Shekhar.

Versus.

1. Union of India through Secretary, Ministry of Defence, South Block, New Delhi.
2. The Commandant 509, Army Base Workshop, Agra Cantt., Agra.

Respondents.

By Advocate : Sri P. Mathur.

O R D E R

Through this O.A., the applicant has prayed for quashing of the letter dated 15.11.1999 of Est. Officer 509 Army Base Workshop, Agra Cantt, Agra and directing the respondent no.2 to re-examine the claim of the applicant for appointment on compassionate grounds.

2. Briefly the facts are that the father of the applicant Sri Nemi Chand was posted at 509 Army Base Workshop, Agra and he died in harness on 13.10.1997. The applicant's mother namely Smt. Chandra Kanta applied for the appointment of her second son namely Sri Uddeept Kumar Bansal (applicant) ^{So that he can look after her} on compassionate grounds as she is suffering from number of diseases. The respondent no.2 asked for certain documents from Smt. Chandra Kanta in order to take-up the case with higher authorities vide letter dated 24.1.1998. She completed all the formalities and submitted the documents on 16.2.1998, but her claim was rejected by the impugned order dated 15.11.99.

3. Sri C. Shekhar, learned counsel for the applicant has submitted that the applicant should have been given employment on compassionate grounds to save the family from financial destitution. Since the mother of the applicant is suffering from cancer and elder brother has separated, the applicant's case deserves sympathetic consideration relaxing the rules, if necessary. The learned counsel for the applicant argued that there are number of cases in which it has been decided that in order to help the family to meet the financial hardship caused due to the death of a Government servant in harness, his ward should be accommodated even if there is no post. The learned counsel for the applicant has cited the following case law :

(i) Kamal Prasad Sahu Vs. Union of India & Others (1985 UPLBEC 232).

(ii) Smt. Sushma Gosain & Others Vs. Union of India & Others (AIR 1989 SC 1976).

In the case of Kamal Prasad Sahu (supra) it was held that "---- the mere receipt of a usual family pension and the dues of the deceased, Government servant to his heirs, being circumstances common to all, could not have been intended to be taken into account for denying the claim of the defendant."

In the case of Sushma Gosain & Others (supra), it was held that "---- if there is no suitable post for appointment supernumerary post should be created to accommodate the applicant."

4. It has also been submitted that the applicant should have been afforded an opportunity of personal hearing before rejecting the claim. This was denied by the respondents and decision taken which in the eyes of law is bad.

5. The other point put forth by the learned counsel for the applicant is that when a vacancy is available as is clear from the Newspaper advertisement dated 21.12.1999 for recruitment of civilians in 509 Army Base Workshop,

Agra (Annexure no. 6 to the O.A.), the request for compassionate appointment should not be denied.

6. Sri P. Mathur, learned counsel for the respondents contested the points raised by the counsel for the applicant and argued ^{that} the case for compassionate appointment of the applicant was processed immediately as per the rules. Only 5% of the total vacancies are reserved for such appointments and the Board of Officers at Army Headquarters considered the case of the applicant in the light of existing rules and rejected the applicant's claim in preference to other deserving cases. The respondents' counsel cited the judgment of the Hon'ble Supreme Court in the case of Life Insurance Corporation of India Vs. Asha Ramchandra Ambekar (Mrs) (1994 SCC (L&S) 737) in which it was held that "the High Courts and the Administrative Tribunals cannot confer benediction impelled by sympathetic consideration. 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. Disregardful of law, however, hard the case may be, should never be done. In the very case itself, there are regulations and instructions governing the matter. The Court below has not even examined whether a case falls within the scope of relevant statutory provisions. 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."

7. The learned counsel for the respondents has also placed reliance on the decision of Director of Education (Secondary) & another Vs. Pushpendra Kumar & Others (1998 SCC (L&S) 1302) in which it was held that "the object underlying a provision for grant of compassionate employment is to enable the family of deceased employee to tide over the sudden crisis

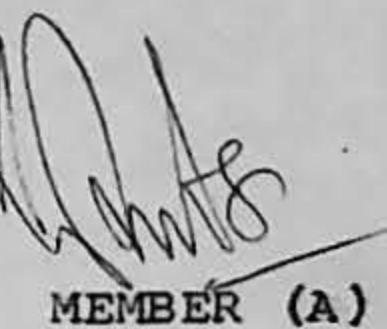
resulting due to death of the bread-earner which has left the family in penury and without any means of livelihood. Out of pure humanitarian consideration and having regard to the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made for giving gainful appointment to one of the dependants of the deceased who may be eligible for such appointment. Such a provision makes a departure from the general provisions of making appointment by following prescribed procedure. It is in the nature of an exception to the general provisions. An exception cannot subsume the main provision and thereby nullify the main provision by taking away completely the right conferred by the main provision. Care has, therefore, to be taken that a provision for grant of compassionate employment, which is in the nature of exception to the general provisions, does not unduly interfere with the right of other persons who are eligible for appointment to seek employment against the post which would have been available to them, but for the provisions enabling appointment being made on compassionate grounds of the dependant of a deceased employee."

8. I have carefully considered the submissions of the learned counsel for the parties and perused the records. The submission of the applicant that he should be given compassionate appointment, even if there is no post, by creating a supernumerary post, does not have force in the light of the judgment of the Hon'ble Supreme Court, ^{in life Insurance Corporation of India Vs. Ashu Ramchandra Ambekar (Supra)} referred to above. The position prevailing earlier has changed with the judgment of the apex court in the above case since 1994. The arguments of the learned counsel for the applicant that there were posts, as is evident from the advertisement of vacancies in respondents establishment, in Newspaper does not hold good as the apex court in the case of Director of Education (Secondary) & Another Vs. Pushpendra Kumar (supra) has unambiguously laid down that there should be vacancy in such quota reserved for the purpose.

The advertisement was meant for the vacancies to be filled by direct recruitment. Since the quota reserved for compassionate appointment is 5% of the vacancies and there were other more deserving cases, the case of the applicant for providing compassionate appointment was duly considered by the Board of Officers as per laid down rules and procedure and rejected.

9. I do not find substance in the submissions of the learned counsel for the applicant that the applicant should have been given an opportunity of hearing. There is no provision to this effect in respect of compassionate appointment. Compassionate appointment can be made only if vacancy is available as decided by the Hon'ble Supreme Court in the case of Hindustan Aeronautics Limited Vs. Smt. A. Radhika Thirumalai (JT 1996 (9) SC 197). It is not an inheritable right.

10. In view of the above, there is no merit in the O.A. and the same is dismissed. No costs.



MEMBER (A)

GIRISH/-