

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

O.A./I.A./CCA No. 881 of 2003

Date of decision 29/3/06

Nagendra Singh Applicant(s)

Sri S. R. Srivastava Counsel for the applicant(s)

Sri A. Srivastava

Versus.

Union of India & Others Respondents(S)

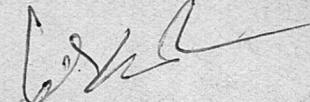
Smt. S.P. Sharma counsel for the respondent(s)

CORAM

Hon'ble Mr. K.B.S. Rajah V.C./Member(J)

Hon'ble Mr. — Member ()

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether their Lordship wish to see the fair copy of the judgment?
4. Whether to be circulated to all Benches?



SIGNATURE

Manish/-

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 30th day of March 2006.

Original Application No. 881 of 2003.

Hon'ble Mr. K.B.S. Rajan, Member (J)

Nagendra Singh, S/o Ram Bali Singh,
R/o Village Choaur, Post Office, Damodara,
Distt: Jaunpur.

.....Applicant

By Adv: Sri S.K. Srivastava
Sri A. Srivastava

V E R S U S

1. Union of India through Ministry of Finance,
Govt. of India,
NEW DELHI.
2. Director, India Government Mint, Alipore,
KOLKATA.
3. Administrative Officer,
India Government Mint, Alipore,
KOLKATA.
4. General Manager,
India Government Mint, Alipore,
KOLKATA.

.....Respondents

By Adv: Sri S.P. Sharma

O R D E R

Initially when the applicant contended that to the exclusion of his case, another person whose father expired later than the demise of the applicant was granted compassionate appointment, the respondents had denied the same and when records were requisitioned, conveniently, instead of producing the records, a new reason for denial of compassionate appointment was put forward, i.e. the applicant had given two different dates of birth.

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When the expectation of the authorities is that a person seeking employment shall be truthful and shall not give false information, there is nothing wrong in expecting a similar character from the authorities. Again, if for furnishing false information the employee is penalized, what should be the treatment that should be given to the authorities if it furnishes false information?

2. The Facts capsule: Father of the applicant, an employee of the Government Mint, Alipore, died in harness on 13th June, 1992 and the applicant's mother applied on 10-05-1993 for employment of her son on compassionate grounds. Certain formalities such as application in the prescribed format etc., were completed and as per the applicant he was one of the twenty persons selected for compassionate appointment, in pursuance of which, police verification was also conducted. However, no appointment was offered and meanwhile, the applicant came to know that compassionate appointment had been given to the son of one Ram Laut Yadav, whose demise was posterior to that of his father. Hence, he filed this OA. To the specific averment about the grant of compassionate appointment to the ward of Late Ram Laut Yadav, the respondents had categorically denied the same, and in this regard, the relevant para of the OA and its reply are extracted below:-

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"Para 4(ix) of OA:

That one Sri Ram Laut Yadva another employee of respondents' establishment died in harness after the death of the applicant's father. His son has been given employment assistance on compassionate grounds ignoring the applicant's case whereas applicant's case stands on better footing in comparison to the other applicants similarly situate.

Para 11 of CA:

That in reply to the contents of paragraph No. 4 (ix) of the original application, it is stated that no such employment assistance was given in respect of the son of late Ram Laut Yadav under died in harness whatsoever."

3. On the prayer of the applicant, this Tribunal called for relevant records of compassionate appointment, vide order dated 21-09-2004. The counsel for the respondents had expressed their inability to produce the same on the ground that the same was not forthcoming. Instead of producing the records, the respondents had sought permission to file supplementary affidavit. The same had been filed on 09-02-2005. In this affidavit, the respondents have come up with an entirely different version that the applicant has furnished incorrect information vide paragraphs 3 and 4 of the affidavit which are as under:-

"3. That it is also relevant to brought in the kind notice of this Hon'ble Tribunal that the applicant's mother has submitted two transfer/leaving certificate of his son i.e. applicant in the office of answering respondent. In the leaving certificate issued Gyan Sarita Junior High School Banideen, Jaunpur, the date of birth of the applicant is shown 25.8.1968 and another Transfer certificate issued by Janta Junior High School Jeetapur, Jaunpur, the date of birth of the applicant is shown 30.12.1959.

4. That in view of the facts and circumstances as stated in preceding paragraphs, it is expedient in the interest of justice that the applicant has submitted the forged documents



regarding his date of birth due to the reasons best known to him."

4. The counsel for the applicant vehemently argued that the respondents are not truthful before the court.

- (a) First, they had rejected the request of the applicant for compassionate appointment without assigning any reason vide order dated 25-06-2003;
- (b) Next, when they had offered appointment to another whose father died subsequent to the demise of applicant's father, they had categorically denied the same.
- (c) When records relating to compassionate appointment were directed to be produced, they had expressed their inability to produce the same, which is obviously with a view to avoiding production of records, as the same would expose them of their arbitrary actions.
- (d) When supplementary affidavit has been filed, though the incomplete records of compassionate appointment of ward of Ram Laut Yadav had been furnished (photocopies), the respondents have come up with a new plea that the applicant had furnished forged documents.

5. The counsel for the respondents has submitted the following:-

- i. In paragraph 4 (i) of O.A. averments regarding five dependents of deceased employee are incorrect. In fact there are only three dependents of deceased employee who are widow and two sons (Including the applicant). Two daughters are already married.



- ii. The applicant does not deserve of any sympathy due to manipulation in date of birth. There are two transfer certificates (T.C.) issued from different institution showing different date of birth. The T.C. issued from Janta Junior High School, Jeetapur shows the applicants date of birth as 30.12.1959 whereas another T.C. issued from Gyan Bharti Junior High School, Ghanideeh demonstrate as 25.08.1968. Both the T.Cs are enclosed to the records Supplied to the Court.
- iii. The financial position of the applicant's family is normal.
- iv. The employment assistance to the dependent of employee dying in harness is dealt under the scheme of Central Government and pronouncements of the Hon'ble Supreme Court. The criteria for consideration are posts available to the extent of 5% quota of the total vacant posts for direct recruitments and relative merits of the claimants. Under the criteria formulated, the applicant was placed lower in merit in comparison to other claimants.
- v. The Hon'ble Supreme Court has fixed five years of limit for consideration. The employee, admittedly, died on 13.06.1992 and the O.A. was filed in the year 2003, after eleven years. In so far cause of action for filing O.A. is concern the same was very much available to the applicant when his case was not settled for about five years. The O.A. ought to have been filed against inaction and negligence, if any, on the part of the department. Delay on pretext of waiting the decision will be of no help as after eleven years need of immediate financial assistance comes to an end. The applicant's claim, as such, was rightly rejected. Under the circumstances the destitution of family becomes imaginary.

- 6. Written submission was also given by the applicant, reiterating their contentions as contained in the OA and in addition, the applicant has relied upon the judgment of this Tribunal in the

case of Santosh Kumar Dubey vide order dated 30-09-2004 in OA No. 1296/2002.

7. The respondents have contended that the applicant's father had stated that the number of family members was only three and not five, as the two daughters of the deceased government servants were married. This argument has to be ignored as what the applicant stated was the situation at the time when the father of the applicant died in 1992 and his mother applied for Compassionate appointment in 1993. At that time the family consisted of five members, as rightly stated by the applicant.

8. The respondents have further contended that the applicant does not deserve any sympathy as he had manipulated as to the date birth, in as much as he had given two different dates of birth. In fact, there was no inquiry in this regard. If one school leaving certificate indicates the date of birth, which has been corroborated by an affidavit the same could well be taken into account. For, in so far as compassionate appointment is concerned, there is no age limit and provisions exist for age relaxation. Nothing much is to be gained by giving incorrect information. In fact, the date of birth (30-12-1959) as certified by the school certificate and confirmed by the mother would go to show that the applicant does not want to take advantage of the

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other certificate as per which his age would be nine years less than his actual date of birth and which would mean nine years of further government service. Thus, there is no merit in the contention of the respondents that the applicant had manipulated the date of birth.

9. The financial position is stated to be normal. It is ~~no~~ settled law, vide the dictum of the Apex Court in the case of **Govind Prakash Verma v. LIC of India, (2005) 10 SCC 289**, "The scheme of compassionate appointment is over and above whatever is admissible to the legal representatives of the deceased employee as benefits of service which one gets on the death of the employee. Therefore, compassionate appointment cannot be refused on the ground that any member of the family received the amounts admissible under the Rules."

10. Again, the terminal benefit was Rs 1.5 lakhs approximately plus family pension. If at the time of the demise of the government servant, there were two unmarried daughters, needless to mention that the terminal benefits would have been consumed in the very marriage of the two daughters.

11. It has been stated that the applicant was kept in lower merit in view of the limited quota for compassionate appointment. The applicant has

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averred that his case was through and even police verification was sought to be made, vide para 4(vi) of the OA and this has not been denied by the respondents. Thus, to turn around and say at this distance of time that the applicant has been kept at a lower merit position is a clear after thought.

12. The respondents have further contended that the Hon'ble Supreme Court has fixed five years of limit for consideration. In this case as the father of the applicant expired in 1992, the applicant ought to have agitated much earlier against his non appointment. This contention cannot be acceptable for the following two reasons:-

(a) The final rejection letter was issued by the respondents only in 2003. As such, there is no question of the applicant approaching the Tribunal earlier.

(b) The Apex Court has nowhere prescribed five years limit. Perhaps, it would have only referred to certain government instructions. Even if it be so, such a time limit is applicable not only to the applicant but to others as well. In the case of appointment of the ward of Ram Laut Yadav (Ahir), the death of the individual took place in August, 1992 (precisely 14-08-1992, vide the Diary Order dated 17-11-1992, whereby he was



struck of strength of the Mint. And, appointment to his ward was given only in late 1998 (18-11-1998). This goes to show that the respondents, who are bent upon rejecting the claim of the applicant, are trying to find out reasons, none of which, is however, tenable.

13. The above would exhibit as to how the Department is trying to twist an issue. Normally, there is a presumption that the Administration acts bona fide (See *Ajit Kumar Nag v. G.M. (PJ), Indian Oil Corpn. Ltd.*, (2005) 7 SCC 764 wherein the Apex Court has stated, "*There is every presumption in favour of the administration that the power has been exercised bona fide and in good faith.*"

14. In this case, is the Governmental action bona fide or otherwise? In the case of ***Dwarkadas Marfatia and Sons v. Board of Trustees of the Port of Bombay***, (1989) 3 SCC 293, the Apex Court has held, "*It is true that there is always a presumption that a governmental action is reasonable and in public interest. It is for the party challenging its validity to show that the action is unreasonable, arbitrary or contrary to the professed norms or not informed by public interest, and the burden is a heavy one.*" Certainly in this case the applicant has proved that the action on the part of the respondents in rejecting the request for compassionate appointment is arbitrary.

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It is settled law that arbitrariness is anathema to right to equality enshrined in our Sacred Constitution.

15. In view of the above, it can be safely said that the applicant's case has not been properly considered by the respondents. Arbitrariness is manifest in their rejection. The applicant in all fairness, ought to have been offered the appointment as earlier even the selection had taken place and Police Verification Report too called for. The order dated 25-06-2003 impugned in the OA cannot be sustained and hence, the same is quashed and set aside. The respondents are directed to consider offering appointment to the applicant on compassionate grounds, commensurate with his educational qualifications. Of course, offer of appointment shall be subject to availability of vacancy under the Compassionate appointment quota.

16. Though the applicant is entitled to cost, the same is not levied as for the mistake committed by the individuals functioning in the office of the respondents, the Government exchequer should not be depleted. Hence, no cost.



Member (J)

/pc/