

CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

O.A.NO./388/92
~~T.A.NO.~~

DATE OF DECISION 7/9/98

V.M.Rajpurkar	Petitioner
Mr.P.J.Pa [^] tel	Advocate for the Petitioner [s]
Versus	
Union of India & ors.	Respondent
Mr.Yogesh Ravani	Advocate for the Respondent [s]

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The Hon'ble Mr. V.RAMAKRISHNAN : VICE CHAIRMAN

The Hon'ble Mr. P.C.KANNAN : MEMBER (J)

JUDGMENT

- 1, Whether Reporters of Local papers may be allowed to see the Judgment ?
- 2, To be referred to the Reporter or not ?
- 3, Whether their Lordships wish to see the fair copy of the Judgment ?
- 4, Whether it needs to be circulated to other Benches of the Tribunal ?

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Vilashkumar M.Rajpurkar
 Kawadi Buwa's Ram Mandir,
 Chokkhandi Main Road,
 Jasod Mahalla,
 Baroda.

: APPLICANT :

ADVOCATE MR.P.J.PATEL

VERSUS

1. Union of India:Through :
 The Secretary,
 Central Board of Excise & Customs
 Collectorate, North Block,
 New Delhi.
2. The Collector,
 Central Excise & Customs Collectorate,
 Race Course Road,
 Baroda.

: RESPONDENTS :

ADVOCATE MR.YOGESH RAVANI

J U D G M E N T
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O.A.388/92

DATE: 7/9/98

PER HON'BLE MR.P.C.KANNAN

: MEMBER (J)

The applicant has filed the above O.A.
 seeking for a direction to the respondents to give

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appointment to the applicant on compassionate ground as Lower Division Clerk in the office of the Respondent No.2.

2. The case of the applicant is that he is son of late Shri Mahadev S.Rajpurkar who died in harness while working as Inspector in the Central Excise Department on 29/7/1987. The applicant passed new S.S.C. examination held in October 1982 and submitted an application for appointment on compassionate ground on 5.8.87. The applicant subsequently reminded the Respondent No.2 on 15.2.88. On 1.6.88, the Respondent No.2. rejected the application of the applicant. Again on 25.5.89, the applicant had submitted another application for appointment on compassionate ground giving full particulars with regard to his family and other aspect. This request was again rejected by the Respondent No.2 vide order dated 7.7.89. Thereafter the applicant made an application before the Central Board of Excise and Customs on 10.1.90, which was also rejected ^{on 12.3.90} without giving any reasons ~~on 12.3.90~~. The applicant subsequently filed O.A.No.418/90 before this Tribunal challenging the action of the respondents. After hearing the parties, this Tribunal partially allowed the O.A. and directed the respondents to consider and decide about the appointment of the applicant on compassionate grounds and if satisfied about the applicant case to give him appointment in suitable post. In accordance

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with the directions of this Tribunal, the Respondent No.2. after giving a personal hearing considered the matter and rejected the claim of the applicant by speaking order dated 3.6.92 (Annexure A- 2) . The applicant has filed the present O.A. challenging the aforesaid action of the respondents.

3. The respondents, in their reply have stated that the claim of the applicant was considered in terms of the instructions issued by the Ministry of Personnel dated 18.3.82, 1.3.84, and on 30.6.1987 (Annexure R-1, R-2 and R-3) and keeping in view of the guide-lines, the case of the applicant was not found fit for compassionate appointment. The claim of the applicant was rejected vide reply dated 26.10.87 (Annexure R-5). The applicant again submitted a representation dated 15.2.88 and stated that the applicant's mother Smt.Rekhaben who was serving in the PWD Department at the relevant point of time, had taken voluntary retirement w.e.f. 31.12.88 and in the circumstances requested for review of the earlier decision. This request was considered and the applicant was informed about the rejection of his request vide letter dated 1.6.88. The applicant had for the third time applied for compassionate appointment vide the application dated 25.5.89 to the Respondent No.2 (Annexure R-10) giving some more facts and sought re-consideration of the earlier decision. The matter was again examined and the applicant was informed

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of the decision of the Respondent No.2 vide reply dated 7.8.89 (Annexure R-11). The applicant again submitted representation dated 14.8.89, to the Secretary, Central Board of Excise and Customs, New Delhi, for consideration of his case. The Central Board of Excise and Customs, considered the matter again and informed the applicant about rejection of his request for appointment on compassionate ground vide letter dated 12.3.90 (Annexure R-13). The applicant subsequently submitted the petition dated 18.9.90 to the President of India and others. Subsequently vide letter dated 3.9.90 (Annexure R-15) purported to be from V.B.Sharma, Secretary on Special Duty, Central Board of Excise and Customs, New Delhi, the Respondent No.2 was conveyed of the decision of the Government to appoint the applicant as Lower Division Clerk in the Department. On verification, the Central Board of Excise and Customs, found that no such letter was issued from the Board's office for appointment of the applicant on compassionate ground and the Board confirmed that the letter was a fraudulent letter vide letter dated 27.11.90. (Annexure R-16)

4. Subsequent to the decision of this Tribunal in O.A.No.418/90, the Collector of Central Excise, after giving personal hearing to the applicant, examined the representation of the applicant and passed the speaking

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Order dated 2.12.90 BY

order dated 3.6.96 (Annexure A-18) and rejected the request of the applicant.

5. We have heard Shri Patel, counsel for the applicant and Shri Ravani, counsel for the Respondents.

6. Shri Patel submitted that the applicant is the son of late Shri Mahadev Rajpurkar. His elder brother got married in April 1987 and immediately thereafter started living separately. He stated that the mother of the applicant was earlier employed in PWD Department and was forced to take voluntary retirement because of her health problem. Subsequent to the death of his father, the only source of their subsistence is from pension and family pension received by his mother. Shri Patel further submitted that keeping in view of the facts, of the case of the applicant is covered by the guidelines/instructions of the Ministry of Personnel regarding compassionate appointment. He also referred to the following decisions:-

- (1) Smt. Phoolwati Vs. U.O.I. & ors.
AIR 1991 SC 469
- (2) Mum. Bhavna Bharatkumar Vishnav Vs. State of Gujarat and others, 1995(2) GLH 194
- (3) Pravinchadra Jeram Sindhal Vs. Gujarat State Road Transport Corporation, 1993(2) GLH 816

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- (4) Chanabhai Babubhai Maru Vs. President/
Secretary, Dhandhuka Nagar Panchayat,
1993(2) GLH 822
- (5) Bhagwanji Monabhai Khatana Vs. State of
Gujarat & ors., 1996(1) GLH 58.
- (6) Smt. Sushma Gosain and ors. Vs. U.O.I. & ors.,
AIR 1989 SC 1976.

7. Shri Ravani submitted that appointment on compassionate ground can be given to a son/daughter or close relative of a government servant who dies in harness leaving his family in immediate need of assistance. In other words, the compassionate appointment can be given only if the family of the deceased government employee is immediately exposed to extreme financial difficulties on the death of the government servant. In this case, the mother of the applicant was working under the State Government at the relevant point of time. She sought voluntary retirement only almost one year and five months after the death of the applicant's father. It was also stated that total monthly pension was about Rs.1900/- approximately. He also stated that the family has received substantial amount by way of retirement benefits and also owns two properties in Baroda proper. Keeping in view of the above facts of the case, the Collector has thought it fit to reject the claim of the applicant. In the circumstances the order cannot be regarded as violative of the guidelines/

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instructions of the Ministry of Personnel. He also referred to some of the decisions of the Supreme Court.

8. We have carefully considered the submissions of both the counsel and examined the pleadings.

9. In the case of Smt. Phoolwati Vs. U.O.I., (AIR 1991 SC 469), the Supreme Court directed consideration of the claim of the applicant on the ground that there was no earning member in the family. In the case of Kum. Bhavna Bharatkumar Vishnav Vs. State of Gujarat & ors., (1995(2) GLH 194), the High Court of Gujarat was of the view that there was no earning member in the family and that the income of the family was less than Rs.1500/- p.m. therefore, entitled to be considered for compassionate appointment as per the guidelines of the Govt. In the case of P.J. Sindhal Vs. Gujarat State Road Transport Corporation, (1993 (3) GLH 816), the High Court found that there was no earning member in the family and the petitioner who was a minor at the relevant point of time, applied for appointment on attaining majority in 1981 and the widow was denied suitable appointment. In the case of Chanabhai Babubhai Maru Vs. President/Secretary, ((1993 (2) GLH 822,)) the High Court held that the widow of the employee can not be denied compassionate employment on the basis that she was receiving family pension and

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certain other benefits. In the case of B.M.Khatana Vs. State of Gujarat, (1996 (1) GLH 58) the Gujarat High Court held that the family income of a member who is living separately cannot taken into account for the purpose of calculating the family income of the deceased employee. In the case of Smt.Sushma Gosain Vs. U.O.I. (AIR 1989 SC 1976), the Hon'ble Supreme Court directed the Union of India to give compassionate appointment to the petitioner rejecting the contentions of Union of India that a ban was imposed on appointment of ladies in the Directorate General of Border Roads after the petitioner was screened and approved for such appointment. These judgments relate to the compassionate appointment in which government servants died in harness leaving his family in immediate need of assistance where there is no earning member in the family.

In the present case, the mother of the applicant was employed at the relevant point of time. Intems of the guide-lines of Ministry of Personnel, appointment on compassionate ground, can be given only when the government servant dies in harness leaving his family in immediate need of assistance when there is no other earning member in the family. The relevant instructions reads as follows :

" 1. To whom applicable

(a) To a son or daughter or near relative

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of a Government servant who dies in harness including death by suicide, leaving his family in immediate need of assistance, when there is no other earning member in the family.

(b) In exceptional cases when a Department is satisfied that the condition of the family is indigent and is in great distress, the benefit of compassionate appointment may be extended to a son/daughter/near relative of a Government servant retired on medical ground under Rule 38 of Central Civil Services (Pension) Rules, 1972, or corresponding provisions in the Central Civil Services Regulations before attaining the age of 55 years. In case of Group 'D' employees whose normal age of superannuation is 60 years, compassionate appointment may be considered where they are retired on medical grounds before attaining the age of 57 years.

(c) To a son or daughter or near relative of a Government servant who dies during the period of extension in service but no re-employment."

[page 327, Swamy's Manual on Establishment & Admn. 1993 Edn]

We have also perused the speaking order passed by the Collector of Central Excise and Customs in this case. (Annexure R-16). After examining the applicant's claim, he had observed as follows:-

" As outlined above, the appointment on compassionate grounds is governed by the O.M.

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No.14014/6/86-Estt(D) dated 30.6.87 which stipulates that such appointment can be given to a son, daughter or a close relative of a govt. servant, who dies in harness leaving his family in immediate need of assistance, when there is no other earning member in the family. In other words, appointment on compassionate grounds may be given only if the family of the deceased government employee is immediately exposed to extreme financial difficulties on the death of the govt. servant. The applicant's family does not seem to fulfil the condition because of various reasons. First, it is on record that the mother of the applicant was working with the State Govt. on a monthly salary of about Rs.2000/- at the time of his father's death. She sought and obtained voluntary retirement from 1.1.89 i.e. almost one year and five months after the death of the applicant's father on 29.7.87. Secondly, it is also on record that the family gets a total monthly pension of Rs.1900/- approx. every month from the Central Excise and Customs and the State P.W.D. Department. Thirdly, the applicant's family had received substantial amount (Rs.1.90 lakhs approx. which could be taken as reduced to Rs.1.40 lakhs as per the above discussion) as retirement benefits after the death of his father and subsequent voluntary retirement of his mother. The family also sold a house

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for an admitted price of Rs.10,000/-to a tenant as indicated above. ^uForthly, the family still owns two properties (Houses) in Baroda proper which only evince their satisfactory financial position. Lastly, no evidence have been furnished by the applicant to establish that his elder borther wowho has been earn-
-ing does not financially assist the family.

It is also relevant to no^rfe that as per Shri V.M.Rajpurkar's letter dt.1.5.92 addressed to the Collector and also his submissions before me during the personal hearing, the applicant has continued his studies after the demise of his father and this year he has appeared in B.Com. final ~~year~~ examination. This fact confirms that the financial resources available to the family after the demise of the applicant's father have been sufficient for basic normal life and vital interest like education of the applicant have not suffered of lack of financial resources after the demise of his father.

I also find it relevant to record that this office had received a forged/fradulent letter dated 3.8.90 ostensibly issued by Central Board of Excise and Customs which referred to Shri Rajpurkar's application dated 18.6.90 and directed the Collector, Central Excise, Vadodara, to appoint the applicant as LDC with immediate effect.

Although, there is no direct

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evidence to attribute the authorship of the said forged letter to the applicant, in the overall circumstances, the applicant's involvement in the abortive deceit cannot be ruled out. However, this point is recorded only as an observation emerging from the perusal of records and I am not taking it as a factor rendering the applicant ineligible for compassionate ~~rate~~ appointment. I have considered his request for compassionate appointment on the basis of evidence on record and on merits without treating the aforesaid attempted deceit as a disqualifying factor.

In view of the detailed discussion in the foregoing paragraphs wherein each of the contentions raised by the applicant has been appropriately dealt with and relevant aspects have been examined I conclude that he does not qualify for appointment to any post on compassionate ground under the guidelines contained in O.M.No.14014/6/86-Estt(DX dt.30.6.87 issued by Govt.of India, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) New Delhi. I therefore, reject the request of Shri V.M.Rajpurkar for appointment as LDC on compassionate ground in the Central Excise and Customs Department.

As the mother of the applicant was working with the State Government at the time of his father's death, the

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case of the applicant is not covered in terms of the instructions of the Government. The cases referred to by the applicant have ^{P2} no application to the facts of the present case.

In the light of the above, we hold that the applicant's claim for compassionate appointment is ~~is~~ devoid of any merit. The O.A. is accordingly dismissed. No order as to costs.

P. C. Kannan

(P.C.KANNAN)
MEMBER (J)

V. Ramakrishnan
7/2/22

(V.RAMAKRISHNAN)
VICE CHAIRMAN

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