

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

O.A. 753 of 96

Present : Hon'ble Mr. D. Purkayastha, Judicial Member.

Sukumar Sahu son of Late Bibhuti Bhusan Sahu of village & P.O. Sasara, P.S. Gopiballavpur, Dist. Midnapore.

...Applicant.

- v e r s u s -

1. Union of India Department of Post India, service to be made upon 4, K.S. Road, 'Raja Chamber', Calcutta-700 001.
2. Chief Post Master General Howrah Region, (Circle Selection Committee) Jogajog Bhavan, Chittaranjan Avenue, Calcutta-12.
3. Senior Superintendent of Post Office, Midnapore Division, P.O. & District - Midnapore.
4. Sub-Divisional of Post Master, P.O. Jhargram, District-Midnapore.
5. The Post Master, Jhargram, Head Office, District-Midnapore.

...Respondents.

For the applicant : Mr. M.S. Banerjee, Id. counsel leading
Mr. T.K. Biswas, Id. counsel.

For the respondents : Mr. S.K. Dutta, counsel.

Heard on 7.8.98

Order on 7.8.98

O R D E R

D. Purkayastha, JM

The short question involved in this case is whether the respondents were justified in refusing to give appointment on compassionate ground to the applicant on the ground that one son of the deceased employee was found employed prior to the death of the deceased Govt. employee, as evident from the letter dated 10.6.96 (Annexure-F to the application). According to the applicant, he is a 2nd son of the deceased employee, Bibhuti Bhusan Sahu who was working as E.D.B.P.M. under the Senior Superintendent of Post Offices, Midnapore, respondent No.3. He became ill and died on 9.4.94 in harness while he was in service, leaving behind the widow wife and another son who was employed at the material time, and the applicant Sri Sukumar Sahu who immediately after the death

of the father alongwith his widow mother made application for appointment on compassionate ground since deceased left the family in economic crisis and indigent circumstances. They furnished material information to the Department from time to time, as asked for. It is stated by the applicant that he is a member of the backward classes of society which is evident from the Certificate for Backward Classes (Annexure-B to the application) and he is a graduate. It is also stated by the applicant that he was appointed on adhoc basis w.e.f. 8.4.94 as a substitute when his father became ill w.e.f. 8.4.94. The applicant further stated that his brother who was found employed also issued no objection certificate to the authorities for appointment to the applicant on compassionate ground. His brother further informed the Deptt. that he had been living separately before the death of the father. Ultimately, the respondents by a letter dated 10.6.96 (Annexure-F to the application) rejected the prayer of appointment by disclosing the fact that one son is being employed.

2. Being aggrieved of and dissatisfied with the said impugned order dated 10.6.96 (Annexure-F to the application), applicant has approached before this Tribunal for direction upon the respondents to consider the case of the applicant by way of appointment on compassionate ground since one son who was found employed before the death of the father, cannot be a ground for refusal of compassionate appointment. ^{as} ^{the} The employed son had also living separately.

3. The respondents filed reply denying the claim of the applicant stating inter-alia that the order of refusal (Annexure-F to the application) was rightly passed by the Department because brother of the applicant was found employed and therefore, it cannot be said that family was left in distress and indigent condition by the deceased Govt. employee. Since the son is employed, thereby it cannot be said that wife had ^{no} ~~no~~ source of income or dependable income from other source except employment sought for. So application is devoid of merit and liable to be dismissed.

4. Mr. Banerjee, Id. counsel leading Mr. Biswas, Id. counsel for the applicant submits that compassionate appointment cannot be refused on the ground that another son was found employed at the time of death of the applicant's father. So consideration for appointment on compassionate ground under the scheme is to be pursued as to whether family was left in indigent circumstances or not. In impugned order (Annexure-F to the application), it does not show ~~as to whether~~ any enquiry was made by the respondents to be satisfied as to whether the family was left in indigent circumstances or not at the time of death of the bread earner, who was holding the post of E.D.B.P.M. under respondent No.3. In short, Mr. Banerjee, Id. counsel for the applicant submits that mere an employment of a son who is living separately before the death of the deceased employee without rendering any financial assistance to the family should not stand in the way of appointment on compassionate ground. Therefore, the refusal of appointment on compassionate ground is devoid of consideration of material fact and object under this scheme. Hence it is liable to be quashed. So, the applicant is entitled to be absorbed in the post in which he was working on adhoc basis as substitute on compassionate ground.

5. Mr. Dutta, Id. counsel for the respondents argues that since the one son of the deceased was found employed in the Department of Education as School Teacher, so it is the obligation of that son to maintain family, specially the widow mother. Mr. Dutta, Id. counsel further submits that Court should not interfere with the order of authority which was issued after considering the material fact of earning source of the applicant and the family members of the deceased employee.

6. I have considered the submission of Id. counsels for both the parties and I have also gone through the records.

7. It is found that the scheme of compassionate appointment as framed by the Govt. of India is an exception to the General Recruitment Rules. The real object or test of financial condition of the family being critical is required to be satisfied. In other words, authority is to be satisfied that family was in need of minimum financial assistance being indigent

circumstance which has no earning member after the death of Govt. servant. It is detected by the respondents on enquiry that one son of the deceased employee was found employed, but he had been living separately before the death of the deceased employee without rendering financial assistance to the family and in that circumstances the order of refusal on the ground ~~is~~ that one son is employed does not stand as good.

8. In Auditor General of India Vs. G. Ananta Rajeshwar Rao reported in 1994 SCC (L&S) 500, Hon'ble Supreme Court has upheld the Govt. of India O.M. dated 25.11.78 to the extend it provides for compassionate appointment to son, daughter and widow of the Govt. servant who died in harness. Hon'ble Supreme Court has also observed that appointment on compassionate ground in exceptional circumstances is justified. Thereby I am of the view that before rejection of appointment on compassionate ground, the respondents ought to have been satisfied by due enquiry whether family left by the deceased employee is required any financial assistance by way of employment and whether the applicant or widow wife had any dependable income to maintain the family without any employment assistance on compassionate ground. I do not find any paper which could show that respondents have been satisfied after due enquiry that the employed son has been rendering financial assistance to the widow before and after the death of deceased Govt. employee. When it is specifically stated by the applicant that his employed brother being married one and has been living separately before the death of the deceased employee. *so order of refusal does not stand good*

9. In view of the aforesaid circumstances, I am of the view that mere employment of a son in another Department who is living separately before the death of the deceased employee without rendering any financial assistance to the family, cannot stand in the way for consideration of the appointment on compassionate ground. Thereby I find it is a fit case to issue direction upon the respondents to consider the case of the applicant for absorption in the said post, as sought for under compassionate scheme and to pass appropriate order within three months from the date