

In the Central Administrative Tribunal
Calcutta Bench

OA No. 965 of 1993

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

Gujeshwari Devi & Anr.

..... Applicants

Vs.

1. Union of India through the Secretary
Ministry of Urban Development, New Delhi
2. Chief Engineer (EZ), Central Public Works
Department, Calcutta.
3. Superintending Engineer, Calcutta Central
Circle No. II, CPWD, Calcutta.
4. Executive Engineer, OCD No. I, CPWD,
Calcutta
5. Superintending Engineer, Coordination
Circle (EZ), CPWD, Calcutta.

..... Respondents

For the Applicant : Mr. P. Chatterjee, Id. Advocate

For the Respondents: Mr. S.K. Dutta, Id. Advocate

Heard on : 9.6.98

Date of Judgement : 9.6.98

ORDER

Applicant No. 1 being a widow wife and applicant No. 2 being a son of the deceased employee late Sadhu Singh, ex-Chowkidar who was attached to Calcutta Central Division No. I respectively filed this application for direction upon the respondents to consider the case of the applicant No. 2 for appointment on compassionate ground. According to the applicants, they applied for appointment of the applicant No. 2 on compassionate ground in the year 1989 but respondents ultimately have rejected the prayer for appointment on compassionate ground on 20.5.96 (Annexure 'A-1' to the application) stating that the prayer for appointment on compassionate ground in respect of Shri Jitendra Singh has not been found to be acceptable by the

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competent authority. Being aggrieved and dissatisfied with the order of refusal of the prayer of the applicant vide letter dated 20.5.96 (Annexure 'A-1' to the application) the applicants approached this Tribunal for getting aforesaid relief in this case. According to the applicant, the family pension received by the applicant No.1 due to death of govt. servant should not be taken into consideration for the purpose of deprival of appointment on compassionate ground of the applicant No.2. Applicants No. 1 & 2 were left by the deceased employee in distress condition. Mr. Chatterjee, Ld. Advocate for the applicant has drawn my attention to a judgement reported in 1996 (33) Administrative Tribunal Case 583 (T.V.G Versus Union of India and Ors.) and also to the judgement reported in 1989 Supreme Court Case (18S) 662 Smt. Sushuma Gossain & Ors. Referring to the judgement of the Hon'ble Appex Court Mr. Chatterjee on behalf of the applicant submits that there is no reason for denial of the applicant from appointment on compassionate ground without disclosing any reason in the impugned order. Since the respondents did not disclose the reason for rejection of the prayer of the applicants, the applicant is entitled to get benefit of the scheme framed by the govt. for the purpose of appointment on compassionate ground. So, application should be allowed.

2. Mr. Dutta. Ld. Advocate for the respondents has drawn my attention to the paras 6 and 8 of the reply and submits that the reason stated in the reply of the respondents are the ground for refusal of appointment of the applicant on compassionate ground and applicant No.1 is receiving pension and they are also holding landed property as per enquiry report. Thereby, applicant cannot be said to be in distress condition. So, application should be dismissed.

3. I have considered the submissions of Ld. Advocate of both the parties and gone through the records. First I find that the applicant applied for appointment on compassionate ground immediately after the death of his father late Sadhu Singh and it is found that due enquiry was done by the respondents through one officer under them on 7-9-89 as per letter dated 7-9-89 (Annexure 'A-3' to the reply) and from the

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said letter it is found that the applicant received retirement benefits of Rs.47,460/- and she is getting pension at the rate of Rs.375/- per month. But when I perused the rejection order (Annexure 'A-1') I find that no reason has been disclosed by the respondent Superintending Engineer, Calcutta as to why the applicant's case was not found to be acceptable by the competent authority. So, the order is devoid of reason. In the scheme framed by the respondents for the purpose of appointment on compassionate ground - I do not find that any parameter has been prescribed for determining a person to be an indigent person. In Mahendra Singh Gill's case, 1998(J) SCC 405 (Para 8) the Hon'ble Apex Court held -

"When an order is passed, be it administrative or quasi-judicial in nature, it should contain the grounds/reason for invalidating the action taken".

It is also opined by the Hon'ble Apex Court reported in 1991 (2) SCC 716 that ^{Subsequently} ~~subsequently~~ if the order does not contain the grounds/reason, the Department should produce the file containing the note to show the order contained reason".

In this case, respondents disclosed the grounds in the written reply for supporting the order dated 25.1.96 (Annexure 'A-1') which admittedly does not contain any ground/reason. The respondents did not produce the file containing the said decision to show that the reasoned decision was taken in the file. In other words the respondents did not produce any material or evidence to support the written reply submitted by them to show that case was duly considered and ~~no medical~~ ^{as to whether} order was passed. The file was essentially required to see the original order in the file containing ^{order} the reason. Since no reason has been disclosed in the order itself and no evidence has been produced by the respondents to justify the action taken by the respondents, thereby I am of the view that the impugned order suffers from infirmity as it was passed mechanically, thereby attracts article 14 of the Constitution. In judgement 1996 (33) Administrative Tribunal Case 583 a similar

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question was decided by the Tribunal as to whether pensionary benefits received by the applicant can be a sufficient ground for refusal of appointment of the applicant on compassionate ground. In the said judgement it was decided that the employment of a son and receipt of retirement benefit of Rs.78,879/- cannot be a good ground for deprival of appointment on compassionate ground. In 1989 SCC(L&S) 662 (Sushuma Gossain case) the Hon'ble Apex Court held that ~~the appointment~~ on compassionate ground should be considered sympathetically by the employer and at the same time it was held that there should not be any delay in appointment. The purpose of such appointment on compassionate ground is to mitigate the hardship due to death of bread-earner in the family". Government of India has framed the scheme for regulating the appointment on compassionate ground with specified objects.

4. In view of the aforesaid circumstances, I am of the view that the impugned order of rejection (Annexure 'A-1') is devoid of reason. Hence, it is arbitrary and illegal and liable to be quashed. Accordingly, I set aside the order dated 25.1.96 (Annexure 'A-1') and direct the respondents to consider the case of the applicant afresh in the light of the discussions made above and to pass appropriate order regarding appointment of applicant No.2 on compassionate ground under the said scheme applicable to him within 4 months from the date of communication of this order, if vacancy is available.

*Accordingly, the application is disposed of
awaiting no cost*

1/4/98
(D. Purkayastha)
Member(J)