

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

No.O.A.1489/1996

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

KHAIRUMISHA & ANR.

VS.

UNION OF INDIA & ORS.

For the applicants : Mr. T.K. Biswas, counsel

For the respondents : Mr. B.K. Chatterjee, counsel

Heard on : 17.6.99

Order on : 17.6.99

O R D E R

The applicants namely Khairumisha and Md. Salauddin applicant No.1 and 2 respectively, filed this O.A. for setting aside the order dated 25.11.94 passed by respondent No.2 and for direction upon the respondents to consider the case of applicant No.2 for the purpose of compassionate appointment. The case of the applicant in short is that, the deceased employee Asgar Ali was working as Khalasi under the Chief Engineer(EZ), Central Public Works Department, Nizam Palace, Calcutta-20. He died in harness on 27.2.92. Immediately after the death of the employee the applicants made representation to the authorities praying for appointment on compassionate ground in favour of applicant No.2. It is stated by the applicants that regarding educational qualification, applicant No.2 is competent for working in the post of Khalasi as he passed Class-VIII which is the minimum qualification for the said post. The applicants stated in their application that, on 25.1.1993, the applicant No.2 was interviewed by the authority and found suitable for the said post. Thereafter, his case was forwarded to the Director General of Works, C.P.W.D, New Delhi for approval by the Chief Engineer(EZ), Central Public Works Department, Calcutta. The respondent

No.2, the Director General of Works, Central Public Works Department, New Delhi refused the prayer of the applicants for compassionate appointment in favour of applicant No.2 without disclosing any reason whatsoever (Annexure A-4 dated 25.11.1994).

2. Respondents filed written reply denying the claim of the applicants stating inter alia that the application is frivolous one and without any substance and also barred by limitation. It is stated by the respondents that the deceased employee left behind his widow and two sons, but the applicants made incorrect statement in their application that the deceased person left behind only his widow and one son i.e. applicant No.1 and 2 respectively. It is also stated by the respondents that the eldest son of the deceased employee is an earning member. Moreover, the widow of the deceased employee applicant No.1 received a sum of Rs.47,734/- as DCRG and is getting an amount of Rs.470/- with D.R. as family pension per month. It is stated by the respondents in the reply that there is no liability in the family of the deceased employee and therefore, the prayer of the applicants for compassionate appointment was duly rejected by the competent authority after proper consideration and that fact was communicated to the applicants vide <sup>memo</sup> Office dated 25th November, 1994 (Annexure A-4 to the app.). Thereby the application is devoid of any merit and is liable to be dismissed.

3. Ld. counsel Mr. T.K. Biswas appearing on behalf of the applicants, submits that the respondents rejected the prayer of the applicants regarding compassionate appointment without disclosing reason in the Office memo dated 25.11.94 as communicated to the applicant (Annexure A-4). So, the said order should be quashed by the Tribunal. He further submits that the delay in filing the application should be condoned in view of the fact that the applicants are not

educated and therefore ~~it~~ was not possible for them to know the ~~necessary~~ details. ~~Thereby~~ the rejection of the prayer ~~of~~ the applicants by the respondents, without disclosing any reason, is highly arbitrary and violative of Article 14 of the Constitution. So, ~~it~~ is liable to be quashed.

4. Id. counsel Mr. B.K. Chatterjee appearing on behalf of the respondents, submits that the respondent No.2 had rejected the claim of the applicant regarding compassionate appointment, stating the grounds in the said Office Memo dated 25.11.94(Annexure A-4). Mr. Chatterjee ~~produces~~ an instruction of the Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions, Government of India regarding Scheme For Compassionate Appointment, 1998 dated 27.11.1998. In the said instruction it is held that :-

"In deserving cases even where there is an earning member in the family, a dependent family member may be considered for compassionate appointment with prior approval of the Secretary of the Department/Ministry concerned who, before approving such appointment, will satisfy himself that grant of compassionate appointment is justified having regard to number of dependents, assets and liabilities left by the Government servant, income of the earning member as also his liabilities including the fact that the earning member ~~is~~ residing with the family of the Government servant and whether he should not be a source of support to other members of the family."

Mr. Chatterjee ~~produces~~ <sup>further</sup> one letter <sup>dated 10.10.94</sup> written by respondent No.2 whereby the prayer of the applicants were rejected by the authorities. The said letter has been communicated to the applicant by another letter dated 25.11.94. On a perusal of the two letters it is ~~found~~ that no reason has been disclosed for rejection of the prayer of the applicants in respect of compassionate appointment.

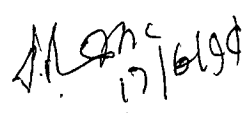
5. I have considered the submissions of the ld. counsel for both the parties and have gone through the records. On the face of the records and in view of the instruction as produced by the ld. counsel for the respondents Mr. Chatterjee

I am of the view that the said impugned order dated 10th Oct., 1994 produced by the respondents from the office file and the letter dated 25. November, 1994 (Annexure A-4) are arbitrary and violative of Article 14 of the Constitution. The Hon'ble Apex Court in the Case of Sushama Gosain Vs. Union of India & Ors. reported in 1989 SCC(L&S), 1989-662, held as under :-

"In all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress."

In the instant case, the ld. counsel for the respondents contended that the family of the deceased employee cannot be said to be in distress as the widow of the deceased employee received the retiral benefits of her husband to the extent of Rs. 47,734/-. I find that the respondents rejected the prayer of the applicants without applying their mind to the facts of <sup>as mentioned above.</sup> the instruction. If, the said contention of the ld. counsel for the respondents is accepted, then the very purpose of the scheme for compassionate appointment would be frustrated. In view of the facts stated above, I am of the view that it would be appropriate on my part to direct the respondents to consider the case of the applicant afresh.

6. In view of the aforesaid circumstance, the respondents are directed to consider the case of the applicants afresh in respect of appointment on compassionate ground in favour of applicant No. 2, within two months from the date of communication of this order. The delay in filing this application is, hereby, condoned. The O.A. is disposed of accordingly awarding no costs.

  
( D. PURKAYASTHA )  
MEMBER(J)

s.m.