

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. O.A.256 of 1996

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

DIPTI BOSE & ANOTHER

... Applicants
Vs,

1. Union of India through the Secretary, Ministry of Defence, New Delhi-1.
2. The Director General of Quality Assurance (Admn.7-A), Department of Defence Production (DOPA), Ministry of Defence, New Delhi-11.
3. The Senior Quality Assurance Officer, Senior Quality Assurance Estt.(A), Cossipore, Calcutta-2.

... Respondents

For the applicants : Mr.S.K.Gupta, counsel.

For the respondents: Mrs.B.Ray, counsel.

Heard on : 17.4.1998

Order on : 17.4.1998

ORDER

The main question for adjudication in this application filed by the widow of Late Panna Lal Bose, the deceased employee and Swarup Bose, son of Late Pannalal Bose, Ex-T. No.0284, Ty.Examiner Grade I (Pmt.Examiner II) SQA, Navy Section, Senior Quality Assurance Estt. (ARMTS), Cossipore, Calcutta-2, who was declared dead as being unheard of for more than 7 years by order dated 9th August, 1991 (annexure 'R/III to the reply). According to the applicants, the Govt. servant, Pannalal Bose, was found missing w.a.f. 29.8.1976 and the missing was reported to the police station Cossipore which was recorded in the Daily Order Paper II Last Part II. According to the applicants only after 5.10.1991 they became

entitled to make an application for employment on compassionate ground and the applicant no.1, the widow of the deceased employee, made a representation dated 28.3.1992 to the Sr.Quality Assurance Officer, praying for a suitable appointment of her son, the applicant no.2, on compassionate ground. It is also stated that the applicant no.1 was paid Rs.1900/- towards GPF of her late husband and Rs.4,200/- as the amount of DCRG and a nominal amount of pension. According to the applicants, the case of applicant no.2 was considered by the authorities and an enquiry was made regarding the financial condition of the applicants and the report submitted by the authorities to the Director General Quality Assurance (Adm.7A), Department of Defence Production, Govt. of India, Ministry of Defence, New Delhi-11, on 31st August, 1995 (annexure 'A/4'), supporting the case of the applicant. Despite that fact the case of applicant no.2 was not considered by the authorities and was rejected on the ground stated in the impugned order dated 6th March, 1995 (annexure 'A/1'). Feeling aggrieved by the said order of refusal dated 6th March, 1995, the applicants have filed this case for getting appropriate relief, as prayed for. It is also stated in the application that the applicant no.2 is a Bachelor of Commerce from Calcutta University and he attained majority in the year 1986 and his date of birth as recorded in the school leaving certificate is 8th September, 1968.

2. The case of the applicant has been resisted by the respondents by filing a reply stating inter alia that the application is a belated one and the applicants are not entitled to get any relief in this case as prayed for. It is also stated that the competent authority considered the case of the applicants in all pros and cons and ultimately rejected the prayer of the applicants for appointment of applicant no.2 on compassionate ground, stating the reasons therein. It is also stated that the wife of

Late Pannalal Bose is getting pension every month and thereby she cannot be said to be in distress condition for the purpose of getting appointment on compassionate ground. It is further stated that Pannalal Bose was removed from service due to unauthorised absence from duty by the authority on 15th February, 1979 w.e.f. 11.8.1976 being found guilty of absenting himself from duty without applying for leave. On a prayer made by applicant no.1, Smt. Dipti Bose, the widow of the deceased employee, the order of removal from service was set aside on 23rd October, 1990 and the applicant no.1 was granted family pension and other retirement benefits of the employee Pannalal Bose, after declaring him dead by the order dated 5.8.1991. Therefore, they state there is no reason for further consideration of applicant no.2 for appointment on compassionate ground and the application is liable to be dismissed.

3. Ld. counsel appearing for the applicants, Mr. S. K. Gupta, submits that the applicant no.2, was admittedly minor at the time of missing of his father on 29.8.1976 and the department did not declare the said Pannalal Bose as dead though he remained unheard of for more than 7 years ^{V. *With effect from 29.8.96.*} i.e. till the date of declaration to that effect on 5.8.1991 as per the order at annexure 'R/ III' to the reply. It is further stated that the applicant no.2 had no scope to apply for appointment on compassionate ground under the scheme until a declaration to that effect had been issued by the competent authority, as per Section 108 of the Indian Evidence Act. Since the respondents delayed the matter for striking off the name of Pannalal Bose from the strength of the department, such inordinate delay cannot be attributed to the applicants for denial of appointment on compassionate ground to applicant no.2. Thereby, the reasons stated by the respondents for non-consideration of appointment on compassionate ground to applicant no.2 is not tenable under Article 14 of the Constitution, as the said refusal order is nothing but an arbitrary one. He further submits that mere receipt of pension @ Rs.930/- p.m. under extreme economic

circumstances cannot be said that the applicants are not in distress condition and thereby the case of applicant no.2 ought to have been considered by the respondents for appointment on compassionate ground.

4. On the contrary, Mrs.Bharati Ray, 1d.counsel appearing on behalf of the respondents, strenuously argued that the case is a belated one and the applicants admittedly earned their livelihood without any employment of applicant no.2 from the date of missing of Pannalal Bose till the date of declaration of Pannalal Bose as dead. It is also stated that Pannalal Bose was removed from service on 15th February, 1979 w.e.f. 11.8.1976, since he was found unauthorisedly absent from duty by the competent authority and with a compassionate view the prayer of applicant no.1 to review the matter was considered and the said order of removal was set aside for the purpose of granting pension to the applicant no.1. So a second consideration for appointment of her son, applicant no.2, on compassionate ground does not arise.

5. Mrs.Ray has relied on a decision reported in Jagadish Prasad vs. The State of Bihar & Another(1996 (1) SC SLJ 93) where the Hon'ble Apex Court has opined that "the very object of appointment of a dependent of the deceased employee who die in harness is to relieve unexpected immediate hardship and distress caused to the family by sudden demise of the earning member of the family. Since the death occurred way back in 1971, in which year the appellant was four year old, it cannot be said that he is entitled to be appointed after he attained majority long thereafter." Referring to this decision, Mrs.Ray submits that the application should be dismissed.

6. I have considered the submissions of both the parties and gone through the records. It remains undisputed in this case that Pannalal Bose was found missing from 10.8.1976 and FIR was lodged in the police station on 29.8.1976. It also remains undisputed from the side of the parties that applicant no.2

as per his school leaving certificate is 8.9.1968. Mr. Gupta has drawn my attention to the report submitted by the authority entrusted by the respondents to enquire into the matter of economic condition of the applicants and submits that the letter dated 31st August, 1995 (annexure 'A/4' to the application) supports the case of the applicants and shows that the applicants are in distress condition and the case of applicant no.2 was referred to the higher authority at New Delhi only after being satisfied with the financial hardships of the applicants, for the purpose of appointment on compassionate ground. He further submits that in view of the said report, there is no reason for denial of appointment on compassionate ground to applicant no.2 and the delay in making such a prayer can be attributed to the respondents and hence the respondents cannot now come up with a story that applicant no.2 is not entitled to get appointment on compassionate ground for the delay.

7. Regarding the legal effect of the missing report of Shri Pannalal Bose, it is found that the applicants being the legal representatives of Late Pannalal Bose, are not entitled to get the benefit of the scheme for compassionate appointment until and unless a declaration was made by the authority in accordance with the provisions of the Rule. Since Pannalal Bose was not found ^{"heard of"} for more than 7 years, it remains no doubt that a declaration to that effect after his missing ^{for} after a period of 7 years from the date of missing is required under the law. Section 108 of the Evidence Act provides that "when the question is whether a man is alive or dead and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is the person who affirms it." So a general presumption would arise of the person if he is found unheard of for more than 7 years. So the general presumption would arise of the person if he is found unheard of for more than 7 years. It is also found that if a person is not heard of more than 7 years, there is a presumption on the expiry of 7 years but the evidence and onus of proving that death took place within

7 years a right to establish for which the fact is essential. There is no presumption that it took place at the close of 7 years.

8. In view of the aforesaid position, mere closing of 7 years a person cannot be declared dead. The department after thoroughly being satisfied of the missing employee who has been unheard of for more than 7 years made a declaration that his name was struck off from the strength of the establishment w.e.f. 29.10.76. So admittedly the applicants had no scope to apply for compassionate appointment under the scheme before 5th August, 1991. So right of getting compassionate appointment arose in favour of applicant no.2 on the date of striking off the name of Pannalal Bose from the rolls of the establishment of the respondents though the applicant attained majority in 1986. According to the applicants, they applied for compassionate appointment on 28.3.1992 immediately after the declaration made by the respondents on 5th August, 1991. At that time the applicant no.2 was major.

9. Regarding the question of economic hardship of the applicants, it is found than an officer was entrusted to enquiry into the matter and the officer after detailed enquiry, submitted his report to the D.G. Quality Assurance, New Delhi, on 31.8.1995 where it has been mentioned that due to malnutrition, applicant no.1 has developed cataract and requires operation and she has been living under the mercy of her relatives as the pension and other benefits she has received is not at all sufficient to meet the hardships of the applicants, due to the missing of the father of applicant no.2, who was the bread earner of the family.

10. On the face of the report it can be said that the respondents or the competent authority who considered the ^{application} ~~report~~, had ^{left him} ~~his~~ eyes closed to the report submitted by the enquiry officer for the purpose of appointment on compassionate ground. It is true that the scheme regarding appointment on compassionate ground does not confer any right on the family members in case of death of the bread earner of the family. The whole object of giving compassionate appointment is to enable the family to tide over the crises.

From the report submitted by the officer who had enquired into the matter, I am satisfied that the crises ^{Economic} is still in the family and the income or pension earned by applicant no.1 as family pension is not sufficient to tide over the crises faced by the applicants. It is true that compassionate appointment is against the public policy and violative of Article 14 as enunciated in Umesh Chandra Nagpal vs. State of Haryana (1994 (4) SCC 448). I am impressed that as a rule appointment in public service should be made strictly on the basis of invitation from the open market. But scheme for compassionate appointment was not made invalid for all purposes and that power should be exercised by the authority promptly and diligently without making inordinate delay so that the bread earner of the family is able to meet the sudden crises being faced by them. I have gone through the decisions relied upon by Mrs. B. Ray, 1d. counsel for the respondents, where their Lordships had held that such mode of appointment is ~~de~~ ^{described as} horse the recruitment rules. But the case in my hand is a different one. Here the applicants had no locus standi to apply for compassionate appointment until an order of striking off the name of Pannalal Bose from the strength of the rolls had been passed by the department. As I have already stated that right of consideration accrued from the date of ~~missing~~ ^{declaration made} of Pannalal Bose S.G-91 u.s.f. 1976. It is also found from the impugned order of rejection that the respondents did not consider the report of the enquiry officer submitted to them as asked for. It is not disclosed why the report of the enquiry officer submitted vide annexure 'A/4' was not considered by the respondents at the time of rejection of the prayer. The order of rejection is arbitrary and is found devoid of consideration of the materials ^{a fact} on record.

11. In view of the aforesaid circumstances, the order of rejection is not tenable and the applicant no.2 is entitled for consideration for appointment on compassionate ground. Therefore, the order at annexure 'A/1' dated 6th March, 1995 is set aside. The respondents are directed to consider the case of applicant no.2 for

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appointment on compassionate ground, in accordance with the rules, and to take appropriate action in this regard after full consideration of all material facts. If there is a vacancy available in the department, within six months from the date of receipt of this order. With this observation, this application is disposed of, awarding no costs.

M. P. Purkayastha
(D. Purkayastha)
Judicial Member