

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

O.A. No. 425/95
P.A.T. No.

199

DATE OF DECISION 24.7.1996

Smt. M. Sushilamma & Anr.

Petitioner

R.K. Soni,

Advocate for the Petitioner (s)

Versus

Union of India & Ors.

Respondent

Mr. Jay Singh, Departmental
Representative for Respondents.

Advocate for the Respondent (s)

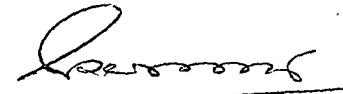


CORAM :

The Hon'ble Mr. S.P. BISWAS, Member Administrative.

The Hon'ble Mr. ---

1. Whether Reporters of local papers may be allowed to see the Judgement? no
2. To be referred to the Reporter or not? yes
3. Whether their Lordships wish to see the fair copy of the Judgement? no
4. Whether it needs to be circulated to other Benches of the Tribunal? yes


(S.P. BISWAS)
Member Administrative

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR.

O.A.No.425/95.

Date of Order: July 24, 1996

1. Smt. M. Sushilamma

2. M. Vijay Kumar

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Applicants.

VERSUS

Union of India & Ors.

...

Respondents.

Mr. R.K. Soni, Counsel for the applicants.

Mr. Jay Singh, Officer Surveyor, O.C. No.32 (P)
Party (WC), Survey of India, Mount Abu.

CORAM :

Hon'ble Mr. S. P. Biswas, Member Administrative.

BY THE COURT :

After Mr. M.P. Rangaiah, died in harness on 15.8.90, wife of the deceased (first applicant herein) sought appointment on compassionate grounds for her second son, the second applicant. The second applicant received A/3 communication dated 17.1.92 offering an appointment to the post of Lower Division Clerk. All the necessary formalities were completed by 10.2.92. While the applicants continued pursuing posting orders for more than two years, the first applicant was asked to submit some more details vide Annex.A/6 dated 03.8.94. This was also complied with. Suddenly, by Annexure A/1 dated 9.5.95, the first applicant was told that her second son cannot be considered for appointment on compassionate grounds as her elder son is already in Government service. Aggrieved by the A/1 order, the applicants have sought issuance of direction to the respondents to implement the A/3 offer without any further delays.

2. Heard rival contentions. Learned counsel for the applicants contended, on the strength of the judgments of the Hon'ble Supreme Court in two cases of Sushma Gosain (Smt.) vs. Union of India, 1989 4 SCC 468 and Smt. Vidya Devi vs. Union of India, 1989(3) SLJ (CAT) 22, that the family is passing through unbearable economic conditions on account of undue delay in the offer of appointment by respondents. The counsel placed reliance, in particular, on the decision of the Apex Court in the case of Sushma Gosain, wherein it was held :-



(5)
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"9. We consider that it must be stated unequivocally that 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. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant." (Emphasis added).

Learned counsel cited the above judgment only to buttress his contention that the "long wait" has accentuated the suffering of the family. Learned counsel further argued that the respondents are barred by the principles of promissory estoppel from denying a posting order at the present stage. While turning down the request of the applicant for final order, there was no mention that ^{the} family of the deceased employee was not in indigent condition because of the fact that the first son was employed. To add strength to his contention, the counsel referred to the decision of this Tribunal in the case of K.Krishna Kumar v. Union of India & Ors. reported in (1990) 2 ATC 142. "The applicants also contended that so far as the appointment of the elder son as "Contingent Khalasi" is concerned, he joined services under the same respondents in 1978, ^{two} lives separately, with his wife and children in State of Gujarat and severed his links completely with the deceased's family living at Mt. Abu, Rajasthan.

3. In the counter, the respondents have submitted that the applicant NO.2 has concealed the material facts from the respondents about his elder brother's service and that there are comparatively more meritorious cases pending with them. Since, the earlier offer of appointment was mainly based on the information regarding lack of regular source of income to anyone of the members of the family, which has turned out to be wrong, the second applicant is no more eligible for the posting order. The respondents also argued that the principles of promissory estoppel would not be applicable in the present case as the offer of appointment was obtained by hiding relevant facts.

4. The following 3 basic issues arise from the pleadings :-

(i) Whether the respondents have considered that the family of the deceased continue to be in distress and in indigent condition before the issue of A/l order;

(ii) Whether the information regarding service of elder son of 1st applicant was wilfully concealed warranting withdrawal of the offer already made;

(iii) Whether appointment on compassionate ground can be considered in favour of an eligible member of a family where another member is already in service;

5. I shall first examine the rules/orders that govern appointment on compassionate grounds. These are available in the Office Memorandum NO.14014/6/86-Estt(D) dated 30.6.87 issued by the Ministry of Personnel, Public Grievances, and Pensions, Government of India. These instructions lay down conditions of eligibility. However, only the relevant portion of the orders, crucial for determining the fate of the present case, is extracted below :-

"4. Eligibility :

(e) In deserving cases even where there is an earning member in the family, the son/daughter near relative of the deceased Government servant, leaving his family in distress may be considered for appointment with prior approval of the Secretary of the Department concerned who, before approving the appointment, will satisfy himself that the grant of concession is justified having regard to the number of dependents, the assets and liabilities including the fact that the earning member is residing with the family of the deceased Government Servant, whether he should not be a source of support to the other members of the family."

The respondents admit that the second applicant fulfills all the conditions set out in the memorandum aforesaid.

6. The next question centres around the income/assets/liability of the family at the relevant time. The details in Annex.A/7 indicate inadequate pecuniary support for the livelihood of the family. The respondents have not controverted this.

7. I shall now advert to the three issues. Reversal of respondents' stand in the matter communicated in the impugned order at A/1 is sought to be justified on the ground that the applicant No. 2 was no more eligible now that his elder brother has been found employed implying thereby that the family is not in indigent circumstances. As already mentioned, the family of the applicant No. 1 lives at Mount Abu whereas her elder son (Mr. Rajendra Prasad), employed as a Khalasi, is living separately and that too in the State of Gujarat. Mr. Rajendra Prasad is also saddled with the responsibility of maintaining a family of two children, wife and himself from a meagre income as Group 'D' official. Contention of the applicant No. 1 commends acceptance taking into consideration the spiral rise in the prices of consumer goods and the fact that the elder son has severed links with the family for twelve years. From the table of income and assets, it is evident that the liabilities of applicant No. 1 outweigh the assets in her hands. These facts lead to the conclusion that the family is in immediate need of succour and solace by way of compassionate appointment. Material on record show that no attempt was made to ascertain these details before issuing A/1 order. Whereas in the facts and circumstances of this case, it was easy to do so when the elder son is serving the same department. The respondents appear to have acted in a huff simply on receipt of a complaint.

8. Coming to the second issue, I find from the records that applicants have faithfully complied with orders of respondents. It was only in Annex.A/6 communication dated 3.8.94, and not in any communication before, that the "income of earning members" was sought for and was furnished accordingly. It is not a case of deliberate attempt to conceal relevant information. Annex.R/5 communication dated 27.1.93 indicate that the respondent NO.3 examined this contentious issue and recommend the case favourably.

9. As regards the third issue, it is the contention of applicants that relevant rules support the case. In any case, if the earning member is not source of support to rest of the members of the family, appointment to any other member, if otherwise found eligible, can be considered. This is well covered under instructions of DOP/T in para 4(e) aforementioned. The same situation prevails in the instant case. Respondents have alleged concealment of information but has not mentioned, not even a whisper, regarding Mr. Rajendra Prasad's service being a source of

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support to the bare subsistence of the family. With the receipt of the complaint, respondents were ~~required~~ to ascertain if factum of elder brother's appointment goes against the policy guidelines laid down by Govt. of India. As per records, this was not done. Admittedly, the existing orders do not provide any bar in offering appointment to a second member subject to conditions stipulated therein.

10. On this issue of compassionate appointment, the Hon'ble Supreme Court in a catena of decisions has laid down that; (i) Compassionate appointment should not reopen a backdoor for appointment without competition; (ii) Such appointment should not be made after a long delay, as the very purpose of mitigating the distress is frustrated; (iii) that the family having sustained the economic hardship by lapse of time is not entitled to the grant of compassionate appointment and that (iv) the courts/tribunals cannot offer benediction impelled by sympathetic consideration and that even if the courts reach a conclusion that the applicant has made out a case, all that the Tribunal can do is only to direct the concerned authority to consider the claim in accordance with the relevant rules. (Please see, U.O.I. & Ors. v. Bhagwan Singh, (1995) 6 SCC 476 and LIC of India v. Asha R. Ambedkar (1994 (27) ATC 174; 1994 SCC (L&S) 737 (Emphasis supplied).

11. It is well settled in law that judicial review is not in the nature of an appeal against finding of facts/decisions, it is directed to the decision making process. If any authority is required for this proposition, it is available in Govt. of Tamilnadu vs. A. Rajapandian, AIR 1995 SC 561. The impugned order at A/1 suffers from the following :-

(i) Every authority involved in a process of adjudication, is required to state the reasons for his conclusion. In this case, as in many other cases of Govt. of India; the orders contain conclusions and not reasons. Some reasons should have induced the decision and that could have been stated. Such non-speaking, if not ~~dump~~, orders cannot do service for the requirements of law. The authority committed with the jurisdiction of taking a decision has to apply its mind before reaching a conclusion. That function is the basic responsibility of any Tribunal/Court.

(ii) The order does not appear to be preceded by any finding of the facts/enquiry. It should have been backed by reasons that the elder brother of the family continue to be a source of means of subsistence.

(iii) The latter portion of A/l order smacks of authoritarian attitude. It is incumbent for each occupant of every high office to be constantly aware that the power vested in the high office he holds is meant to be exercised in public interest and only for public good. (Emphasis added) (See State of Assam vs. P.C. Misra & Ors., 1996 SCC (L&S) 169).

12. As the respondents have failed to consider the request of the first applicant for an appointment to the second applicant on compassionate grounds on merits and rejected the same without acceptable reasons, I am left with no option, but to quash A/l order. In view of the discussion aforementioned, the application succeeds on merits and is allowed accordingly. I, therefore, dispose of this O.A. by passing the following order :-

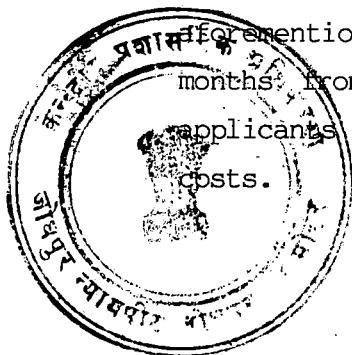
(a) The impugned order at Annex.A/l dated 9.5.95 rejecting the claim of the applicant No.1 for appointment to the second applicant on compassionate grounds, is hereby set aside.

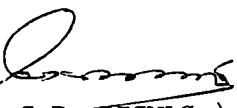
(b) The applicants shall make out a supplemental representation to the respondents regarding pecuniary circumstances, the financial commitments and other relevant grounds to show how the family is in immediate need of assistance as also that the family is separated from Shri M. Rajendra Prasad, elder son, with the help of Ration Card, CGHS Certificate, LTC and other trustworthy documents and send the same to the second respondent (Surveyor General of India, Post Box No.37, Hathibarkala Estate, Dehra Dun (U.P.)), to decide the matter in terms of the O.M. dated 30.6.87 of the Department of Personnel & Training. This representation should be submitted by the applicant within one month from the date of receipt of a copy of this order.

(c) The respondents are directed to examine the matter de novo, consider revival of the offer of appointment on the basis of

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supplementary representation supported by documents
aforesaid, pass final orders within a period of three
months from the date of receipt of representation from the
applicants and communicate the same to the first applicant. No
costs.




(S.P. BISWAS)

Member Administrative

[CPM]