

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH : JODHPUR

Date of order : 20.04.20

O.A. No. 75/1999

1. Rajendra Soni son of Shri Sohan Lal
2. Shanti Devi wife of late Shri Sohan Lal resident of 1-Cha-10, Madhuvan Colony, Basni, Jodhpur, deceased Sohan Lal, Tradesman 'D', Defence Laboratory, Jodhpur.

... Applicant.

v e r s u s

1. Union of India through the Secretary to the Government, Ministry of Defence, Raksha Bhawan, New Delhi.
2. The Director, Defence Laboratory, Ratanada Palace, Jodhpur.

... Respondents.

Mr. Vijay Mehta, Counsel for the applicants

Mr. Kuldeep Mathur, Advocate, Brief holder for Mr. Ravi Bhansali, Counsel for the respondents.

CORAM:

Hon'ble Mr. Justice B.S. Raikote, Vice Chairman

Hon'ble Mr. Gopal Singh, Administrative Member

: O R D E R :

(Per Hon'ble Mr. Justice B.S. Raikote)

This application is filed for quashing the impugned order at Annexure A/1 dated 22.08.96 with a direction to give appointment to the applicant No. 1 on the post of Helper on compassionate grounds.

2. The applicants stated that the applicant No.1 is the son and the applicant No.2 is the widow of the deceased Sohan Lal, who died in harness on 3.6.96. The deceased was working as Tradesman 'D' under the respondent No. 2, i.e., the Director, Defence Laboratory, Jodhpur. It is stated by the applicants that after the death of Shri Sohan Lal, the applicant No.2 (widow of the deceased) applied for appointment of applicant No.1 on

compassionate grounds. But the applicants were told vide Annexure A/1 dated 22.08.96 that on that date, there was no suitable post available for the son of the applicant No. 2, and in case the vacancy arises in future, the case of the applicant No.1 would be considered sympathetically. This order the applicant sought for quashing. Thereafter, the applicant No. 2 submitted number of representations, including those dated 24.09.97 and 20.11.97 vide Annexures A/3 and A/4, respectively. The applicants have stated that the vacancy of Helper arose in the month of June 1998, and the interviews were held on 24.07.98 and onwards. From this, it follows that the vacancies were available, but the case of the applicant No.1 was not considered, and the applicant No. 1 is eligible for appointment on the post of Helper. The applicants also stated that the appointment on compassionate grounds is governed by O.M. dated 30.6.87 issued by the Ministry of Personnel, Public Grievances and Pension, and there is no provision in the said O.M. for not providing appointment on the ground of non-availability of vacancy. The applicants submitted that it is a fit case for appointment on compassionate grounds, and the application may be allowed.



3. By filing reply, the official respondents have denied the case of the applicants. They have stated that as per the circulars dated 30.6.87 (Annexure R/1), dated 22.9.92 (Annexure R/2) and dated 26.9.95 (Annexure R/3), for the post meant for filling up on compassionate grounds, maximum of 5% of vacancies, falling under direct recruitment quota in any Group 'C' or 'D' posts during the relevant year is provided, and Shri Sohan Lal was working under the respondent No. 2 as Technician 'C' and not as Tradesman 'D', as stated by the applicants. They have also stated that the appointment contemplated vide letter dated 9.2.99 was against the post of Technician 'A' and not against the post of Helper, as alleged by the applicant. They also submitted that these posts did not fall under 5% quota available for appointment on compassionate grounds. It is also stated that the initial request of the applicants could not be considered

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for want of vacancy within 5% quota as per the Government circulars, and this 5% quota is based on the basis of the directions of Hon'ble the Supreme Court, and as and when the vacancy of Helper was available within that percentage of quota, the case of the applicant was considered as per the guidelines issued by the Government from time to time. They have also stated that the family of the deceased Sohan Lal comprised of his wife and five sons. The elder four sons are earning members and the applicant No.1 being 29 years of age, at the time of death of his father, was not dependant upon him. The applicant No.2, widow of the deceased, did not have any family liability, and was not in indigent condition since she was getting a family pension of Rs. 2562/- per month with 32% DA, which is considered sufficient for her own livelihood. The respondents have stated that none of her children is dependant on her since four sons are already employed and the 5th son, i.e. the applicant No.1, is 29 years of age, and the applicant No.1 is expected to get a job on his own merit and not on compassionate grounds. It is further stated by the respondents that even if a vacancy is available for compassionate appointment within the prescribed percentage of quota, the same cannot be offered indiscriminately, since it will be at the cost of a more deserving candidate, who may be denied the appointment merely for want of vacancies on compassionate grounds. They relied upon the judgement of Hon'ble the Supreme Court reported in JT 1994 (3) SC 525 and contended that as per the law declared Hon'ble the Supreme Court, mere death of an employee in harness does not entitle the family for such compassionate appointment as a matter of right. The competent authority has to examine the financial conditions of the family and it is only after satisfaction that without getting an employment, the family will not not be in a position to meet the financial crisis, the case of the applicant is considered for compassionate appointment. In the instant case, the case of the applicant was duly considered, and vide Annexure R/4 dated 19.07.99 and Annexure R/5 dated 13.08.99, the case of the applicants for appointment or



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compassionate grounds has been rejected by the authorities. It is alleged that in fact, the family has four earning members, besides getting a sum of Rs. 2562/- with 32% DA as family pension by the widow, and in these circumstances, the applicant No.2 is not in indigent condition. The applicant No. 1, being 29 years of age at the time of death of his father, cannot be considered to be in indigent circumstances. The respondents contended that absolutely, there are no merits in this application, and accordingly, the O.A. deserves to be dismissed.

4. The applicants by filing rejoinder denied the allegations made in the reply of the respondents. The applicants stated that the other four sons are living separately. Shri Balmukhan lives at Jetaran for the last 30 years, Shri Ram Chandra lives in Kamla Nehru Nagar, Jodhpur, Shri Mahesh lives in Chanana Bhakar, Jodhpur, and is doing embroidery work and Shri Jagdish lives in Subhawaton Ki Dhani, Jodhpur, and he is doing handicraft work, and therefore, they all are living separately. The applicants have produced zerox copy of ration card of Shri Rajendra Soni, son of Shri Sohan Lal, vide Annexure A/6. They have also produced zerox copy of another ration card vide Annexure A/7 (which is not legible). The applicants have also produced an allotment letter of a house issued by the Rajasthan Housing Board vide Annexure A/8 dated 3.2.87, and it was allotted to the deceased Sohan Lal. The applicants contended that it is a fit case for granting the reliefs, as prayed for.

5. On the basis of the pleadings of both the parties and the arguments addressed at the Bar, we have to see whether the discretionary order passed by the respondents vide Annexure R/5 dated 17.08.99, calls for our interference.

6. The case of the respondents is that the prayer of the applicant No.2 to appoint the applicant No.1 on compassionate grounds, has been rejected vide Annexure R/5 dated 17.08.99. This order has not been

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challenged by the applicants for the reasons best known to them. We wish to extract the said order for our consideration, as under:-

"  
To:

Date : 17th August, 99.

Smt. Shanti Devi,  
W/o. Late Shri Sohan Lal,  
1-Cha-16, Madhuvan Housing Board,  
Basni, JODHPUR (Raj.)

Sub: Employment on compassionate ground : Shri Rajendra Soni S/o. late Shri Sohan Lal, Ex-Technician 'A'.

.....

Your request for compassionate ground appointment to your son Shri Rajendra Soni has been thoroughly examined. Compassionate appointment is given to render immediate assistance to the ward of a Govt. servant who dies in harness, leaving behind his family in distress and indigent condition, when there is no other earning member in the family.

In your case, you are in receipt of Rs. 1,94,649/- as terminal benefits besides Rs. 2562/- as family pension plus 32% D.A. You have a house to live in. The elder four sons are earning members, out of whom one son is a Central Government employee. The amount received by you is sufficient to lead a normal life. Taking all facts into consideration, we are sorry to inform you that your request for compassionate appointment of your younger son, Shri Rajendra Soni, is not covered under rules for compassionate appointment.

(Umaid singh)  
Senior Administrative Officer-II  
For Director "


7. From the reading of the above order, it is clear that the applicant No.1 had been refused the appointment on compassionate grounds on the ground that the applicant No.2, Smt. Shanti Devi, has received an amount of Rs. 1,94,649/- as terminal benefits, and she is also in receipt of Rs. 2562/- as family pension plus D.A. @ 32%. The applicant No.2 is living in her own house, and her four sons are already earning members, and out of them, one is a Central Government employee. The respondents contended that the amount received by the widow of the deceased is sufficient to lead a normal life, and in these circumstances, the applicant No.1 is not entitled to appointment on compassionate grounds.

8. The fact that the deceased Sohan Lal had in all five sons and the

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applicant No. 1 is the 5th son, and he is the youngest, is not disputed. All other five sons are earning members. But the case of the applicants is that they are living separately. It is also not in dispute that the applicant No.1 is already 29 years of age, and the applicant No.2 has received a sum of Rs. 1,94,649/- as terminal benefits, and she has also been receiving an amount of Rs. 2562/- plus 32% D.A. as pension. Hon'ble the Supreme Court in JT 1994 (3) S.C. 525 (Umesh Kumar Nagpal vs. State of Haryana & Ors.) has laid down the law that the appointment on compassionate grounds is not a matter of course, and such an appointment may be made in case where the family is tied over by the financial crisis and relieving such family from the indigent circumstances. We think it appropriate to extract the relevant part of the judgement as under:-



"2. The question relates to consideration which should guide while giving appointment in public services on compassionate ground. It appears that there has been a good deal of obfuscation on the issue. As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interest of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family will not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authorities concerned has to examine the financial conditions of the family of the deceased, and it is only if it is satisfied that but for provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Class III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family of the financial destitution and to help it get over the emergency. The provision of employment in such lowest post by making an exception to the rule is justiciable and valid since it is not discriminatory. The favourable treatment given to such dependant of the deceased employee in such posts has a rational nexus with the object sought to be achieved viz., relief

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against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned.

3. Unmindful of this legal position, some Governments and public authorities have been offering compassionate employment sometimes as a matter of course irrespective of the financial conditions of the family of the deceased and sometimes even in posts above Classes III and IV. That is legally impermissible.

4. It is for these reasons that we had not been in a position to appreciate the judgements of some of the High Courts which have justified and even directed compassionate appointment either as a matter of course or in posts above Classes III and IV. We are also dismayed to find that the decision of this Court in *Sushma Gosain & Ors. vs. Union of India & Ors.* [(1989) 4 SLR 327] has been misinterpreted to the point of distortion. The decision does not justify compassionate employment either as a matter of course or in employment in posts above Classes III and IV. In the present case, the High Court has rightly pointed out that the State Government's instructions in question did not justify compassionate employment in Class II posts. However, it appears from the judgement that the State Government had made at least one exception and provided compassionate appointment in Class II post on the specious ground that the person concerned had technical qualifications such as M.B.B.S, B.E., B.Tech. etc. Such exception, as pointed out above, is illegal, since it is contrary to the object of making exception to the general rule. The only ground which can justify compassionate employment is the penurious condition of the deceased's family. Neither the qualifications of his dependant nor the post which he held is relevant....."


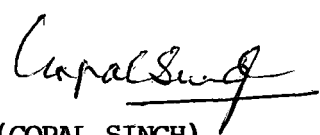
9. From the reading of the above judgement, it is clear that the only ground which can justify compassionate appointment is the penurious condition of the deceased's family. Since the family has already received an amount of Rs. 1,94,649/- as terminal benefits, and the widow (applicant No.2) has been receiving a family pension of Rs. 2562/- plus 32% DA per month, it cannot be said that the family is in penurious condition. Whether a particular case deserves compassionate appointment or not depends upon the facts and circumstances of each case. The respondents while passing the order Annexure R/5 dated 17.08.99, have taken into account the financial conditions of the family, including number of persons who were employed, and in these circumstances, it cannot be said that the family in question is in penurious condition. The order Annexure


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R/5, on the basis of which the applicants have been denied appointment on compassionate grounds, being discretionary order based on sound reasons does not call for any interference. However, the learned counsel for the applicants relied upon the judgements and orders of the Central Administrative Tribunal, New Delhi, reported in (1995) 30 ATC 351 [Rishalo and another vs. Union of India and Ors.], and Central Administrative Tribunal, Bombay Bench, reported in (1996) 33 ATC 583 [G.B. Yerwa (Mrs.) and another vs. Union of India & Ors.] and the judgement and order of this Tribunal dated 25.02.2000 passed in O.A. No. 13/1998 [Kapoor Ram vs. Union of India and another]. Having regard to the facts and circumstances of the case, those judgements are distinguishable from the facts of the present case in view of the law laid down by Hon'ble the Supreme Court, referred to above.

10. For the reasons recorded above, we do not find any merit in this application. Accordingly, we pass the order as under:-

"Application is dismissed. But in the circumstances, without costs."

  
  
(GOPAL SINGH)  
Adm. Member

  
(JUSTICE B.S. RAIKOTE)  
Vice Chairman

cvr.



M us  
24.4.1

Ken Carlin  
25/4/67

Part II and III destroyed  
in my presence on 29.3.67  
under the supervision of  
section officer (1) as per  
order dated 19/3/67  
Section officer (Records)