

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

I/9

O.A. No. 121/2001

DATE OF DECISION 24.10.2002

Pankh Raj

Petitioner

Mr. Vijay Mehta

Advocate for the Petitioner (s)

Versus

Union of India & Anr.

Respondent

Mr. Kamal Dave

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. J.K. Kaushik, Judicial Member

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 ? Yes.
4. Whether it needs to be circulated to other Benches of the Tribunal ? Yes.


(J.K. KAUSHIK)
Jud. Member

CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR

J/10

ORIGINAL APPLICATION NO. 121/2001

DATE OF ORDER: 24.10.2002

Pukh Raj s/o Shri (Late) Tarachand by caste Heerahas aged 24 years r/o Vill. Khivandi Tehsil Jawai Bandh District Pali - Tara Chand Ex-Cabin Man, W. Rly. Chityod District Gandhidham (Gujrat).

...APPLICANT.

V E R S U S

1. Union of India through the General Manager,
W. Rly. Church Gate, Mumbai.
2. Divisional Railway Manager (Estt.),
W. Rly. Ajmer.

...RESPONDENTS.

Mr. Vijay Mehta, counsel for the applicant.

Mr. Kamal Dave, counsel for the respondents.

CORAM:

HON'BLE MR. J.K. KAUSHIK, JUDICIAL MEMBER

O R D E R

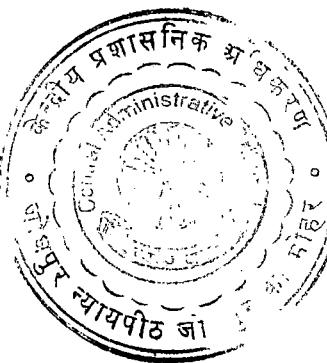
PER MR. J.K. KAUSHIK, JUDICIAL MEMBER

Shri Pukh Raj is aggrieved with the impugned order dated 24.04.2001 (Annexure A/1) vide which his case for

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consideration of appointment on compassionate ground has been turned down. The applicant is the son of late Shri Tara Chand, Cabin Man who was the permanent Railway employee and died in harness on 31st December, 1997. Late Shri Tara survived Chand was ~~survived~~ by three sons, applicant, his elder brother Shri Ramesh Kumar and younger brother Shri Dinesh. Subsequently Shri Ramesh Kumar eldest son of the deceased Government servant also expired on 09.10.1999. Thereafter the applicant started striving and made effort to get appointment on compassionate ground. But his case was turned down vide order dated 28.03.2000 through non-speaking order and without disclosing any reason.

2. The further case of the applicant is that he filed an Original Application No. 119/2000 and the same came to be disposed of vide order dated 17.01.2001 (Annexure A/5) with a direction to the respondents to reconsider the case of the applicant for appointment on compassionate ground objectively with certain observations made therein. The case of the applicant has been turned down vide order dated 24.04.2001 (Annexure A/1). The main reasons aduced for rejection of his candidature are that his mother expired before the death of the deceased Government servant and the applicant is an adult and cannot be considered fully dependent on his father. ~~xxxx~~ An amount of Rs 1.5 lakh was paid to as settlement dues and the family pension is also being paid by which they could pull on their livelihood. The another ground of rejection is that the applicant is lacking of the integrity and reliability in as much as he submitted a certificate in respect of death of his brother by giving wrong date.



3. It has also been submitted that the matter regarding the submission of death certificate by which wrong date has already been dealt with by this Hon'ble Tribunal and the contentions of the respondents to this effect were rejected. The case of the applicant has not been considered objectively and there is a violation of the relevant rules. The Original Application has been filed on number of grounds mentioned in para 5 of the Original Application. Hence this application

4. The respondents have filed a detailed counter reply and have controverted the facts and grounds mentioned in the Original Application. Inter alia it has been averred that compassionate appointment is not a right which the applicant can claim to have been infringed. The employer has every right to consider the conduct of the incumbent who is before them for seeking appointment and in case of any doubt the claim can be rejected. It has also been submitted that as per the verdict of Hon'ble High Court in one of recent case non-disclosure of fact regarding pendency of criminal case would dis-entitled any right of appointment even if criminal case culminated into acquittal. It has also been submitted that impugned order is in consonance with the parameters of consideration ex for compassionate appointment and has been rightly passed. The case was considered and the impugned order has been passed in compliance with the direction of this Hon'ble Tribunal. It has also been submitted that letter dated 28.01.2000 (Annexure A/3) was never passed and the Original Application deserves to be dismissed with exemplary costs.



Rejoinder and
Additional submissions have been submitted enclosing a copy
of O.M. dated 09.08.1998 on behalf of the applicant.

5. I have heared the learned counsel for the parties
and have carefully perused the records of this case.

6. Mr. Vijay Mehta, learned counsel for the applicant
has submitted that the applicant was very much dependent
on the deceased Government servant at the time of his death.
The claim of compassionate ground can not be rejected only
on the ground that one has got certain terminal benefits.
He has also submitted that the applicant is dependent on
the deceased Government servant is also evident from the
fact that he is being paid the family pension and the
family pension is payable only to the dependent who is
less than 25 years of age. At the time of the death of
father of the applicant, the applicant was about 20 years
of age. Nextly, my attention was drawn to the judgement
dated 17.01.2001 wherein it has been clearly held in respect
of submission of death certificate in respect of the elder
brother of the applicant that it cannot be inferred that
the applicant had not come to the Tribunal with clean hands
and an issue was settled.

7. On the other hand, Mr. Kamal Dave, learned counsel
for the respondents have reiterated the facts and grounds
mentioned in the reply as well as has submitted that the
impugned order is a speaking order, self-contained and has
been passed in full compliance of the directions of this
Hon'ble Tribunal given in the previous Original Application
(Supra).

8. At the very outset I would make it clear that an O.M. dated 09.10.1998 has been filed as Annexure A/8 alongwith the additional submissions. The same seems to have been supplied to the learned counsel for the applicant as per order-sheet dated 23.08.2002. However, the father of the applicant expired on 31.12.1997 and the O.M. being of dated 09.10.1998 has no application to the present case. Thus the rules existing as on the date of the death of the deceased Government servant shall be applicable. There could hardly be any dispute as regards the dependency of the applicant on the deceased Government servant in as much as the applicant has been allowed the family pension which is permissible only to a dependent.

9. As regards the contention of the respondents that the applicant have been paid a sum of Rs 1.5 lakh as settlement dues and also being paid the family pension and thus they could earn their livelihood, is concerned, it is the settled position of the law that the case of compassionate appointment cannot be rejected solely on the ground of family pension and payment of terminal benefits. This issue has also been settled by this very Bench of the Tribunal in O.A. No. 82/2002 (Sukh Dev vs. U.O.I. & Ors.) decided on 15.02.2002 in para 7 and does not remain res integra. Otherwise also as per the scheme for compassionate appointment in the Railways no means test is required to be applied while deciding the request for appointment on compassionate ground. This issue also has been elaborately discussed by Jaipur Bench of the Tribunal vide order dated 19.11.2001 in Nirmala Devi vs. Union of India and Ors. (O.A. No. 299/2001). Thus rejection of ~~the~~ appointment of the applicant on the pretext that his dependency of the Government servant was



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doubtful and also settlement dues were paid to him, has no legs to stand. The next vital ground of attack is on the peculiar reason of honesty and integrity needs consideration in this case. As narrated above and also evident from para 9 of the judgement dated 17.01.2001 (Annexure A/5) in previous Original Application (Supra) of the applicant, there was neither any concealment nor the date of death of applicant's elder brother Shri Ramesh Kumar was material to the issue. In this way, hammering settled issue again and making it as the main reason for rejection of the claim of applicant of appointment on compassionate ground is nothing but reflects adamancy of the respondents. It has also been submitted that since there was no concealment in any manner the judgement of the Hon'ble High Court has no application in the matter. The respondents cannot be permitted and give a finding on an issue like the integrity and honesty of the individual on the basis of conjectures and surmises especially when the very issue itself has been settled by this Tribunal and has also attained the finality, the action of the respondents lacks fairness. The learned counsel for the respondents has reiterated the stand taken in the reply to the O.A. and has tried to repel the argument advanced on behalf of the applicant.

10. I have given anxious consideration and thought to the above arguments. I find that the contention of the learned counsel for the applicant is right and the complete position is evident from the very perusal of the judgement of this Tribunal in the previous Original Application (Supra). Further as regards to the entry



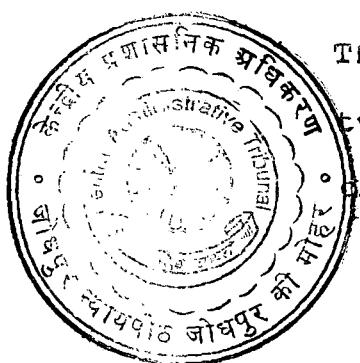
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into public employment, the following observations of Chinnappa Reddy J. in State of Madhya Pradesh v. Ramshankar Raghuvanshi (1983 (2) SCC 145) is worth pondering over: "Should all these young men be debarred from public employment Is Government service a heaven that only angels should seek entry into it?" If Government service were a world for angels only, elaborate conduct rules and discipline and appeal rules would not have been necessary to regulate their conduct after entry into that world. However, I have to no hesitation/agree with the contention of the learned counsel for the applicant that there is no iota of evidence so as to cause any suspicion on the integrity and honesty of the applicant and his case ought to have not been thrown on such extraneous ground. In fact I am of considered opinion that taking into account the sequence of events together it could very well be concluded and inferred that respondents have not objectively considered the case of the applicant for appointment on compassionate ground. The compassionate appointment is intended to enable the family of the deceased employee to tide over the sudden crisis resulting due to death of the sole breadwinner, who died leaving the family in penury and without sufficient means of livelihood. The applicant has fulfilled all the norms for consideration of appointment on compassionate ground but his case has been turned down, ex-facie on wrong pretext as discussed above. In this view of the matter the impugned order is not sustainable in law.

11. In view of the foregoing discussions, the impugned order dated 24.04.2001 (Annexure A/1) cannot be sustained

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and the same is hereby quashed. The respondents are directed to consider the case of the applicant for appointment on compassionate ground afresh objectively and keeping in view above observations in strict sense. This order shall be complied with within a period of two months from the date of receipt of a copy of this order. However, there shall be no order as to costs.


J.K. KAUSHIK
(J.K. KAUSHIK)
Judl. Member

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Kumawat