

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

I/6

O.A. No. 102/2002

DATE OF DECISION 13.11.2002

Sumendra Raj Mathur

Petitioner

Mr. B. P. Mathur

Advocate for the Petitioner (s)

Versus

Union of India & Ors.

Respondent

Mr. B. R. Mehta

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. No


(J. K. Kaushik)
Jud. Member

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CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR

ORIGINAL APPLICATION NO.: 102/2002

DATE OF ORDER: 13.11.2002

Sumendra Raj Mathur son of Late Shri Laxman Raj Mathur,
resident of U.I.T Colony, House No. 206, Pratap Nagar, Jodhpur.

...APPLICANT.

V E R S U S

1. Union of India, through the Secretary,
Ministry of Defence, Raksha Bhawan,
Government of India, New Delhi.
2. Garrison Engineer (Army),
Multan Lines, Jodhpur.
3. Headquarter Chief Engineer,
Jaipur Zone, Power House Road,
Bani Park, Jaipur.
4. Army Headquarter Engineer in
Chief Branch, Kashmiri House,
New Delhi.
5. Chief Engineer,
Headquarter S.C.,
Engineer Branch, Pune-411001.

...RESPONDENTS.

FOR THE APPLICANT : Mr. B.P. Mathur, Advocate.
FOR THE RESPONDENTS : Mr. B.R. Mehta, Advocate.

CERAM:

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

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: O R D E R :

PER KAUSHIK: JUDICIAL MEMBER

Shri Sunendra Raj Mathur has challenged the impugned order dated 11th March, 2002 (Annexure A/1) by which the case of applicant for compassionate appointment has been rejected. The applicant has further prayed for seeking a direction to grant him employment as per his qualification.

2. The brief facts as narrated by the applicant in pleadings of this case are that the applicant is son of late Shri Laxman Raj Mathur. Late Shri Laxman Raj Mathur was employed on the post of Charge Electrician and expired in the year 1988 (wrongly mentioned as 1980 in para 4.2). At that time the applicant was of about 20 years of age. It has also been submitted that an application was submitted on 12.07.1988 by the mother of applicant to the respondent no. 2 for keeping a suitable post for employment whenever he becomes eligible for it. On becoming major in the year 1991 another application was moved in this matter. The department called for the complete papers in respect of the applicant. Thereafter the matter was reminded a number of times and it was only on 17.05.1996 an information was given that the matter has been sent to the respondent no. 4 for his concurrence. Certain further information were called and vide letter dated 25.08.1998 the case was turned down by a non-speaking order which was challenged before this Bench of the Tribunal vide O.A. No. 177/1999. The same was disposed of vide order dated 25.09.2001 with a direction to the respondent to consider the case of the applicant afresh within a period of 3 months. Thereafter, the case was considered and has been

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rejected vide impugned order dated 11th March, 2002 (Annex. A/1).

3. The Original Application has been filed on multiple grounds, set out in para 10 (a to h). It has been mentioned that the rejection of the application of the applicant for grant of compassionate appointment is illegal, arbitrary and without any basis. At the time of death of his father, the applicant was minor and after attaining majority age he immediately applied for the same. His case was duly recommended by the Subordinate Authority and the claim was accepted. They have no authority to reject the case despite completing all formalities and in dire need of appointment, the applicant has not been given the appointment. No reason has been indicated for rejection of his claim.

4. A detailed counter reply has been filed on behalf of the respondents wherein it has been specifically submitted that the case of the applicant was considered afresh in the light of direction of this Hon'ble Tribunal vide order dated 25.09.2001. The competent authority has passed a speaking order dated 31 May, 2002 (Annexure R/1) but the same has not been challenged by the applicant. It has been submitted that there is a contradiction as regards to the age of the applicant. One side he said that he was minor and other side indicated 20 years of age at the time of death of his father. He has also averred that the Government servant died on 24.05.1988 i.e. 14 years ago as such the need for immediate assistance and crisis is lacking in this case. The deceased Government servant was survived with one daughter and two sons. The deceased Govt. servant's family received an amount of Rs 87,497/- as terminal benefits with present family pension @ Rs 1350/- per

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month. They are in possession of a house. The widow of the deceased Government servant is serving as Assistant Teacher in State Government and earning about Rs 10,000/- per month, therefore family cannot be said to be in penury condition or without any means of livelihood. The Competent Authority has considered the complete matter in detail and found that it was not a deserving case. The Original Application, therefore, may be dismissed.

5. Mr. B.P. Mathur, learned counsel for the applicant sought time for filing the rejoinder but no rejoinder has been filed. The case was listed on 01.11.2002 and with the consent of learned counsels for both the parties, the case was finally heard at admission stage and order was reserved. A specific query was projected to the learned counsel for the applicant as to what he has got to say about the averments made in the reply wherein it has been stated that the mother of the applicant is in employment and getting about Rs 10,000/- per month, since the same remains un-refuted as neither any rejoinder has been filed nor any additional affidavit has been filed on behalf of the applicant. The learned counsel for the applicant tried to side-track the matter and submitted that ~~the~~ applicant disclosed this fact in the earlier Original Application filed on behalf of the same applicant. Per contra, learned counsel for the respondents has strenuously contended that there has been a deliberate and intentional concealment of material fact having direct bearing on this case in as much as the applicant's mother is gainfully employed as Assistant Teacher and drawing about Rs 10,000/- per month but it has not been disclosed in the pleadings. As regards his disclosure of this fact in the previous O.A. he

he did not know about it and has submitted that the Original Application to be dismissed on the ground of very concealment of the fact as the applicant has not come before the Hon'ble Tribunal with clean hands. In addition to contentions taken in the reply to the O.A. he urged that firstly the family of the deceased was not at all in indigent condition, secondly by now about 14 years have elapsed and the family has survived and there was no necessity for granting compassionate appointment since the family has survived for such a long period and there was no sudden crisis as also the family was not in destitute. He has also submitted that the case of the applicant has been rightly rejected since the means test is not satisfied. The very object of providing such ameliorating relief should not be taken as opening an alternative mode of recruitment to public employment. There is no necessity for carrying out any judicial review in the impugned order even though the order dated 31 May, 2002 (Annex. R/1) which is main order has not been challenged in this Original Application. Mr. B.R. Mehta, learned counsel for the respondents has placed heavy reliance on the judgment in Umesh Kumar Nagpal vs. State of Haryana and Ors., 1994 (2) SLR 667 delivered by the Hon'ble Supreme Court.

6. On the other hand, the learned counsel for the applicant has stressed that the factum regarding the employment of the mother of the applicant was very much disclosed in the earlier O.A. and the matter was kept pending by the respondents for long period. The restraint of vacancies also cannot come in the way of compassionate appointment. The Authorities are required to see the economic conditions of the family in such cases. He has also submitted that the main order is dated 11th March, 2002 and not the order dated 31 May, 2002 since his case was closed by the impugned order. He also

placed heavy reliance on the judgement in Umesh Kumar Nagpal's case (Supra).

7. I have considered the rival contentions raised in this case and have carefully perused the records of this case. In the interest of justice, I also called for the file of O.A. No. 177/1999 which was filed by the same applicant before this Tribunal. In that O.A. an additional affidavit was also filed, there is no mention regarding the employment of the mother of the applicant. On the other hand regarding the family position, the ground (g) in the earlier O.A. as well as in the present O.A. is material and the contents of the same are extracted as under:-

"(g) That the father of the appellant was employed on a low paid post and after his death it is very difficult for the mother of the appellant to maintain herself and her family out of the meager pension. The family is in real hardship and harass for want of employment to the applicant and it is in the interest of the justice that the applicant is provided compassionate employment."

The perusal of the aforesaid clearly reveals that it has been specifically said that the source of income is only meager family pension and there is not even an iota of disclosure regarding the employment of the mother of applicant. It hardly needs any emphasis as regards the availability of an earning member in the family of the deceased that such fact is very material in the matter. Thus, I am of firm opinion that the applicant has not come with clean hands and the material fact has been concealed from this Tribunal and the Original Application deserves to be dismissed on this count alone, however, I would also examine this case on merit.

8. The contention of the learned counsel for the respondent
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that the family of the deceased has survived for 14 long years and there was no need for any appointment after such a long period. There is a force in this contention and the issue has already been examined and decided by this Bench of the Tribunal in O.A. No. 145/2002 (Gopal Singh vs. U.O.I. & Ors. decided on 25.10.2002 by a Bench consisting of Mr. J.K. Kaushik, Judicial Member. In ~~the~~ that case reliance has been placed on the Apex Court's judgements in Sanjay Kumar vs. State of Bihar and others (2000) 7 SCC 192, Director of Education (Secondary) and another vs. Pushpendra Kumar and others (1998) 5 SCC 192, Life Insurance Corporation of India vs. Asha Ramachandra Ambekar (Mrs.) and another (1994) 2 SCC 718, Jagdish Prasad vs. State of Bihar and another (1996) 1 SCC 301, and in State of U.P. and others vs. Paras Nath, (1998) 2 SCC, and has been held as under:-

"14. So far, legal position is concerned, from the above cases, it is amply clear that even in cases where a person is minor, unable to apply, the Supreme Court has held considering the underlying object of giving appointment on compassionate ground, that the family does not suffer due to the death of bread-earner and the family survives. If the family has survived in spite of death of bread-earner, there is no dire need to extend the benefit of compassionate appointment. Such a provision, in the light of the aforesaid decision of the Apex Court, cannot be held arbitrary or unreasonable. As in the instant case, the application was made after 17 years after the death of the government servant, it cannot be said that by rejecting the application, illegality has been committed.

15. From the foregoing reasons, the original application fails, being devoid of any merit and the same is hereby dismissed in limine at admission stage itself."

I have no reason except to un-hesitantly follow the same.

9. As regards the case of Shri Umesh Kumar Nagpal (supra) on which the reliance has been placed by both the learned

counsel, the Apex Court has taken note of the object underlying the rules providing for appointment on compassionate grounds and has held that the Government or the Public authority concerned has to examine the financial condition of the family of the deceased and it is only if it is satisfied, that but for the 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. In that case the Apex Court was considering the question whether appointment on compassionate grounds could only be made against the lowest posts in non-manual and manual categories. It was observed:-

"The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependent of the deceased employee in such posts has a rational nexus with the object sought to be achieved, viz, relief 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 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 status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned."

It was also impressed that appointments on compassionate ground cannot be made ~~granted~~ made after lapse of reasonable period which must be specified in the rules because the right to such employment is not a vested right which can be exercised at any time in future.

for respondents
Learned counsel has also drawn my attention to paragraph 6 of the decision where it has been indicated:

"For these very reasons, the compassionate employment cannot be granted after a lapse of reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be

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exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over."

In the said case, Apex Court has considered the earlier Judgment in Smt. Sushma Gosain & Ors. v. Union of India & Ors., 1989 (4) SCC 468. It has been observed that said judgment has been misinterpreted to the point of distortion and that it does not justify compassionate employment as a matter of course.

10. The perusal of aforesaid discussion would reveal that the judgment in Umesh Kumar Nagpal (supra) supports the contention of the respondents and is of no help to the applicant. In this view of the matter also I do not find any infirmity in the action of the respondents and the impugned order is perfectly legal and in conformity with the relevant rules.

11. In view of the foregoing discussions, the Original Application deserves to be dismissed being devoid of any merit and also on account of concealment of material facts and the same is hereby dismissed with cost amount of Rs. 1000/- payable by the applicant to the respondents within a period of two months from the date of receipt of this order.

Dec 21/80
(J.K. KAUSHIK)

Judicial Member

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