

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

O.A. No.1157 of 1997

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

- 1) Sri Pankaj Dutta, son of late Sumanta Ranjan Dutta &
- 2) Sm. Mira Dutta, widow of late Sumanta Ranjan Dutta, both are of village and Post Office Mondalpara, via Shyamnagar, Police Station Jagatdal, Dist. North 24-Parganas

.... Applicants

VS

1. Union of India, service through Secretary, Ministry of Defence, New Delhi
2. Senior Officers' Administration, Eastern Air Command, Indian Air Force C/o 99 APO, Kalaikonda, 5Wing Air Force Kharagpur, District Midnapore
3. Junior Warrant Officer, Assistant Adjutant, Kalaikonda, 5 Wing Air Force C/O 99 APO, Kharagpure, Dist. Midnapore
4. Station Commander, Air Force Station Kalaikonda, 5 Wing Air Force, C/o 99, APO, Dist. Midnapore
5. Flight Lieutenant, Administration Officer, Air Force Station, Kolaikonda, Dist. Midnapore, 5Wing Air Force, C/O 99 APO

... Respondents

For the Applicants: Mr. R.N. Dutta, counsel
Mr. H. K. Haldar, counsel

For the Respondents: Mr. S.K. Dutta, counsel

Heard on 6-8-1998 : : Date of order: 6-8-1998

O R D E R

Applicants, Sri Pankaj Dutta and Sm. Mira Dutta are son and widow wife respectively of the deceased Government Servant, Sumanta Ranjan Dutta, who died in harness on 13.6.1988. Immediately after the death of Sumanta Ranjan Dutta, applicant No.2 as widow wife applied for appointment on compassionate ground on 28.2.88. Her case was considered by the authority for

appointment on compassionate ground in the year of 1989, but no offer of appointment could be made to her since no vacancy was available in the Department for appointment on compassionate ground. In the meantime applicant No.1, Sri Pankaj Dutta made an application for appointment on compassionate ground in place of her mother, applicant No.2 by an application dated 7th May, 1992, Annexure/B to the application. Thereafter the case was referred to the higher authorities for consideration of the prayer of Shri Pankaj Dutta and he was directed by a letter dated 27th June, 1992, Annexure/E to the application, to furnish certain information and documents for the purpose of consideration of his case. Accordingly, he submitted all the requisite information and documents including the certificate issued by the District Magistrate and Collector, Midnapore dated 5th August, 1992, Annexure/F1 to the application. Thereafter on 20th November, 1996 (Annexure/G to the application) the applicant was asked to submit birth, educational certificates and three copies of passport size photograph. And thereafter on 10.1.97 (Annexure/H to the application) applicant No.2, Sm.Mira Dutta made a representation to the authorities viz., Shri J.K. Majumdar stating that it is really an unkindly step from the side of the office to provide her a job of Safaiwala after about 9 years of death of her husband. Thereafter by a letter dated 5th March, 1997 (Annexure/I to the application) applicant No.2 was intimated that her case was considered by the higher authorities who have intimated that once the case of her was considered finally by ACC-in-C, further consideration of her son is not feasible. Feeling aggrieved by and dissatisfied with the said order dated 5th March 1997 (Annexure/I to the application), applicant No.1, Sri Pankaj Dutta and applicant No.2, Sm.Mira Dutta approached the Hon'ble High Court by a petition which was numbered as W.P. 11546(W)/97, but ultimately the said application was withdrawn by the applicants and filed this case before this Tribunal on the

ground that the letter dated 5th March, 1997 is devoid of consideration of the material facts and thereby the impugned order dated 5th Marcy, 1997 is illegal and violative of principles of natural justice.

2. The case has been resisted by the respondents by filing a reply to the OA. They denied the claim of the applicants stating interalia that on the basis of the application of the applicant No.2 dated 28.6.88 for considering her case for employment on compassionate ground, the case was referred to the Headquarters on 23.3.89 and the case of Sm. Mira Dutta, applicant No.2 was considered for appointment on compassionate ground, but she could not be offered any employment since no vacancy was available in the Department and when the vacancy arose she was offered. But in the meantime the applicant No.1 on 7.5.92 made a representation to the authorities for appointing him on compassionate ground in place of his mother since his mother became ill in the meantime. That application has been disposed of by a letter dated 9.11.92 (Annexure/R1 to the reply) intimating the same to the applicant No.1, Shri Pankaj Dutta and it is also stated by the respondents that Sm. Mira Dutta on 13.11.95 obtained 'No objection' certificate from two sons for her appointment on compassionate ground and that has been intimated to the authorities by a letter dated 13.11.95 (Annexure/R2 to the reply). It is the stand of the respondents that since the case of the appointment of Smt. Mira Dutta was considered by the authority the question of further consideration of her son, applicant No.2 did not arise specially when his application was rejected by a letter dated 9.11.92 which is not challenged by the applicants in this application and the applicant No.2 did not disclose the same fact of rejection in the application and according to the respondents, their right to appoint applicant No.2 on compassionate ground goes. The very object of appointment on compassionate ground is now to members

of the deceased due to death of the bread earner in the family not operative. Accordingly the application is devoid of merit and is liable to be dismissed.

3. Mr.R.N. Dutta, learned counsel on behalf of the applicant strenuously argued before me that appointment on compassionate ground to a son as a substitute of the mother cannot be a legal bar when the mother became ill and had given consent in favour of her son for giving appointment on compassionate ground. He has also drawn my attention to a certificate dated 5th August, 1992 issued by the District Magistrate and Collector, Midnapore stating that the family of the deceased Government servant is in indigent circumstances and employment assistance is justified having regard to assets and liabilities as they have no landed property or assets and there is no earning member in the family. It is also submitted by the learned counsel, Mr. Dutta that the respondents by a letter dated 27th June, 1997 (Annexure/E to the application) called for necessary information and documents and the applicant No.1 furnished all information and documents, as desired by the authorities for consideration of his case in place of his mother, since no vacancy was available in the Department for appointment on compassionate ground on the basis of the application of her mother and the matter was delayed. According to the scheme of compassionate appointment since the mother given her consent to a son for getting appointment on compassionate ground, thereby there cannot be any impediment on the part of the respondents to consider the case of the applicant No.1 who had the requisite qualification for appointment on compassionate ground. So, the application should be allowed. Mr. S.K. Dutta, learned advocate argued by refuting the arguments made by the learned advocate for the applicant stating that the petition suffers from suppression of the material facts since the applicant did not challenge the very impugned order dated 9th Nov, 1992

(Annexure/R1 to the reply), by which the case of the applicant No.1 was considered and rejected intimating that it was not possible to consider the case of the applicant No.1, Shri Pankaj Dutta as prayed for and that order has not been challenged in this case. Mr. Dutta, Ld. adv. for the respondents further submits that the matter was considered for appointment and the respondents are still ready to give appointment to the mother, i.e., applicant No.2, if she desires to do so by joining as asked for and accordingly the respondents submitted no objection certificate on 13.11.95 for joining in the post offered to her on compassionate ground. Therefore, the question of giving compassionate appointment to her son does not arise and his case was rejected by a letter dated 5th March, 1997 (Annexure/I to the application).

4. I have considered the submissions of the learned counsel of both the parties, perused the documents and records in this case. Under the scheme of compassionate appointment an employee's wife, son and daughter may be appointed on compassionate ground in relaxation of the recruitment rules to Group 'D' and 'C' post. In the matter of appointment on compassionate ground the question of educational qualification is also irrelevant. I have gone through the representation submitted by the mother of applicant No.1, Smt. Mira Dutta on 10.1.1997 (Annexure/H to the application), where it is found that the applicant No.2, Smt. Mira Dutta was offered the post of Safaiwalla after 9 years of the death of her husband. From the said application it is found that she was reluctant to join as Safaiwalla considering her status in the family. In the judgments of the Hon'ble Apex Court in Umesh Kumar Nagpal vs. State of Haryana and others ;(JT 1994(3) SC 525); as well as in LIC of India vs. Asha Ramchandra Ambedkar and another ;(1994) 27 ATC 174; cases, there is a specific observation that status, ^{- dependent on deceased govt servant} education and qualification of the ~~employee~~ for the purpose of

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getting employment on compassionate ground will be treated as irrelevant and the question of status cannot be a ground for refusal of the appointment on compassionate ground. It is upto the person concerned whether he would accept the job ^{under the} ~~or not~~ under the peculiar circumstances of the scheme. It is found from the letter that the respondents already considered the case of applicant No.2 and she is now about 40 years old. Due date of retirement of the Government employees on superannuation is 60 years. So, if the applicant No.2 would have joined in the post of Safailwalla, as offered to her, she could have maintained herself in addition ^{to} ~~by~~ getting family pension by accepting the job of Safaiwalla and could have served more than 20 years in the Department. The Hon'ble Apex Court repeatedly stated that the scheme of compassionate appointment is an exception to the general recruitment rules and no appointment on compassionate ground should be given from the back door for the purpose of employment of family members. Moreover, I find that the application ~~has~~ suffered from suppression of material fact by not producing the rejection letter at Annexure/R1 to the reply. It is found from the said rejection letter dated 9.11.92 that the respondents took up the matter with the higher authorities for consideration, but ultimately the competent authority did not accept the proposal of the subordinate office for appointment of applicant No.1. However, I have gone through the facts and circumstances of the case and I find that the application is devoid of merit. Mr. R.N. Dutta, learned counsel submits that he did not get any scope to file any rejoinder in this case since the respondents served the reply today. But I fail to understand why Mr. Dutta, learned counsel after receipt of the copy of the reply today has pressed before me to hear the application today under special circumstance, as mentioned in my earlier order today before taking up the case. Such conduct of the learned advocate does not speak well. I cannot appreciate conduct of the

learned advocate Mr. Dutta in view of the submission recorded in my earlier order passed today before taking the case for hearing. On his prayer this case was taken up. So, he should not back out from the submissions made earlier. With this observation I dismiss the case as the case is found devoid of merit. No order is passed as regards costs.


(D. Purkayastha)

MEMBER (J)

6.8.1998