

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH: PATNA

Registration No. OA-265 of 1996

(Date of decision 18.11.96)

Baldeo Prasad Applicant

Versus

The Union of India & Others Respondents

Coram: Hon'ble Mr. Justice V.N.Mehrotra, Vice-Chairman

Counsel for the applicant: Mr. Gautam Bose

Counsel for the respondents: Mr. J.N.Pandey.

O R D E R

Hon'ble Mr. Justice V.N.Mehrotra, V.C.

This OA has been filed with the prayer that the Respondents be directed to appoint or consider him for appointment to a suitable post on compassionate grounds.

2. Late Rajendra Prasad, who was the father of the applicant, Baldeo Prasad, was working as a Wireman in Class IV post in the Telecommunications Department. Rajendra Prasad died on 13.9.1990 while he was still serving. It is said that he died of liver cancer. Rajendra Prasad left behind his widow, 4 sons and 2 daughters. At the time of the death of Rajendra Prasad 3 of his sons excepting the present applicant were already employed. One of his daughters have been married while second daughter, viz, Manorma Devi was unmarried. She was, however, married after the death of Rajendra Prasad.

The applicant has asserted that an amount of about Rs.60,000/- was received by the heirs but all this amount was spent on repaying back the loans and debts of Rajendra Prasad which was taken for his treatment. It is also asserted that some amount was spent on the marriage of Manorma Devi. It is asserted that the mother of the applicant, Smt. Sharda Devi was getting about Rs.1300/- as family pension and dearness relief. It is asserted that due to the indigent condition of the applicant and his mother, a prayer was made for the appointment of the applicant on Class-IV post on compassionate grounds but the prayer was rejected by Annexure-A/1. It is asserted that considering the indigent condition of the applicant and his mother, the applicant should have been appointed on compassionate grounds.

2. On behalf of the respondents it has been asserted that the applicant and his mother were not in financial distress nor they could be said to be indigent. It is asserted that two of the brothers of the applicant are Govt. employees, one of them being serving in the Army and the other in Telecommunications Department while third son was employed as a Driver. It is asserted that pay of these sons was Rs.5637/- when the order at Annexure-A/1 was passed. It is also asserted that the mother of the applicant has received Rs.60,000/- after the death of her husband and that she is also getting a sum of about Rs.1300/- as family pension. It is contended that considering these circumstances no ground for compassionate appointment has been made out.

3. I have heard the learned counsel for the parties and examined the material on record. It cannot be disputed that appointments to civil posts is to be made in accordance with the rules applicable to the same.

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Exceptions have however, been made in the case of Govt. employee who dies in harness leaving his family in distress. In such case provision has been made for appointment of the widow, son or daughter of the deceased employee in case the family was in distress and due to its indigent condition it was unable to maintain itself. Merely because a person was in Govt. service, his descendant cannot, as of right, claim that he should also be appointed as a Government servant. There cannot be an appointment on the grounds of descent as it will clearly violate Article 16(2) of the Constitution. However, in case the appointments were confined to the son, daughter or widow of the deceased employee who die in harness and which needs immediate appointment on grounds of immediate need of assistance, then such an appointment on compassionate grounds could be made.

4. A similar matter came up for consideration in the case of Auditor General of India vs. G. Ananta Rajeshwara Rao (AIR 1994 SC 1521). It was observed that appointment on ground of descent clearly violates Articles 16(2) of the Constitution. But, however, it is made clear that if the appointments are confined to the son/daughter or widow of the deceased Govt. employee and who die in harness and who needs immediate appointment on grounds of immediate need of assistance, in the event of there being no other earning member in the family to supplement the loss of income from the bread winner to relieve the economic distress to the members of the family, it is unexceptionable.

5. In the case of Life Insurance Corporation of India vs. Mrs. Asha Ramchandra Ambedkar and another, AIR 1994 Supreme Court 2148, It was observed that the High Courts and the Administrative Tribunals cannot confer benediction impelled by sympathetic consideration. The Courts should

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endeavour to find out whether a particular case in which sympathetic considerations are to be weighed falls within the scope of law.

6. The matter of appointment on compassionate grounds also came up for consideration of the Supreme Court in the case of Umesh Kumar Nagpal vs. State of Haryana, 1994 Supreme Court Cases (L&S) 930. It was observed: "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 any other consideration is permissible. Neither the Government 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 interests of justice and to meet certain contingencies. One such exception is in favour of the dependents of an employee dying in harness and leaving his family in 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 would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependents 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 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 authority

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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". A similar view was taken by the Supreme Court in the case of State of Haryana and others vs. Rani Devi and another, 1996 Supreme Court Cases (L&S) 1162.

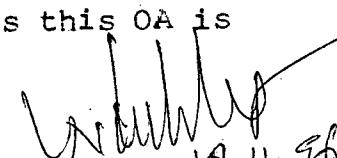
7. In view of the above mentioned decisions it cannot be said that a dependant of the deceased employee ~~cannot~~ claim appointment to a Government post merely because his father, who was a Government employee died in harness. Such an appointment can be made only if it is found that the family is in penury and it cannot tide over the crisis caused by the sudden death of the bread earner unless one of his descendants is appointed on compassionate ground. In the present case it is not disputed that out of four sons of the deceased three were already employed at the time of the death of their father. One of the sons was serving in the Army and holding the rank of Nayak, who has only a daughter to maintain. The other son was serving in the Telecommunications Department while the third son was employed as a Driver by a private person. One of the daughters of the deceased has already been married before his death. The second daughter was married after the death of the employee and at present the applicant and his mother remain in the family for whom it is claimed that they cannot maintain themselves unless the applicant is appointed on a suitable Government job. It may be accepted that out of the amount of Rs.60,000/- and odd, the widow had to pay the loans or advances taken for the treatment of the deceased employee who was suffering from cancer. It may be that some amount was also spent on the marriage of the second daughter. But still the fact remains that the mother of the applicant was getting

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nearly Rs.1300/- as family pension and dearness relief, out of which she can obviously maintain herself and may be the applicant also who is a major son. It is true that on behalf of the applicant it is asserted that all the elder sons who are employed and are residing in different States have said that they cannot maintain the applicant or his mother due to their own needs, but such an ~~assurance~~ ^{assertion} can be made by each and every employed son in order to ensure the appointment of their brother to the Govt. job. The present case is not such a case that the applicant and his mother were living in penury and their pecuniary condition is such that they cannot maintain themselves unless the applicant was given appointment on compassionate grounds.

8. The learned counsel for the applicant has referred to the decision in the case of Smt. Rishalo and Another vs. Union of India, 1996 (1) S.L.J. (CAT) 240 in support of his argument that merely because the brothers of the applicant were employed, appointment on compassionate grounds should be refused. In my view this decision is not applicable to the facts of the present case. In that case the deceased left five sons and one widow. Only one son was employed but his income was not mentioned. Other 4 sons were yet to be rehabilitated. It was on these facts that a direction was issued for reconsideration of the claim of the applicant of that case.

9. On a consideration of the facts and circumstances of this case and the law laid down by the Hon'ble Supreme Court, I am of the view that the applicant has failed to establish ^{that} his claim for appointment on compassionate grounds was valid. In the circumstances this OA is dismissed. No order as to costs.


10.11.96
(V. N. MEHROTRA)
VICE-CHAIRMAN