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CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 550/88
~~R.A.X.X.No.~~

198

DATE OF DECISION 8.3.1991

Shri S.M.Gadekar _____ Petitioner

Shri S.Paul Sundararajan _____ Advocate for the Petitioner(s)

Versus

Union of India & Ors. _____ Respondent

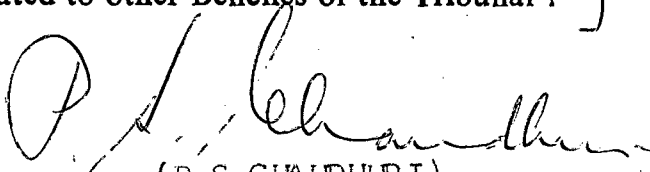
Shri R.K.Shetty. _____ Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. P.S.CHAUDHURI, MEMBER(A),

The Hon'ble Mr. T.S.OBEROI, MEMBER(J).

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
 2. To be referred to the Reporter or not ?
 3. Whether their Lordships wish to see the fair copy of the Judgement ?
 4. Whether it needs to be circulated to other Benches of the Tribunal ?
- } No


(P.S.CHAUDHURI)
MEMBER(A).

(7)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

Original Application No.550/88.

Shri S.M.Gadekar.

... Applicant.

V/s.

Union of India & Others.

... Respondents.

Coram: Hon'ble Member(A), Shri P.S.Chaudhuri,
Hon'ble Member(J), Shri T.S.Oberoi.

Appearances:

Applicant by Mr.S.Paul Sundararajan.
Respondents by Mr.R.K.Shefity.

JUDGMENT:-

{Per Shri P.S.Chaudhuri, Member(A)} Dated: 8-3-1991

This application under section 19 of the
Administrative Tribunals Act, 1985 was filed on 21.7.1988.

In it the applicant whose late father was working as a
Civilian Carpenter under the 4th respondent is seeking
employment on compassionate grounds in any suitable post
w.e.f. 1.6.1987 and connected and consequential reliefs.

2. The respondents have opposed the application by
filing their written statement and we have heard
Mr.S.Paul Sundararajan, learned counsel for the applicant
and Mr.R.K.Shetty, learned counsel for the respondents.

3. The case of the applicant is as follows. His
father, Mahadu Shankar Gadekar died on 13.4.1987 while still
in employment leaving behind a family consisting of his
wife, two sons, five married daughters and a widowed mother.
(The applicant subsequently placed on record that of the
five married daughters one had actually passed away in
1975 four months after giving birth to a female child and
that this child was being maintained and brought up by the

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applicant's mother). All the settlement dues received by the applicant's mother had been spent in repaying the loans taken for celebrating the marriages of the five daughters. Although the applicant's late father's younger brother is a Central Government employee, he does not live in Nasik, where the applicant and his family reside and he is not in a position to render any financial help to the applicant's grand mother. The applicant's elder brother has separated from the family and he is living separately with his wife and three children and he is also of no help to the family. On 15.5.1987 the applicant's mother applied to the 4th respondent seeking compassionate employment for her younger son, viz. the applicant. She followed this up with a reminder on 27.1.1988. But her request was turned down by letter dt. 26.4.1988. Being aggrieved, the applicant filed the present application.

4. The instructions regarding compassionate appointment of son/daughter/near relative of deceased government servants are contained in the Department of Personnel and Training's Office Memorandum dt.30.6.1987. Para 1(a) of this Office Memorandum states that it is applicable "a) To a son or daughter or near relative of a Government servant who dies in harness including death by suicide, leaving his family in immediate need of assistance, when there is no other earning member in the family." Para 4 (e) of this Memorandum states that "In deserving cases even where there is an earning member in the family, a son/daughter/near relative of the deceased Government servant, leaving his family in distress may be considered for appointment with the prior approval of the Secretary of the Department concerned who, before approving the appointment, will satisfy himself that the grant of concession is justified having regard to the number of dependents, the assets and liabilities left

by the deceased Government servant, the income of the earning member as also his liabilities including the fact that the earning member is residing with the family of the deceased Government servant and whether he should not be a source of support to the other members of the family".

5. It was Mr. Shetty's contention that the applicant did not ^{have} a vested right in compassionate appointment. In support of this he cited Satish Chander Halder and Another v. Union of India & Others - 1988(2) SLJ(CAT) 345 - in which the Calcutta Bench have held " The petitioners in this case have not earned any legal or vested right for an appointment of this nature, which is entirely dependent on the discretion of the authorities. Obviously, giving appointment to the relations by relaxing the normal rules of appointment is a special dispensation with the rules of recruitment. Application of such relaxation should normally be objected to and hence it should be treated as an extreme case justifying such relaxation. We are unable to find any such ground in the present petition and as such we are unable to allow the petition." It was his contention that compassionate appointments had to be regulated in accordance with the instructions dt. 30.6.1987 (Supra) and that in terms thereof there was no case for acceding to the applicant's request. To begin with there were two other earning members in the family viz. applicant's uncle and ~~xxx~~ elder brother.

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Coming now to the relaxation permissible even where there is an earning member, the family could not be considered to be in distress. This had been specifically considered by the respondents and the facts had been succinctly brought out in their letter dt. 26.4.1988 (supra). The applicant's mother had received settlement dues amounting Rs.57,043/-; in addition she was receiving family pension of Rs.600/- per month plus relief. Mr.Shetty submitted that there was therefore absolutely no case whatsoever for relaxing the instructions regarding compassionate appointment in the case of the applicant. Mr.Paul Sundararajan attempted to overcome this by submitting that the relaxation was required to be given by the Secretary of the Department concerned whereas the letter dt. 26.4.1988 had been issued by the fourth respondent. We are unable to go along with Mr.Sundararajan because the applicant could have challenged the letter dt. 26.4.1988 by making a representation to the Secretary of the Department, but he chose not to do so and thus cannot now make a grievance of it. Mr.Shetty also submitted that the applicant himself was married and had a child and hence could not be considered to be without any means of livelihood. His final submission was that even assuming that the settlement dues had been exhausted in repayment of debts, the family pension of Rs.600 plus relief could not be considered to be inconsequential when the starting pay of a Group 'D' Government employee was Rs.750 plus allowance. Mr.Shetty sought to cite three cases viz. 1. Kunhikrishna Karup v. The General Manager, Telecommunications Kerala Circle, Trivandrum - 1989(1) ^(CAT) SLJ/127, 2. Sunderlal Gupta v. G.M., Gun-Carriage Factory, -(1989) 11 ATC 803, and 3. Smt.Hoshiari and Anr. v. Union of India - 1990(3) ^(CAT) SLJ/393 - (with which one of us viz. T.S.Oberoi, Judicial Member was associated). In view of the final

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order that we propose passing it is not necessary for us to go into the details of these cases which all support that decision.

6. Based on these rival submissions we are unable to see any merit in the application. To begin with the scheme of compassionate appointment is meant to cater to the needs of the family of a government servant who dies in harness leaving behind his family in immediate need of assistance. We are unable to convince ourselves that the applicant's family is in need of assistance, let alone immediate assistance. It is quite clear that compassionate appointment is not to be used as a back door when normal methods of appointment, after ensuring equality of opportunity, fail.

7. In this view of the matter, the application does not merit acceptance.

8. We accordingly dismiss the application. In the circumstances of the case there will be no order as to costs.



(T.S. OBEROI)
MEMBER (J)



(P.S. CHAUDHURI)
MEMBER (A).

8-3-1991