

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
~~AT BOMBAY~~
 BOMBAY BENCH

O.A. No. 303 OF 1989.
~~ExxxNxx~~

DATE OF DECISION 3-1-1992

1. Shri R. Nagappan
 2. Shri Manikam, _____ Petitioner s

Mr. D.V. Gangadh, _____ Advocate for the Petitioner(s)

Versus

Union of India & Ors. _____ Respondent s

Mr. A.I. Bhatkar proxy counsel _____ Advocate for the Respondent(s)
 for Mr. M.I. Sethna,

CORAM :

The Hon'ble Mr. D.K. Agarwal, Member (J)

The Hon'ble Mr. M.M. Singh, Member (A)

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? No
4. Whether it needs to be circulated to other Benches of the Tribunal? No

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1. Shri R. Nagappan
Ex-Trades Man 'B' in
Bhabha Atomic Research Centre,
Trombay, Bombay - 400 085.
Residing at - Sector E-N-19,
Cheeta Camp, Zopada No.19,
Line No. 6, Trombay,
Bombay - 400 088
2. Shri Manikam son of
Shri R. Nagappan,
aged about 20 years,
Residing at - Sector:E-N-19,
Cheeta Camp, Zopada No.19,
Line No. 6,
Trombay, Bombay - 400 088. Applicants.

(Advocate: Mr.D.V. Gangal)

Versus.

1. The Union of India through
The Secretary,
Prime Minister's Secretariate,
New Delhi.
2. The Chairman,
Atomic Energy Commission,
Bhabha Atomic Research Centre,
Trombay, Bombay - 400 085. Respondents.

(Advocate:Mr.A.I.Bhatkar proxy counsel
for Mr. M.I. Sethna.)

J U D G M E N T

O.A.No. 303 OF 1989

Date: 31-1992

Per: Hon'ble Mr.M.M. Singh, Member (A).

The first applicant of this Original Application filed under section 19 of the Administrative Tribunals Act, 1985, is an ex. employee of Bhabha Atomic Research Centre, Trombay. Having been rendered medically completely and permanently incapacitated for further service, the first applicant retired on invalid pension with effect from 31.7.1988 at the age of about 58 years and six months. The second applicant is his son. Their grievances is that the second

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applicant has been denied the right of compassionate appointment which accrued to him from the relevant provisions of the Ministry of Home Affairs, Department of Personnel and Administrative Reforms' Office Memorandum dated 25.11.78 with the event of invalidation on medical grounds of the first applicant. As ~~this~~ right has been denied because of the amendments to the relevant provisions in the OM dated 25.11.78 carried out by OMs dated 18-3-82, 7-4-86 & 7-10-87 relief of declaration that the related provisions of the three office memoranda are ultra vires of provisions of Articles 14, 16, 21, 38, 39 & 41 of the Constitution is sought.

2. An application dated 27.6.88 came to be submitted to the respondents for grant of compassionate appointment to the second applicant. The application was rejected by the respondents' reply dated 5.8.88. However, the second applicant was given work on daily wages for about two weeks but not given regular appointment even on casual basis. The ^{first} applicant's family consists of his wife who is uneducated and the second applicant who has studied upto the 8th standard. The ^{first} applicant's say is that his invalidation placed him in indigent circumstances. According to the applicant, right to compassionate appointment is a fundamental right and it is therefore the duty of the respondents to consider and grant such right without hesitation and delay.

3. The respondents have resisted the application by filing reply. It is averred that at the time of his invalidation, the applicant was 58½ years old.

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4. We have heard Mr.D.V.Gangal, learned counsel for the applicant and Mr.A.I. Bhatkar, proxy counsel for Mr. M.I. Sethna, learned counsel for the respondents and perused the record.

5. The substance of pleadings and submissions on behalf of the applicants is that the second applicant deserves to be appointed on compassionate basis in the light of the relevant provisions in OM dated 25.11.78, supra, amendment to which provisions by related provisions in OMs dated 18.3.82, 7.4.86 and 7.10.87 is unconstitutional. The applicants are therefore required first to show ^{their} ~~that~~ case falls within the ambit of the provisions of OM dated 25.11.78.

6. The matter pertains to compassionate appointment of a dependent of those who retire on medical grounds under Rule 38 of CCS (Pension) Rules 1972. The copy of OM dated 25.11.78 of Government of India, Ministry of Home Affairs, Department of Personnel and Administrative Reforms produced by the applicants shows that this office memorandum was issued by way of revised instructions in supersession of office memorandum dated 23.5.78. In this office memorandum dated 25.11.78, for eligibility to compassionate appointment in the event of retirement on medical grounds appears the following :

"Govt. Servants retired on medical grounds.

In exceptional cases when a Department is satisfied that the condition of the family is indigent and in great distress, the benefit of compassionate appointment may be extended to the son/daughter/near Relative

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of Government servant retired on medical grounds under Rule 38 of the Central Civil Services (Pension Rules) 1972 or corresponding provisions in the Central Civil Regulations."

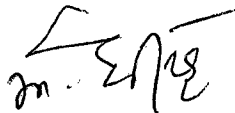
It is clear from the other provisions of the Office Memorandum that compassionate appointment is in relaxation of the prescribed procedure of recruitment through Staff Selection Commission or Employment Exchange and the benefit is available to employees of Group-C or Group-D posts on prior approval of Joint Secretary-in-charge of the Administration or Secretary in the Ministry of the department concerned or the head of the department in attached sub-ordinate offices. The appointment has to be given only when the applicant is eligible and suitable for the post under the provisions of the recruitment rules and relaxation of educational qualifications permissible only in cases of very hard conditions of the family and age requirement can be relaxed when imperative in the context of the pecuniary condition of the family in accordance with the provisions of general order dated 12.2.1955. Regard has to be made for number of dependents of the retiree and of his income and liabilities. Thus the benefit of compassionate appointment does not necessarily fall as available from the fact of retirement on medical ground only. It becomes available on the fulfilment of the twin conditions of retirement on medical grounds and the satisfaction of the department that the condition of the family of the retiree is indigent and the family is in great distress as per provision reproduced above.

7. The applicant was medically invalidated on attaining the age of 58½ years. 58 years is the normal age of retirement of Govt. servants which in case of the applicant, is 60. It is the averment of the first applicant that his family consists of his wife and the son. The amount of pension and dearness allowance on pension the applicant receives has not been disclosed in the record of the case. During the arguments, the learned counsel for the applicant urged that the applicant did not get full pension seeing the number of years of service put in by him. But information about pension and dearness allowance amount has not been furnished at the time of arguments also. In the absence of this most vital information, there is no material to hold that despite receiving pension and dearness allowance on pension, the first applicant with his family consisting of his wife and one son is left indigent and in great distress as a result of his medical retirement at the age of 58½ years. The second applicant's representation dated 27.6.88 to which the respondents gave reply dated 5.8.88 has not been produced by the applicant. The applicant has thus ^{not} produced any material to show that he had furnished required information to the respondents to satisfy them that the first applicant's family, despite his receiving pension on medical retirement at the age of 58½ years, is indigent and in great distress on account of the medical retirement. Therefore, even if the applicants' case is to be considered in the light of OM dated 25.11.78 with the provisions of which

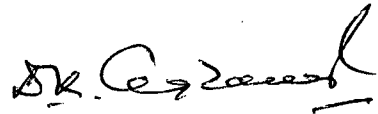
(12)

the applicants have no dispute in regard to their legality and in fact rest their claim on its provisions, the applicants have failed to show that their case falls within the ambit of provisions of OM dated 25.11.78 for eligibility to consideration for compassionate appointment. With that not shown, it is unnecessary to take up for our detailed scrutiny alleged unconstitutionality of the amendments to the OM dated 25.11.78.

8. In view of the above, the application is liable to be dismissed. We hereby do so without any order as to costs.



(M.M. Singh)
Member (A)



(D.K. Agarwal)
Member (J)