

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PATNA BENCH : PATNA

Date of Order:- 23.2.07

Registration No.OA-548 of 2005

C O R A M

Hon'ble Km Sadhna Srivastava, Member (J)

Hon'ble Shri Amit Kushari, Member (A)

.....

Smt. Bhagwatiya Devi and Another

....Applicants

-By Shri M.P.Dixit, Advocate

Versus

The Union of India & Others

....Respondents

-By Shri M.K.Mishra, Sr. Central Government Standing Counsel

O R D E R

Km Sadhna Srivastava, Member (J):- Applicants' request to permit them to join together in the OA, as their grievance and relief claimed are the same, is allowed.

2. The subject matter is compassionate appointment.

3. The applicants .. aggrieved by orders dated 20.2.2003 and 2.6.2005 (Annexures-A-9 & A-13), whereby the request of applicant No.2 for grant of compassionate appointment has been rejected by the respondents. Hence they pray for quashing of both the orders and further to issue appointment order on compassionate ground in favour of the applicant No.2.

4. The facts in brief are that the applicant No.1 is the widow of one late Rohin Mandal who died while in service on 22.1.1992 ... working as



Mate under the respondent No.5 leaving behind the widow (applicant No.1) and one son, applicant No.2. On her representation for compassionate appointment of her son, an order was passed rejecting her claim. Questioning that order, the applicants<sup>4</sup> filed an OA-387 of 2001 and the Bench of this Tribunal by its order dated 15.12.2002 (Annexure-A-8) disposed of the OA by giving direction to the respondents to decide the matter as per law, rules and instructions then relevant within a period of three months. Pursuant to the direction the respondents have considered the case of applicants and rejected the same by order dated 28.2.2003 (Annexure-A-9) on the ground that due to more deserving cases and a few vacancies<sup>3</sup> <sup>were</sup> available the case of the applicants was not recommended for compassionate appointment. The applicants had also filed contempt petition for allegedly non-compliance of the order dated 15.12.2002 recorded in OA-387 of 2001. The contempt petition was also disposed of on 31.1.2005 with direction to the respondents that in case the applicants' case had been reconsidered in the year 2004, the said order be communicated to the applicants. In compliance of the order dated 31.1.2005 of this Tribunal the respondents had passed an order dated 2.6.2005 (Annexure-A-13), whereby it was informed to the applicant that his case was considered in March, 2004, June, 2004 and September, 2004, but due to low in merit and non-availability of vacancy his case could not be recommended by the competent authority. Hence, the case was rejected by the respondents. Aggrieved by orders dated 20.2.2003 and 2.6.2005 the applicants filed the present O.A.

5. The applicants have challenged both the orders on the ground that the same are not in consonance with the direction given by this Tribunal in OA-

387 of 2001. Hence it is illegal and unjustified. It is further argued on behalf of the applicants that the purpose of compassionate appointment is to mitigate the hardship on account of sudden demise of the deceased employee, therefore, even in the absence of the vacancy the appointment should be given after creating supernumerary post. In support of his argument the applicant has placed reliance on the judgment of the Apex Court reported in 1989 SCC(L & S) 602 -Smt. Sushma Gosain Vrs. Union of India & others.

6. While deciding the case of the applicants the respondents have filed written statement alleging therein that the applicant No.1 filed an application for appointment of her son on 6.5.1993 which was incomplete. She filed certain documents in support of her application on 28.6.1993. The applicants did not furnish the requisite documents as advised by the department. She sent another application for appointment of her son (applicant No.2) on 6.8.1993. She again filed a fresh application on 5.4.1994. On completion of documents, the application of the applicant was processed with higher authority vide letter dated 5.5.1994. The applicants' case was considered by the respondents, but not found fit for grant of compassionate appointment. Hence, the impugned orders have been passed. The respondents have relied on a decision given by Hyderabad Bench of the Tribunal in OA-1823 of 2000 -Smt. K. Sulochana Vrs. Director General EME, Army Headquarters, New Delhi and others, another decision dated 22.8.2001 passed by Chandigarh Bench in OA-792 of 2001-Budha Prakash Vrs. The Union of India & Others.

7. Heard the learned counsel for the parties.

8. The applicants' claim that they have been hit hard. It may be so, but



the Apex Court in the case of LIC of India Vrs. A.R. Ambekar, 1994 SCC (L&S) page 737, has held that the Court cannot direct appointment on compassionate ground, de hors provisions of scheme in force governed by the Rules/Regulations/instructions. The High Court and the Administrative Tribunal cannot confer benediction impelled by sympathetic consideration. In this regard it has been observed as follows:-

“The Courts should endeavour to find out whether a particular case in which sympathetic consideration is to be weighed falls within the scope of law. Disregardful of law, however, heard the case may be, it should never be done .....

9. The scheme for compassionate appointment is administered by the Nodal Ministry i.e. Department of Personnel and Training (DOP&T). Instructions regarding operation of the scheme are issued by the department from time to time. As per the relevant instructions of the DOP&T appointment on compassionate ground is permissible only upto 5% of the direct recruitment quota vide Government of India, DOP&T's letter No.14014/6/95-Estt. D dated 26.9.1995.

10. In the case of Himachal Road Transport Corporation Vrs. Dinesh Kumar (1996 SCC (L&S) 1153) the Hon'ble Supreme Court was dealing with two cases where the application had been submitted by the dependents of the deceased employee for appointment on compassionate ground and both of them were placed on the waiting list and had not been given appointment. They approached the Himachal Pradesh Administrative Tribunal, and the Tribunal directed transport Corporation to appoint both of them. Setting aside the said decisions of the Tribunal, the Apex Court observed that in the absence of vacancy it is not open to the Corporation to



appoint a person to any post.

11. In the case of Hindustan Aeronautics Ltd. Vs. A. Radhika Thirumalai, 1996 SCC (L&S) 1427, a Single Judge of High Court held that appointment on compassionate ground is given notwithstanding whether there is any vacancy and if need be, by creating supernumerary post. The decision of learned Single Judge was confirmed by Divisional Bench of the High Court. The Hon'ble Supreme Court held that reliance placed by the learned Single Judge on the case of Sushma Gosain, 1989 SCC (L&S) 662 was misplaced with an observation that the case of Sushma Gosain has to be read in the light of the facts of that particular case. The observations made in the case of Umesh Kumar Nagpal Vs. State of Haryana, 1994 SCC (L&S) 930 to be effect "the decision of Sushma Gosain has been misinterpreted to the point of distortion and that the decision does not justify compassionate appointment as a matter of course" were also quoted with approval.

12. The Hon'ble Supreme Court again in the case of UOI Vs. Joginder Sharma (2002) 8 SCC <sup>46</sup> 85 has held that High Court/Tribunal cannot compel the department to relax the ceiling of vacancies and appoint a person. Since this method of appointment is in deviation of the normal recruitment process under the rules where people are waiting in the queue indefinitely. The policy laid down by the Government regarding such appointment should not be departed from by the Courts/Tribunals by issuing direction for relaxation merely on account of sympathetic consideration or hardship of the person concerned. If, in a given case, department of the Government concerned declines as a matter of policy, not to deviate from the mandate of the provisions underlying the Scheme and refuses to relax the ceiling fixed therein, the Court cannot compel the authorities to exercise its jurisdiction

in a particular way and that too by relaxing the essential conditions.

13. In the case of Umesh Kumar Nagpal (Supra), the Hon'ble Supreme Court has observed that it must be remembered that as against the destitute family of the deceased employee, there are millions of other families which are equally, if not more destitute. If the dependents of the deceased employee finds it below his dignity to accept the post offered, he is free not to do so. The post is not offered to cater to his status but to see the family through the economic calamity. It was also observed that the compassionate appointment cannot be granted after a lapse of reasonable period. The consideration for such employment is not a vested right which can be exercised at any time in future. The compassionate appointment cannot be claimed and offered whatever the lapse of time and after the crisis is over. In the instant case, the applicants lost the bread earner in between the years 1993 to 1999. It is not known if the penurious condition of the applicants continues in the same state.


14. Again, in the case of State of Manipur Vs. Md. Rajaodin (2003)/SCC 511, the Hon'ble Supreme Court has observed that the purpose of providing compassionate appointments is to mitigate the hardship caused due to the sudden death of the bread winner in the family. It is to alleviate the distress of the family that such appointments are made but these considerations cannot operate even after a long delay. In the instant case also a delay has occurred and therefore, the question is whether compassionate appointment has relevance after long years of death of an employee. The Hon'ble Supreme Court has reiterated the same principle in the case of Punjab National Bank & others Vs. Ashwani Kumar Taneja, 2005 (1) SLJ 30, with an observation that the compassionate appointment is




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an exception~~al~~ to the rule and cannot be given as a bounty.

15. In the instant case it is seen that the respondents have already considered the case of the applicants for four times and they have said that their case is not fit for grant of compassionate appointment because before the Department, there are number of cases seeking compassionate appointments. Therefore, they have to see relative condition of all the candidates. In the present case it is seen that when the deceased died there was no major liability left by him. The applicant No.1 is getting family pension. Since the respondents are bound by 5% ceiling and they found that there were more deserving cases than the applicants for grant of compassionate appointment. We do not see any illegality in the orders passed by the respondents.

16. Resultantly the OA is dismissed without any order as to costs.

  
(Amit Kushari)  
Member (A)

  
(Sadhna Srivastava)  
Member (J)

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