

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 326/96.

Date of Decision: 25-03-98

Bhimrao Deoram Sonawane

.. Applicant

Shri D.V.Gangal

.. Advocate for
Applicant

-versus-

Union of India & Ors.

.. Respondent(s)

Shri S.C.Dhawan

.. Advocate for
Respondent(s)

CORAM:

The Hon'ble Shri M.R.Kolhatkar, Member(A).

The Hon'ble

(1) To be referred to the Reporter or not ?

(2) Whether it needs to be circulated to
other Benches of the Tribunal ?

M.R.Kolhatkar
(M.R.KOLHATKAR)
MEMBER(A).

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 326 /96.

pronounced this the 25th day of March 1998.

Coram: Hon'ble Shri M.R.Kolhatkar, Member(A).

Bhimrao Deoram Sonawane,
Upalinagar,
Hut Near R.B.1/877 Quarters,
Near Old Power House,
Bhusawal - 425 201.

... Applicant.

(By Advocate Shri D.V.Gangal)

V/s.

1. Union of India through
General Manager,
Central Railway,
Bombay V.T.,
Bombay.

2. The D.R.M.,
Central Railway,
Bhusawal - 425 201.

... Respondents.

(By Advocate Shri S.C.Dhawan)

O R D E R

(Per Shri M.R.Kolhatkar, Member(A))

In this O.A., the applicant challenges the order dt. 27.3.1995 from the Central Railway Headquarters Office, Personnel Branch informing the applicant that the Competent Authority has not agreed for compassionate appointment in his case. The case of the applicant is that his father was medically boarded out from the services of the Central Railway. The family consists of wife (Smt.Durgabai), the applicant (Bhimrao) who has passed 10th standard, another son Jagan (23 years old) and daughter who is 19 years old. The applicant contends that his elder brother who is stated to be employed with the Railways lives separately and therefore the fact that one son is employed cannot be made a ground for refusing compassionate appointment to him.

...2.

According to him as per the Master Circular the fact that one son is employed is no bar to grant of compassionate appointment because that son was not employed on compassionate grounds, but on merits.

2. The respondents have opposed the O.A. According to the Respondents the elder son of D.T. Sonawane the father of the applicant, is already employed with the Railway's as Khalasi Helper in permanent capacity. Therefore, the applicant is not entitled to any compassionate appointment ^{which in the case of} the wards of medically decategorised employees is exceptional and in this connection reliance is placed on the para 5 of the Master Circular (I(v) which states as below :

"(v) Where, on being medically decategorised, a Railway employee is offered alternative employment on the same emoluments, but choose to retire and requests for compassionate appointment, provided that if he has less than three years of service at the time of decategorisation, personal approval of the General Manager is to be obtained before the compassionate appointment is made."

The respondents also refer to the Circular dt. 11.6.1991 issued by the Head Office laying down heads of additional information to be collected in case appointment on compassionate grounds to wards of employees who have been medically decategorised/unfitted for all cadres until the age of 55 years is recommended. According to the respondents, the case was considered in the light of this Circular, as well as other instructions and the Competent Authority did not find the case deserving and it was rejected. On merits, it is contended that the case of the applicant is not a deserving one because the father of the applicant has received all the retirement benefits plus monthly pension and the competent authority felt that the test of distress has not been satisfied.

3. The learned counsel for the respondents argued that the test of distress is laid down in the guidelines of the Ministry of Personnel, but such a test of distress does not find a place in the Master Circular of the Railway Board/ and therefore, the compassionate appointment cannot be denied by importing an alien test. Even otherwise, he contends that the distress test is satisfied in his case because his elder brother stays separately and there is a family consisting of four persons including one unmarried daughter and the retirement benefits and the monthly pension are not adequate to maintain all of them. The applicant relies on the following Judgments:

- (1) Smt. Sushma Gosain and ors. V/s. Union of India & Ors. (AIR 1989 SC 1976)
- (2) Smt. Phoolwati V/s. Union of India & Ors. (AIR 1991 SC 469)
- (3) Auditor General of India & Ors. V/s. G. Ananta Rajeswara Rao. (1994 SCC (L&S) 500)
- (4) Judgment of the Bombay Bench of the Tribunal in O.A. 938/92 (Shri Vilas Kashinath Mistry & Anr. V/s. Union of India and Anr.) decided on 12.7.1993.
- (5) Judgment of the Bombay Bench of the Tribunal in O.A. 1090/93 (Shri Ganesh Pandurang Vispute. V/s. Union of India & Anr.) decided on 20.12.93.

4. The learned counsel for the respondents on the other hand relied on the Judgment of the CAT, Hyderabad Bench in P. Ashi Reddy V/s. The General Manager, S.C. Railways, extracted at 202. Swamy's CL Digest 1994/2 and the Judgment of the CAT, Patna Bench in Medni Mandal and Ors. V/s. Union of India, extracted at 194. Swamy's CL Digest 1994/2. ~~and that was not~~

~~Shri Anant~~ The learned counsel for the respondents also contends that there is no vested right to compassionate appointment as observed by the Supreme Court in State of Haryana V/s. Naresh Talwar. The learned counsel

for the respondents also produced the connected file of the department (leading to the issue of the impugned order.

5. I have considered the matter. In my view, the Supreme Court Judgment in the case of Auditor General of India & Ors V/s. G. Anantha Rajeswara Rao delivered on 8.4.1993^{i.e.}/subsequent to Smt. Sushma Gosain and Smt. Phoolwati's case requires to be attached great weight, because that case considered the constitutional validity of the procedure of compassionate appointment. This is particularly relevant in the context of the contention of the applicant that Railway Board's instructions stand on their own footing and the distress test is an alien test which cannot be imported into the Railway Board's instructions. In this connection, extract of para 5 of the Supreme Court Judgment in Auditor General and Ors. V/s. G. Anantha Rajeshwara Rao may be reproduced:

"... But, however, it is made clear that if the appointments are confined to the son/daughter or widow of the deceased government employee who died 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 of the members of the family, it is unexceptionable. But in other case it cannot be a rule to take advantage of the Memorandum to appoint the persons to these posts on the ground of compassion. Accordingly, we allow the appeal in part and hold that the appointment in para 1 of the Memorandum is upheld and that appointment on compassionate ground to a son, daughter or widow to assist the family to relieve economic distress by sudden demise in harness of government employee is valid. It is not on the ground of descent simpliciter, but exceptional circumstances for the ground mentioned. It should be circumscribed with suitable modification by an appropriate amendment to the Memorandum limiting to modification by an appropriate amendment to the Memorandum limiting to relieve the members of the deceased employee who died in harness from economic distress. In other respects Article 16(2) is clearly attracted."

7. In my view, the Supreme Court has in this case declared law under Article 141 of the Constitution and it is binding all over India including the Railways. It may be that one to one compassionate appointment was a Rule in some departments prior to this Judgment, but after this Judgment all instructions of various departments have to be read in the light of this Judgment and therefore the distress test is required to be read into Railway Administration's Master Circular also.

8. Let me, however, consider whether distress test has been correctly applied by the Railway Administration in the present case. For this purpose, a reference is required to be made to the reasons for the order. These reasons, although they are not incorporated in the impugned order can be found on the relevant file and it is well settled that if the reasons for the orders are not given in the impugned order, it suffices if the reasons for the order are at least given in the connected file. These reasons are as below :

"The case does not present any distress situation. The employee is in receipt of full pension and has elder son is already employed with the Railways as a Khalasi Helper. The applicant and the two other children (one son and one daughter) are all grown up children, it does not appear to be a fit case for any special consideration."

9. From this, the reasons why the distress test is held not to have been satisfied appear to be the following :

- a) that the retired government employee has been given full pension.
- b) one son of the government servant is employed.
- c) the other children are grown up children.

10. The fact that the government employee has received full pension is by itself is not a sufficient factor for holding that there is no distress. It all depends on the circumstances of the family. One family

may have less number of dependents, another family may have larger number of dependents with special liabilities. In the present case, it is stated that the Railway Administration has considered that three children are grown up, but what has been overlooked is that two sons are unemployed, one of whom has sought employment and one daughter is unmarried. In an Indian household the need to marry off an unmarried daughter is considered to be a very heavy liability and this aspect has been ignored by the administration. The mere fact that she is grown up is therefore not material. The second son as earlier observed is unemployed. The fact that the elder brother is employed has been acknowledged by the applicant, but the Railway Administration has not established by means of a local enquiry that the elder brother and the remaining family stay together. If they stay separately and if they had been living separately prior to the death of the government servant, then the fact of employment of the elder brother would not also be sufficient to deny compassionate appointment to another son.

11. I am therefore, of the view, that on facts the applicant is entitled to succeed. The impugned order is quashed and set aside. The respondents are directed to reconsider the case of the applicant in the light of this Judgment and additional material gathered through local enquiry ~~consider the case of the applicant~~ for grant of compassionate appointment afresh within three months from the date of communication of the order. There will be no orders as to costs.

M. R. Kolhatkar
(M.R.KOLHATKAR)
MEMBER (A).