

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.: 644/96

Date of Decision : 31<sup>st</sup> October 2000

S.Vishwanathan Applicant.

Shri J.M.Tanpure Advocate for the  
Applicant.

VERSUS

Union of India & Ors. Respondents.

Shri R.K.Shetty Advocate for the  
Respondents.

CORAM :

The Hon'ble Shri S.L.Jain, Member (J)

The Hon'ble Smt.Shanta Shastry, Member (A)

- (i) To be referred to the Reporter or not ? yes
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ? no
- (iii) Library

yes  
S.L.Jain  
(S.L.JAIN)  
MEMBER (J)

mrj\*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.644/96

Dated this the 31<sup>st</sup> day of October 2000.

CORAM : Hon'ble Shri S.L.Jain, Member (J)

Hon'ble Smt.Shanta Shastry, Member (A)

Shiva Vishwanathan,  
R/o.H.No.385 S.No.24/1,  
St.Thomas Colony, Mamurdi,  
Dehuroad, Tal.Maval Dist.Pune.

... Applicant

By Advocate Shri J.M.Tanpure

V/S.

1. Union of India through  
The Secretary,  
Ministry of Defence,  
South Block, New Delhi.

2. The Commandant,  
Ordnance Depot,  
Talegaon Dabhade,  
Tal.Maval, Dist. Pune.

... Respondents

By Advocate Shri R.K.Shetty

O R D E R

{Per : Shri S.L.Jain, Member (J)}

This is an application under Section 19 of the Administrative Tribunals Act, 1985 seeking a declaration that the applicant or his younger brother is entitled for compassionate appointment with a direction to the respondents to give an immediate employment on compassionate grounds to the applicant or

*Per Shetty*

..2/-

his younger brother Balkrishna Vishwanathan and to pay the pay and allowances from 12.10.1995 as if the applicant was on duty from 12.10.1995.

2. The applicant applied for compassionate appointment on 29.9.1995 vide Ex.'A-3'. His application was rejected by the respondents on 12.10.1995 vide Ex.'A-1'. The cause for rejection is "At this stage any action to give benefits to any party would be prejudice to the Court case, and therefore, no action can be taken on your application."

3. Sumitra Devi filed an OA.No.149/98 against the respondents claiming a declaration that she is entitled to the family pension as widow of A.Vishwanathan and wants a direction to the second respondent to send her family pension papers to the Chief Controller of Defence Accounts (Pension), Allahabad for releasing her family pension with 18% interest. The said OA. was decided on 5.3.1999 stating the fact that "this OA. is mis-conceived in the sense that the reliefs claimed and the dispute raised are beyond the scope and jurisdiction of this Tribunal. Accordingly, it is hereby dismissed, but without any orders as to costs."

4. The applicant claims to be the son of A.Vishwanathan who was working under Respondent No. 2, Ticket No. 5758 who expired on 22.3.1995. The said A.Vishwanathan had married Sumitra Devi on 5.11.1975. Out of the said marriage wedlock, he had two sons,

*J. S. M. /*

..3/-

namely, Shiva Vishwanathan and Balkrishna Vishwanathan born on 8.5.1977 and 4.8.1978 respectively. Claiming the status of son of said A.Vishwanathan application dated 29.9.1995 for compassionate appointment was filed.

5. The applicant has filed alongwith the OA. a copy of application for heirship certificate (succession certificate) filed by Smt. Padmavathi Vishwanathan who claims to be the married wife of A.Vishwanathan. On perusal of para 2 of the said application, it is <sup>b</sup>stated that Late A.Vishwanathan had heirs at the time of his death, namely, Rukmini Amma - the mother, A.Padmavati - wife, Sunil - son, Anil - son and had no heirs except this. Thus, Smt. Padmavathi claims that except the heirs stated by her, late A.Vishwanathan had no heirs. The said Misc. Application No. 480/95 is pending for decision.

6. The learned counsel for the applicant claims that A.Vishwanathan had filed a Criminal Case No. 482/82 in the Court of J.M.F.C. Vadgaon under Section 494 and 497 of I.P.C. in which it is stated that complainant had married Accused No. 1 according to Hindu Law at Dehuroad, Dist.Pune and out of that wedlock, the complainant had two sons. In the said case, Sumitra Vishwanathan was Accused No. 1. Thus, he argued that Sumitra Vishwanathan is the married wife of A.Vishwanathan and the Applicant is the son of late A.Vishwanathan.

*Pran* -

..4/-

7. The applicant has also filed alongwith rejoinder the extract from the Register of Births in the Cantonment of Dehu Road, affidavit of Sumitra Devi to prove that the applicant is her son and his nick name was Nagraju. It is suffice to state that it is being filed only with a view to meet the defence. 'A' service record states that Nagraju is the son of late A.Vishwanathan.

8. The applicant has arrayed only two respondents, namely, Union of India through the Secretary, Ministry of Defence and the Commandant, Ordnance Depot, Talegaon Dabhade. While hearing the application for early hearing on 6.8.1999, the Division Bench of this Tribunal has observed as under :-

"After hearing both sides and perusing the materials on record, we find that there is serious dispute about the relationship of the applicant with the deceased employee. It is also seen from the record that there is serious dispute between the two widows of deceased Vishwanathan. There is already an earlier OA. in this Tribunal in O.A.No. 149 of 1998 which was between the two widows - Smt.Sumitradevi, who is stated to be the applicant's mother and the second wife Smt.Padmavathi. In view of this position, we feel that the present OA. cannot be decided unless Smt. Padmavathi is impleaded as a party-respondent. Therefore, we hereby give liberty to the applicant to implead Smt. Padmavathi as party respondent and after notice to her and after the pleadings are complete, the applicant can file a fresh M.P. for early hearing.

9. After the said order was passed, the applicant did not care to avail the liberty granted to him to implead Smt.Padmavathi as party respondent.

*P. S. D. 2*

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10. It is also made out from the OA. that the litigation in respect of legal status of the applicant is pending.

11. A person can claim consideration by respondents for compassionate appointment and is not entitled to seek an order by the Tribunal directing the respondents to give an immediate employment on compassionate ground or pay allowances from the date when his application for compassionate appointment was not considered.

12. A legal status can be declared only by competent court of civil jurisdiction and none else. For this reason, while deciding OA.NO.149/98, the Bench has observed that the Tribunal cannot interfere, enquired or go into the matter respecting the validity or subsistence of the marriage for want of jurisdiction and it can be decided only by a Civil Court of competent jurisdiction.

13. In the aforesaid circumstances, the admission of A. Vishwanathan in criminal complaint can at the most be a piece of evidence along with an entry in birth register and an affidavit of Smt. Sumitra Devi. That is to be examined by competent court of Civil jurisdiction and not by this Tribunal for want of jurisdiction.

P. Cor. 2

..6/-

14. In the result, as the circumstances do exist at present, the respondents have committed no error while passing the order dated 12.10.1995. In the result, the OA. is liable to be dismissed and is dismissed accordingly with a liberty to the parties that on change of circumstances if the applicant and Balkrishnan are declared to be sons of late A.Vishwanathan, the applicant and Balkrishnan are at liberty to request the respondents to consider their cases for compassionate appointment as per law. No order as to costs.

*h-f*

(SMT. SHANTA SHASTRY)

MEMBER (A)

*S.L. Jain*

(S.L. JAIN)

MEMBER (J)

mrj.