

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO: 59/99

DATE OF DECISION: 31/7/2000

Shri Annis Khalik Shaikh

Applicant.

Shri S.P.Kulkarni

-----Advocate for
Applicant.

Versus

Union of India & 2 Ors.

-----Respondents.

Shri V.S.Masurkar

-----Advocate for
Respondents.

CORAM:

Hon'ble Shri B.N.Bahadur, Member(A)

1. To be referred to the Reporter or not?
2. Whether it needs to be circulated to
other Benches of the Tribunal?
3. Library.

No

128
(B.N.BAHADUR)
MEMBER(A)

abp

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO:59/99

DATED THE 31ST DAY OF JULY,2000

CORAM:HON.SHRI B.N.BAHADUR, MEMBER(A)

Shri Anis Khalik Shaikh,
(Sub-Postmaster, Nashik Division),
Nashik,
Residing at:House No.3196,
Chowk Mandai, Kalapura, Adarsh Road,
At P.O.Nashik,
District-Nashik-422 001. ... Applicant.

By Advocate Shri S.P.Kulkarni

V/s.

Union of India

Through:

1. Senior Superintendent of Post Offices,
Nashik Postal Division,
At P.O.Nashik- 422 001.
2. Postmaster General,
Aurangabad Region,
At P.O.Aurangabad - 431 002.
3. Chief Postmaster General,
Maharashtra Circle,
Old G.P.O. Building, 2nd Floor,
Fort, Mumbai,
AT POST MUMBAI-400 001. ... Respondents

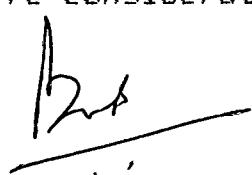
By Advocate Shri V.S.Masurkar

(O R D E R) (ORAL)

Per Shri B.N.Bahadur, Member(A)

This is an application made by Anis Khalik Shaikh, son of Shri Abdul Khalik Shaikh seeking the relief, in substance, that a direction may be given for the re-investigation into the case and for putting up the case to the Competent Committee for its re-consideration for appointment on compassionate

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grounds. I have seen all the papers in the case including some original record submitted at the time of arguments by Respondents and have also considered the arguments made before me by Learned Counsels on both sides.

2. The facts of the case are in a short compass in that Shri Abdul Kalik Shaikh unfortunately expired while in service on 15/4/97 while working as Sub Postmaster, Nasik Division and besides leaving behind a widow, left a married daughter, a son living separately and youngest son i.e. applicant who was then aged 24. The detailed facts are enumerated in the application.

3. The case of the applicant is as follows:-

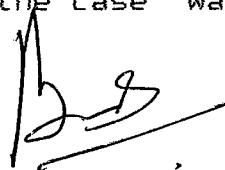
It is argued by Learned Counsel for Applicant, Shri S.P.Kulkarni that in the grounds of rejection vide Impugned letter dated 19/1/98 (Annexure A-1) it has been stated inter-alia, that there is the first son who is employed. The Learned Counsel went at great length and strenuously argued that this is wrong and made the point that has been taken up in the OA, the reply statement and then contested on facts in the rejoinder. The point made is that the elder son is also not employed and is in indigent circumstances himself. The Learned Counsel also took support from the Judgement of Anwar Farooqui (1998(1)ATJ 386) to state that a separated son already in employment did not provide a ground for rejection of such applications.



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4. Another important point taken by the Learned Counsel, Shri S.P.Kulkarni was one of discrimination, the example being cited of two cases detailed out in para-4.6 of OA viz. namely the cases of late Shri Y.H.Deshpande and late Shri G.V.Deobhankar. It was argued that in these cases, the financial status of those persons families was much better than that of the present applicant's but their dependents were provided with compassionate appointments. The plea of hostile discrimination was thus taken by Learned Counsel. While accepting the facts of the financial benefits received after the unfortunate death of Shri Abdul Khalik Shaikh, as listed at para-8 of Respondent's reply statement, the Learned Counsel, Shri Kulkarni, argued that this cannot be said to be very satisfactory circumstances, specially when compared to the two cases in respect of which he alleges hostile discrimination. Shri Kulkarni also cited that the the case of Smt.Eswari Bai decided upon by the Hyderabad Bench of this Tribunal on 2/2/94 (1994(1)ATJ-369) to make the point that authorities must consider all cases of compassionate appointment on comparative merit and should such a situation arise, this case can be re-considered at a later stage. Learned Counsel concluded his argument by praying for reliefs as claimed in the OA.

5. The case was argued on behalf of Respondent by Learned Counsel, Shri V.S.Masurkar. He took me over the facts of the case, as stated in reply statement, and first made the point that the case was examined in detail on merit by a Competent Committee headed by Post Master General, and all aspects of the merits of the case was thoroughly considered. The Learned Counsel stated



that the Applicant's mother i.e. widow of the Late Shri Abdul Khalik Shaikh was paid amounts of the order of Rs.2.3 lacs as detailed in para -8 of the written statement., besides the Pension of over Rs.4000/- payable every month, and hence argued that ~~her~~ ^{she} were not indigent circumstances.

6. Resisting the arguments of hostile discrimination, the Learned Counsel for Respondents stated that the two cases cited were considered in a meeting in 1995, and not alongwith the present applicant's case which was considered in September, 97. Hence, no discrimination is involved specially when no constitutional rights exist for such appointments.

7. In regard to the first point regarding the son staying separately and being unemployed, I cannot, in the first instance, ^{and the} go into a fishing enquiry about ~~the~~ status of employment of this son. The burden of the applicant's argument really is that he cannot be expected to become a support for the mother and youngest son, Supposing we accept this position straightaway, it cannot become a ground enough for granting relief to the applicant; the other facts would need to be considered independently, especially the one relating to the financial situation of the applicant and his mother.

8. It must be noted at this stage that the first consideration arises for the widow of the deceased Government servant. Admittedly, she has given no objection for appointment of the youngest son. However, the fact as to what she gets



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by way of financial dues from Government cannot be overlooked. Learned Counsel Shri Kulkarni mentions that Family Pension of Rs.4000/- plus appears high because this is given on higher rate for the first seven years after the death of the Government Servant. There is besides the amount of Rs.2.31acs paid as one time payment and even given that Pension will come down fairly substantially after seven years, we cannot say that these amounts are inconsequential. It is also to be noted that the youngest son was about 24 years old at the time of the unfortunate death of his father. It must be recapitulated here that the Hon'ble Apex Court has pointed out that this very system of granting compassionate appointment is an exceptional one and this aspect of the law settled by Supreme Court is important in this context. The object of providing immediate sustenance is also relevant. This is the aspect on which the case of the applicant is at its weakest, and we must realise that such appointments are to be given to the very exceptional cases, say, in cases where there is a liability of very young children with no earnings on a month to month basis, etc. There is substance in the contention of the Respondents that this is not a case of very indigent circumstances. Indigent circumstances have to be seen with reference to the overall facts and circumstances of a particular case.

9. I now come to the point of hostile discrimination. The points that the cases were not considered at the same meeting was sought by the respondents, but I am not very impressed by the argument that one set of cases was considered in

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1995 and the other in 1997. However, it is not possible for this Tribunal to take up these cases like an administrative authority. Also, even if it is assumed that these two cases (cited vis a vis discrimination) were not deserving, it will still be possible for this Tribunal to provide any relief on that ground. The Hon'ble Apex Court has ruled that even if a benefit is given to some party illegally; it cannot be a basis for providing reliefs later to someone else. Hence, ~~on the basis of hostile~~ while no conclusion can be reached regarding deserving nature or otherwise of those two cases, it can certainly be stated that they cannot become a basis for provision of any relief to the applicant.

10. I have gone through the original record produced and do not find it any facts which will help the case of the Applicant.

11. In view of the discussions made above, no relief can be provided to the applicant and hence this application is dismissed. There will be no orders as to costs.



(B.N.BAHADUR)
MEMBER(A)