

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

Original Application No.985/1999

Dated: 04/01/2001.

Smt. Sirtabai D. Ahir.

Applicant.

Shri R.C. Ravalani.

Advocate for
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri R.K.Shetty

Advocate for
Respondent(s)

CORAM :

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

- (1) To be referred to the Reporter or not? *Yes*
(2) Whether it needs to be circulated to
other Benches of the Tribunal? *No*

B.N. Bahadur
04-01-01
(B.N. BAHADUR)
MEMBER (A)

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THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

Original Application No.985/99

Dated this Thursday the 4th Day of January, 2001.

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

1. Smt. Sirtajbai D.Ahir
2. Shri Maharajdin D. Ahir
Both residing at Village Kaji Ka Purva,
Parshadepur, Teh: Salon
Dist. Rai Bareli (UP) 229129.

C/o Shri Bharat Yadav
55, Servant Quarter, Hills View Road,
Ordnance Estate, Khadki,
Pune 411003.

.... Applicants

vs.

1. Union of India
through: The Secretary
Ministry of Defence
South Block, New Delhi 110 011.
2. The Chairman
Ordnance Factories Board,
10-A, Shaheed Khudiram Bose Road,
Calcutta 700 001.
3. The General Manager
Ammunition Factory,
Khadki, Pune 411003.

.... Respondents.

(Respondents by Shri R.K. Shetty, Advocate)

O R D E R

[Per B.N.Bahadur, Member (A)]

This is an Application made by Smt.Sirtajbai D. Ahir and her son Shri Maharajdin D.Ahir, seeking the relief from this Tribunal, that the Respondents be directed to consider the case of Applicant No.2, for compassionate appointment, to any Class IV post, and appoint him, giving relaxation in age, as he was already declared successful in 1989, after an interview.

2. The case made out by the Applicants is that the late Shri Dashadin G. Ahir (husband of Applicant No.1 and father of Applicant No.2) who was working under Respondent No.3 had been

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detected as a cancer patient, and had thereafter requested for "Medical Board Out" and for the employment of the third son (Applicant No.2). This request was made by him vide an Application dated 4.7.1987 (annexure A.3). The Applicant further avers that before any action could be taken on this Application, Shri Dashadin expired on 26.7.1987. Applicant No.1 applied for compassionate ~~and~~ employment of Applicant No.2, who is her third son, since the first son was blind; and the second son was employed, but living separately, and not supporting the family.

3. It is further averred by the Applicants that an oral interview was taken, and Applicant No.2 was declared successful for appointment as labourer, but was however, not employed. Finally, Respondent No.2 informed the Applicant No.1, as late as on 2.4.1992, (A.2) that the Applicant No.2 cannot be provided an appointment, as the second son had failed to join duty at Ordnance Factory, Varangaon. It is with such grievance that the Applicants have filed this O.A. Two M.Ps. have also been filed one for condonation of delay and other for allowing a Joint Petition. These M.Ps. are also being considered herein, since they do not seem to have been decided.

4. A reply have been filed on behalf of the Respondents. It is stated that an Application for considering the case of second son, Shri Bindadin Ahir, for compassionate appointment was made by Applicant No.1 (Ex. R.1). It is averred the said Shri Bindadin was offered an appointment, as labourer, in Ordnance Factory, Varangaon (R.2). However, Shri Bindadin refused duties as he had already secured employment, in another organisation, at Khadki, Pune. Hence the offer of appointment was cancelled. Thereafter, Applicant made ~~a~~ fresh Applications on 24.4.1988, and 21.12.1988

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making a request for appointment of Maharajdin, on the ground that ^{the} second son is living separately and not assisting her.

5. Respondents agree that Maharajdin was interviewed on 19.10.1989 when the position regarding second son, being since employed was realised. It is further averred that despite this suppression of information by the widow, the case of Maharajdin, was forwarded to OFB Calcutta, which turned down the case on the ground that the family had once refused compassionate appointment, and that the question of reconsidering the matter after 5 years did not arise. Even a second investigation and recommendation was turned down, as described in the reply statement. Further, ~~in~~ the reply statement, parawise replies had been given. The respondents thus pray that the Application is devoid of merit, and needs to be dismissed.

6. I have gone through all the papers in the case, including the rejoinder/sur rejoinder filed and have considered the arguments made by learned ^{Counsel B.S.} on both sides.

7. Considering the facts of the case, it is clear that the prayer made for joint application is justifiable. The M.P. in this regard is, therefore, allowed.

8. Learned Counsel for the Applicant first took us over the facts of the case, and took the plea that the second son had been independently employed, and was working in another factory. It was argued that the Applications made, by both the deceased Govt. Servant and the widow had requested for the appointment of Maharajdin, i.e. the third son. No interview was taken in regard to the second son. It was reiterated that the second son lived separately and the family has no support from him. Learned

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Counsel argued on this point in some detail with reference to para 4 (e) of the instructions contained in OM (Copy at A-11) dt. 30.6.1987 governing compassionate appointment. He made the point that no consideration of his case as laid in this paragraph, was made by the Respondents. In fact, the consideration was to be made by the Secretary of the Department. Learned Counsel sought to take the support of the case of Anand Gadj [2000 (1) AISLJ 3111.]

9. Learned Counsel for applicant further went on to argue how deserving the case was, where the widow had been left with the responsibility of one blind son, a big family, and virtually no resources. Other conditions of the family were then described specially the point that the family had no property or any other support, and that they were in dire circumstances.

10. On the point of limitation, the Learned Counsel for the Applicant sought support from the case of Raguraman reported at (189 (11) ATC 495). He made the point that the cause of action arises after the second representation was rejected, and prayed that the Application made for condonation of delay be allowed.

11. ^{B.S.} ~~legally~~ The learned Counsel for the Respondents, Shri R.K. Shetty, took support from the Written Statement of Reply, and first took up the point regarding limitation, and delay and laches. It was further argued that such a long time having elapsed, the case was not eligible for consideration on the ground that compassionate appointment was to be provided with a view to meeting the needs arising soon after the demise of the bread winner.

12. Shri Shetty highlighted the points regarding suppression of information about employment of the second son, and also argued

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that once the offer of appointment was rejected by one member of the family, the other son had no right to it.

13. The chronology of events, as gleaned from correspondence cited by both sides is put together below. (It is important not only for getting a clear idea of the case but also to assess the overall picture of the stands taken/averrments made):

04.07.1987	Request by Shri Dashadin (employee) boarding out for employment for 3rd Son (Maharajdin).
26.07.1987	Shri Dashadin passes away.
18.09.1987	Widow requests for employment for 2nd son.
20.03.1988	Fact Sheet (A-4)
20.04.1988	2nd son informs about his getting a job.
13.07.1988	Offer for appointment to 2nd son.
08.08.1998	Page 60 of the letter.

14. Except in the letter dated 8.9.1987 the request by the applicant No.1 (and her husband, earlier) has throughout been for employment for Maharajdin. From an overview of events it is important to note that on 20.4.1988 a letter has been written by the second son, informing the authorites regarding his own employment. Thus there was no real attempt to hide things as a design. Hence too much need not be made of a single communication in the background of all others. Also this information is available, and in fact provided by Applicant No.1, in the fact sheet dated 20.3.1988 (Annexure - 4). Thus this point should hold back the consideration of the case.

15. Now, going further from the above discussions, we come to the aspect relating to the eligibility of the Applicant vis-a-vis the fact that one of the brothers had secured employment

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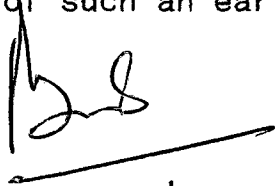
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elsewhere. This employment was secured perhaps through his own efforts, not as a part of the provision of compassionate appointment in view of the death of the father. Be that as it may, we are to be guided in this regard by the instructions of the Govt. issued by the Department of Personnel and Training vide its O.M. dated 30.6.1987 (Annexure A.II). Para 4 (e) of these instructions reads as follows:

"(e) In deserving cases even where there is an earning member in the family, a son/daughter/near relative of the deceased Government servant, leaving his family in distress may be considered for appointment with the prior approval of the Secretary of the Department concerned who, before approving the appointment, will satisfy himself that the grant of concession is justified having regard to the number of dependants, the assets and liabilities left by the deceased Government servant, the income of the earning member as also his liabilities including the fact that the earning member is residing with the family of the deceased Government servant and whether he should not be a source of support to the other members of the family."

16. In the present case, there has been no examination of the case in regard to the earning of the family, and overall financial background. The entire attention of the authorities seems to have been concentrated on the aspect of the second brother's not responding to the position offered. It is thus seen that the examination of the case has been undertaken with a fragmented vision, and not in totality. Once, it is conceded through examination of the facts as brought in Annexure IV, that one son is living separately, it was necessary that a detailed examination of the Family's income and social and other difficulties be examined with reference to the facts and circumstances in which the family found itself, suddenly, in view of such an early death of the breadwinner. For instance, it seen

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that, there are the adverse circumstances about a blind brother, who has to be looked after. The recommendation made by the Ordnance Factory in its letter dated 8.8.1998 (Annexed to replies statement by Respondents) would also need to be considered. Further, copies of some letters are filed by Applicants while some others by Respondents and it will be desirable to view them all in totality, apart from other record which Respondent may have, or may like to get.

17. In the facts and circumstances discussed above, it will be justifiable if this case is re-examined by the Competent Authority with reference to the observations made above and the provisions of the aforesaid para 4 (e) of Govt. instructions. Since the authority competent to take a final decision in this regard vests with the Secretary of the Department, such consideration would need to be made by the Secretary of the Department i.e. Respondent No.1.

18. As regards the point regarding limitation, it is true that the application is hit by the law of limitation. But at no point was the pursuit with authorities given up. Considering the facts and circumstances and the need for substantial justice, the M.P. seeking condonation of delay is therefore allowed.

19. Consequently this O.A. is disposed of with the following orders.

(a) Respondent No.1 i.e. Secretary to the Govt. of India shall reconsider this case, with reference to the observations made above, on merits and in accordance with Rules and take a decision. The decision shall be taken within a period of 3 months from the date of receipt of a copy of this Order and shall be communicated to Applicant No.1.

(b) There will be no orders as to costs.

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

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04/01/01.