

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.663/2000.

Wednesday, this the 21st day of March, 2001.

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

Laxman Malji Pervi,
Room No.22,
Ganesh Nagar,
Saltpen Road,
Wadala (E),
Mumbai - 400 037.
(By Advocate Shri S.V.Marne)

...Applicant.

Vs.

1. The Union of India
through The Secretary,
Ministry of Defence,
South Block,
New Delhi.
2. The Flag Officer,
Commanding-in-Chief,
Western Naval Command,
Shahid Bhagat Singh Marg,
Mumbai.
3. The Admiral Superintendent,
Naval Dockyard,
Mumbai - 400 023.
(By Advocate Shri V.S.Masurkar)

...Respondents.

O R D E R (ORAL)

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

This is an Application made by Shri Laxman Malji Pervi seeking the relief for quashing and setting aside the impugned orders dt. 30.8.1999 and 12.4.2000 (Annexures - A-1 and A-2). Also, the Applicant seeks a direction to the Respondents to grant him compassionate appointment forthwith.

2. The facts of the case are that the Applicant's father

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B.S. of *unfortunately expired on 6/6/95 while he was in the service*
the Respondents. The applicant contends that the mother had made *B.S.*
an application dt. nil, but in 1995 and had prayed for
compassionate appointment for the applicant (son). The applicant
thereafter gives details of his family, at para 4.4, to state
that, apart from wife of the deceased government servant, there are
three sons who are admittedly settled, but living separately, and,
apart from the applicant, there are three daughters who are
totally dependent and were yet to be married. The applicant also
states fairly in the application that the mother is in receipt of
family pension of Rs.1800/- p.m. and has also received certain
retiral benefits after the death of the applicant's father. It
is stated that these sums of money were utilised for the marriage
of one daughter later, and for maintenance of a large family. In
fact, the applicant's family is in dire pecuniary circumstances
giving difficult economic situation due to high prices, it is
averred.

3. The Applicant further points out the deficiencies in the
manner of consideration of the applicant's request in that the
system of marking as envisaged by the instructions at page 31 has
not been followed. Certain other reasons are brought forth as to
why the applicant is aggrieved by his application being not
properly considered. These were expounded in the oral arguments
by his Learned Counsel.

4. The Respondents have filed a written statement in reply,
where the claim of the Applicant is resisted and it is stated
that the case has been considered, in fact, by the Naval

Headquarters, and the Ministry of Defence, and it was only after consideration by the competent authority that the case has been rejected. The Respondents point out in para 8 that a sum of about Rs.1.85 lacs was provided as retiral benefits, apart from the total pension of Rs.1800/- p.m. (it has subsequently been clarified by Learned Counsel for Applicant that a basic pension of 1500 + Dearness Relief has been sanctioned). The point taken is that dire pecuniary circumstances do not exist in the case of the family. Further details are provided in the written statement to the effect that the three brothers are employed and that casual employment was provided as a temporary measure after the unfortunate death of the applicant's father.

5. I have seen all the papers in the case including the Rejoinder and Sur-Rejoinder filed, and have also considered the arguments made by Learned Counsels on both sides.

6. Arguing the case on behalf of the applicant, their Learned Counsel Shri S.V.Marne went over the facts of the case and made strenuous contentions in support of the case. These are reproduced below in gist:

(1) The first point made was that no reasons had been given in the impugned orders at Annexure A-1 and A-2 and that this showed improper consideration of the case.

(2) The fact of grant of casual employment to the applicant after the death of his father implied that there was a genuine need by the family of such assistance and in fact, this strengthens Applicant's case ~~of~~ for the compassionate appointment.

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The Learned Counsel for Applicant Shri Marne stated that after the implementation of the Vth Pay Commission Report by the Union Government a minimum family pension of Rs.1500/- plus Dearness Relief is available to even the lowest paid servant, and similar amounts as available to applicant are available to almost any one, hence this should not be a consideration. This would mean that any Application would be rejected. Learned Counsel sought support from the ratio of the case decided by the Hon'ble Supreme Court in the matter of Balbir Kaur and Anr. Vs. Steel Authority of India Ltd. (2000 SCC (L&S) 767). Another ground reiterated by the Learned Counsel, Shri Marne, was that weightage system was not followed, and this would have implied the entitlements of compassionate appointment to the applicant.

7. Arguing the case on behalf of the Respondents, their Learned Counsel, Shri V.S.Masurkar, also took me over the facts of the case and sought to meet pointwise the arguments made by Shri Marne. Arguing that the size of the family was not itself enough condition to provide relief as per Rules, he stated that instructions (page 26 to 30) of the paper book were scrupulously followed and appropriate consideration at proper level was made. Shri Masurkar stated that Rules nowhere provided for a speaking order. Thus, he contended that this cannot be a ground for the applicant's claim in itself.

8. Shri Masurkar further made a point that reasons have been indicated in the files of the Respondents and have been brought out clearly in the written statement. In this direction the details regarding the availability of the post-retiral benefits

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were emphasised and reiterated. It was also pointed out that mere provision of casual employment does not commit the Respondents to ^{providing Post} regular compassionate appointment. Reacting to the point about higher level of post-retiral benefits now available, Learned Counsel made the point that this in itself does not mean that the basic law decided by the Supreme Court would change or that different standards would need to be applied to assess cases. Learned Counsel stated that the case of Balbir Kaur was specifically related to a Public Sector Undertaking, and would not apply in the present case. An analysis of the facts in this case show that it is admitted that an amount of Rs.1.85 lacs and a basic pension which is about Rs.1800/- p.m. has been made available to the widow of the deceased government servant i.e. applicant's family.

9. In the first instance, the fact that the impugned orders do not give detailed reasons for rejection of the case of the applicant does not provide right to the applicant or constitute a legality as argued on behalf of the applicant. What has to be seen is whether proper consideration has been made and facts assessed properly or whether the case has been considered in an arbitrary fashion devoid of legitimate sympathy. In any case, the grounds have now been substantially put forth in the written statement that has become available in this OA and the applicant has had full opportunity for arguing his case.

10. I am not able to be convinced by the argument made by the Counsel for the applicant that given that fact of higher

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assistance now available because of acceptance of Vth Pay Commission recommendations, the amounts provided have to be judged in a different light. In the first instance, there is considerable weight in the argument by the Respondents that the case of Balbir Kaur has been decided to a particular scheme of a particular Public Sector Organisation. The basic principles of the Supreme Court as settled in the case of Mrs. Asha Ramachandra Ambekar & Ors., Umesh Kumar Nagpal and other cases still stand in relevant cases. Just because better facilities are made available to Government servants, the basic factor that the financial circumstances have to be taken into consideration does not change. It has to be remembered as per settled law that the mode of providing compassionate appointment is an exception to the general Rule of selection for government employment and therefore, cannot be provided without reference to dire needs. Thus, higher facilities provided by the Pay Commission cannot become any ground, ipso facto, for automatic leniency being shown in the assessment of needs. Given the circumstances in the country, while it cannot be said that the family of the applicant is in very happy circumstances, it also cannot be said that the circumstances are so impecunious as to call for provision of relief through judicial intervention. ~~I now, come to the point~~ BnB

14. I now, come to the point regarding the marking system. These are devices and instructions/guidelines of Government to ensure fair and impartial consideration. What has to be seen, therefore is whether there was any arbitrariness or patent

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irregularity, favouritism etc. The argument taken by applicant that the marking system is sacrosanct in a manner to establish claim by his own arguments cannot be allowed to stand. What Learned Counsel stated was that as per the statement at page 32, he would certainly get more than 50% marks which would entitle him compassionate appointment. Now, this is a matter which a Tribunal will not do to go into in a manner as ⁴⁻¹⁵⁻⁸ it was a superior government authority. Thus, no rights by judicial determination on this count also become available. Similarly the granting of casual employment to the applicant may certainly have been a right step, but that also does not establish a right, as argued.

12. In view of the circumstances discussed above, the applicant has not persuaded me that interference is deserved in the case. Hence, the OA is hereby dismissed, with no order as to costs.

B.N. Bahadur

(B.N. BAHADUR)
MEMBER(A)

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