

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 673 of 2000.

Dated this Monday, the 1st day of October, 2001.

Smt. Jayashree Jayandra More, Applicant.

Shri P. A. Prabhakaran, Advocate for the
Applicant.

VERSUS

Union of India & Another, Respondents.

Shri S. S. Karkera for Advocate for
Shri P. M. Pradhan, Respondents.

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

- (i) To be referred to the Reporter or not ?
- (ii) Whether it needs to be circulated to other
Benches of the Tribunal ?
- (iii) Library.


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

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Dated this Monday, the 1st day of October, 2001.

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

Smt. Jayashree Jayandra More,
Resident of -
714, Old BMC Chawl,
2nd Hasnabad Lane,
Khar (W),
Mumbai - 400 052.

...

Applicant.

(By Advocate Shri P.A. Prabhakaran)

VERSUS

1. The Director General,
All India Radio,
Akashwani Bhavan,
Parliament Street,
New Delhi - 110 001
Representing Union of India.

2. The Station Director,
All India Radio,
Broadcasting House,
Backbay Reclamation,
Mumbai - 400 020.

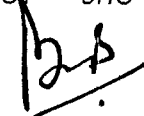
... Respondents.

(By Advocate Shri S. S. Karkera for
Shri P. M. Pradhan).

O R D E R (ORAL)

PER : Shri B. N. Bahadur, Member (A).

The Applicant in this case, Smt. Jayashree J. More, is the widow of the late Shri Jayandra Gajanan More. The latter expired on 25.12.1995 while working in the Departmental Canteen of the Office of the Station Director, All India Radio,



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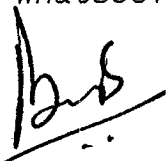
Broadcasting House, Backbay Reclamation, Mumbai (Respondent No. 2). He was working at that time as a Bearer in the aforesaid canteen. The Applicant has come up to this Tribunal seeking the relief for a direction to provide her compassionate appointment in terms of letter and spirit of the rules governing such employment.

2. The facts of the case, as brought out from the O.A., the Written Reply and from the arguments brought out today by both Learned Counsel are that the Applicant made an application praying for some suitable employment on compassionate grounds.

4. The first such application was made on 10.06.1996. She claims she followed this up with personal visits and avers that the ban on recruitment does not apply to compassionate appointments. The Applicant states that she has been persuing the matter with Respondents but with no response. The Canteen has number of posts as indicated in para 4.7 including 3 posts of Bearers, she avers.

3. In the Written Statement of reply, the respondents have attempted to meet the averments made in the O.A., parawise. A perusal of the detailed statement showed that two points are made, the first being a reference to the part of the Scheme which envisages employment to only those families which are placed in dire pecuniary circumstances. However, there is no discussion whatsoever or a contention taken that the financial condition of

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the Applicant is good. The second contention taken is that the compassionate appointment is possible only towards filling up 5% of the Direct Recruit posts.

4. I have heard the Learned Counsel on both sides and perused the papers in the case as also the Scheme for Compassionate Appointment, 1998, issued by the Department of Personnel, of the Union Government. I have also considered the arguments made by both Learned Counsel, Shri P. A. Prabhakaran for the Applicant and Shri S. S. Karkera for the Respondents.

5. Shri Prabhakaran made the point that the Applicant satisfies all conditions of eligibility as per rules. Firstly, that the local office at Mumbai has recommended her case for appointment on compassionate grounds, as Bearer in the Akashwani Departmental Canteen in relaxation of educational qualification vide their letter dated 08.07.1996 (Exhibit A-1). It is stated in this letter, inter alia, that "the family of Late Shri J. G. More, has three small children in dire need of immediate assistance as there is no earning member in her family." Thus he argued the deserving nature of the case. In regard to the second point about the compassionate appointment being possible only in regard to 5% of Direct Recruit quota, Shri Prabhakaran stated that there were vacancies available and there were no rules to show that there was no Direct Recruitment quota.

6. Learned Counsel, Shri S. S. Karkera, while admitting that the case had been recommended by the Local Office in terms of



need, etc. made the point that the post of Bearer though vacant, was slotted for being filled up on promotion. This was the main defence taken. (No promotion has been made admittedly for a decade). Shri Karkera produced a booklet in original, which is titled as 'Model Recruitment Rules' It was agreed to during argument that these were only model rules and not Recruitment Rules.

7. On the first issue regarding need, there seems to be no doubt. Well, as a reference has been made to the rule, it is clear from the letter at page 10 written on behalf of Station Director, Mumbai dated 08.07.1996 that the case of the Applicant has been recommended after due application of mind. It is a detailed letter which inter alia shows satisfaction about the pecuniary status of the Applicant/his family and the conviction about genuineness of need. This has not been countered. On this score, the Applicant has a good case, since his financial condition of need is admittedly satisfied.

8. Now to examine the other point, there is no doubt, as could be seen from para 7 of the Scheme that compassionate appointment is anticipated only against Direct Recruitment post. However, the written statement does not talk of any Recruitment Rule. A very general point is made in Written Statement which nodoubt has been clarified today by the Learned Counsel for the Respondents by providing relevant facts. What transpires is that there is no recruitment rule in force today for the post of Bearers. The Recruitment Rule is a statutory rule and we cannot



go by the argument that they are mere general guidelines. We wish this point had been clearly dealt with in the Written Statement itself. It has indeed now been dealt with only during arguments by the Learned Counsel for Respondents. It cannot, therefore, be concluded that this is a promotional post. It is unfortunately observed that no attempts are made for filling up these posts for a long time by promotion either, which while it is clearly an administrative matter and left to the department, certainly cannot be a ground to argue that it is a Direct Recruitment post. Be that as it may, this objection is not valid in terms of the clear position that Recruitment Rules do not exist. There was some discussion during argument on both sides about availability of some posts of Wash Boys. On being questioned, it was stated that there are posts of Wash Boys from which promotion can be made to the post of Bearer. All of these posts of Wash Boys as of today were occupied and none was vacant, according to Learned Counsel for Respondents.

9. I was also informed in Open Court today by the Learned Counsel, Shri S.S. Karkera that the Applicant's case was considered for suitable appointment but she has been kept in Wait List No. 3 of Maharashtra Zone.

10. In the facts and circumstances of the case and the discussions made above, it is clear that the Applicant deserves immediate reconsideration for compassionate appointment by the Respondents in the light of the above discussions. They will consider her for the post of Bearer by ignoring the argument that

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these are promotional posts and that the Applicant is therefore not even entitled for consideration. If however, in the face of any overwhelming difficulty it is felt that Wash Boys are to be promoted in preference, there would be no harm if she is considered even for the post of Wash Boy. Consideration of applicant's case as above shall be made within a period of three months from the date of receipt of a copy of this order. The Applicant shall be informed accordingly in writing through a detailed letter of the decision taken.

11. The O.A. is disposed of in terms of above directions/decisions, with no order as to costs.



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

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C.P./No: 48/02

for orders.
Fixed for
hearing on.
14/6/02

ml
21/6/02

14-6-2002 (9)

Applicant by Shri P. A. Parabhakaran.
Respondents by Shri P. M. Padhan.

By consent of both sides,
adjourned to 28-6-2002.

Shri
(Shri Jain)
MCA

ml
(B. N. B. Shadur)
MCA

(7) 28.6.2002

Counsel for applicant is not
present. Shri P. M. Padhan Counsel
for respondents.

Let the case be listed on
5/7/2002.

ml
(M. Singh)
MCA

B. Dixit
(B. Dixit)
MCA

H.

OA 673/2002

Dated: 6.12.02

Shri P.A.Prabhakaran for the Applicant.
 Shri S.S.Kulkarni ~~Kulkarni~~ counsel for the Respondents.

Both counsel inform us and place on record copy of the order of the High Court dated 16.10.2002 stating that High Court has decided the matter providing four weeks time to comply with the order. We are also informed that Applicant in OA has since been appointed and appointment order has been issued. In view of the above decision, Contempt Petition does not survive. Contempt Petition is rejected. Notice issued to the Respondents is discharged.

S.L.Jain
 (S.L.Jain)
 Member (J)

B.N.Bahadur
 (B.N.Bahadur)
 Member (A)

Shri S.S.Kulkarni (counsel)
 9/12

06/12/02
 order/judgment despatched
 to the respondent (S)
04/01/03

01/01/03