

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO: 158/2000

DATE OF DECISION: 2/02/2001

Mrs.Daisy John & Anr. Applicant.

Ms.N.Gohad for Shri S.P.Saxena Advocate for
----- Applicant.

Versus

Union of India & 4 Ors. Respondents.

Shri R.R.Shetty for Shri R.K.Shetty Advocate for
----- Respondents.

CORAM:
Hon'ble Smt. Shanta Shastry 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.

Shanta *J*
(SHANTA SHAstry)
MEMBER(A)

abp

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO: 158/2000
DATED THE 2nd DAY OF Feb 2001

CORAM: HON'BLE SMT.SHANTA SHAstry, MEMBER(A)

1. Mrs.Daisy John,
W/o.Late Mr.E.J.John,
C/o.Mr.Samkutty John,
Flat No.12/B,
Vishal Chaitanya Hsg. Society,
Kasarwadi, Pune - 411 034.
2. Miss. Jai John
D/O.Late Mr.E.J.John,
C/o.Mr.Samkutty John,
Flat No.12/B,
Vishal Chaitanya Hsg. Society,
Kasarwadi, Pune - 411 034. Applicants

By Advocate Ms.N.Gohad for
Shri S.P.Saxena

v/s.

1. Union of India,
Through the Secretary,
Ministry of Defence,
DHQ, P.O.,
New Delhi - 110 011.
2. The Chief of Army Staff,
Army Head Quarters,
South Block, DHQ, P.O.,
New Delhi - 110 011.
3. The Directorate General of
Sigs/Sigs 4(c)
Army Head Quarters,
G.S.Branch, Signal S/4,
South Block, DHQ, P.O.,
New Delhi - 110 011.
4. The Admin. Commandant
Station Head Quarters,
Kirkee, Pune - 411 003.
5. The Chief Signal Officer,
Head Quarters,
Southern Command,
Pune - 411 001.

By Advocate Shri R.R.Shetty for
Shri R.K.Shetty.

:2:
(ORDER)

Per Smt. Shanta Shastry, Member(A)

This OA has been filed for directions to the respondents to give compassionate appointment to applicant No.2.

2. The applicants are the wife and daughter respectively of late E.J. John who was working as CSDO Gr.I in the O/O. Respondent No.4 at Pune. Late Shri John expired on 22/5/97 due to sickness after completing 27 years of service. At the time of his death, he left behind four family members namely wife, daughter and father and mother. The applicants have received the terminal benefit, and family pension has been sanctioned to applicant No.1.

3. The applicants submit that they had to incur heavy medical expenses on the treatment of Shri John while he was in hospital, infact they had to borrow money for the treatment. They had also to vacate the quarters. They have now to share a flat with brother-in-law of applicant no.1 and pay heavy rent of Rs.1500/-p.m. as their contribution. In order to meet the family needs, the applicant No.1 approached Respondent No.4 on 2/6/97 requesting for compassionate appointment for her daughter. Thereafter, applicant No.2 also made an application on 5/6/97 requesting for a job for herself. The application was considered by the respondent but was turned down in August 1998. The R.No.4 however, recommended the case of Applicant No.2 to Army Headquarter vide letter dated 3/4/98. The Respondents vide letter dated 13/5/98, informed that the application would be considered again. However, in August 1998, it was informed that her application was considered but could not be recommended. A further recommendation was made in October 98 by Respondent No.4 to Respondent No.3. However, the Respondent No.5 vide letter

dated 15.3.99 addressed to Respondent.No.4 informed that on the basis of norms laid down the application of civilian could not be recommended for employment assistance. It was further informed in 24/7/99 that applicant's case was considered thrice and rejected. The Applicant No.1 again submitted an application to Respondent.No.2 through Proper Channel on 10/12/99. So far she has not met with any success. It is the case of the applicants that the respondents should not discriminate between civilian and military employees. The applicants are in dire need of employment and the case needs to be considered sympathetically.

4. The learned counsel for the respondents however opposes the claim. It is explained that the applicant has received total dues of Rs.2,22,223/-. The applicant No.1 is getting a pension of Rs.860/- plus DA. Also, the medical expenses incurred by applicant on the treatment of her late husband is subject to reimbursement as the deceased employee was a CGHS beneficiary. The respondents state that they have made every effort to accommodate the applicant, however due to non availability of vacancies and due to there being a large number of applications for compassionate appointment and the applicant's case being comparatively weaker, the respondents have not been able to provide compassionate appointment to the applicant. The respondents submit that they have a marking system and the applicants for compassionate appointment are graded on that basis. Those securing higher marks are given priority. The applicant secured 41 marks on the basis of amount of family pension, terminal benefits, movable immovable property, minor sons and unmarried daughter, others included in the application, left over service of the Government Servant. The applicant's case was

considered a third time. Against 5% direct recruit quota one post is vacant in Group 'D'. This vacancy went to applicant who was awarded 77 marks. There are five others who ~~was~~ awarded more than 41 marks. Thus in comparison the other applicants have been considered to be more needy than the present applicants and hence the rejection.

5. The learned counsel for the applicants pleaded that though Rs.2,22,223/- were received by the family in reality the family had to incur huge expenditure even though some of the expenditure on medical treatment is reimbursable. The learned counsel also assailed the policy of the respondents in discriminating between civilian and military employees and violative of Articles 14 and 16 of the Constitution of India. Commenting on the marking system she expressed that appointments on compassionate grounds should not be on the basis of a competition. She also mentioned that in a similar OA No.421/97, decided on 25/3/98 in the matter of Lata Dabhade V/s. Union of India & Ors this Tribunal had held the marking system as clearly irrational and had directed the respondents to reconsider the case of the applicant for grant of compassionate appointment against the next available vacancy. In that case also the applicant's request had been rejected thrice.

6. The learned counsel is further relying on the judgement of the Andhra Pradesh High Court delivered on 8/12/99 in A.P.S.R.T.C & another versus Smt. Abidha Khanam. The compassionate appointment was denied on the ground of ban on recruitment. It was held that the denial was not justified. Authorities were directed to consider granting compassionate appointment for post of sweeper. Further reliance has been placed on the judgement of the Supreme Court in Balbir Kaur and

Anr. V/s. Steel Authority of India Ltd & Ors. 2000 Supreme Court Cases (L&S) 767. It was observed therein that denial of compassionate appointment in deserving cases would neither be fair nor reasonable in the context of constitutional philosophy. The learned counsel vehemently pleaded for grant of compassionate appointment to the applicant.

7. The learned counsel for the respondents have stood firm and averred that the case of the applicant's was considered thrice strictly according to rules and scrutiny conducted by a Board of Officers. The marking system has to be resorted to due to a limited number of vacancies for consideration against compassionate appointment. Therefore the applicant cannot be granted compassionate appointment.

8. I have heard the learned counsel for both sides and have given careful consideration to the pleadings. Each case for compassionate appointment needs to be considered on its own merits. There are several judgements wherein it has been held that compassionate appointment is not a right. What counts is the indigent condition of the family after the death of the breadwinner. At the same time, the Government has a scheme of grant of compassionate appointment with certain guidelines. Therefore the case of the applicant needs to be considered in the light of the guidelines. The procedure to be adopted should be judicious and not mechanical. I find that the applicants are helpless with no earning member in the family except the pension which is not adequate. I am in agreement with the judgement in

OA No.521/97 (supra) and direct the respondents to reconsider the case of the applicants against the next available vacancy. Action be taken within three months from the date of communication of this order. OA is allowed. There will be no order as to costs.

Shanta S
(SHANTA SHAstry)
MEMBER(A)

abp

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

CONTEMPE PETITION NO. 61/2001
IN
ORIGINAL APPLICATION NO.158/2000

WEDNESDAY, THE 28TH DAY OF SEPTEMBER, 2001

CORAM: SHRI JUSTICE V.RAJAGOPALA REDDY.VICE CHAIRMAN
SMT. SHANTA SHAstry. MEMBER (A)

Mrs. Daisy John & another Contempt Petitioners

By Advocate Ms. N.G. Gohad

Versus

1. Col. Rai,
commandant,
Station Headquarters,
Kirkee,
Pune-411 003.
2. Mj. General Chopra
Chief Signal Officer,
Headquarters, S.C.,
Pune-411 001. Contemnners/ Respondents

By Advocate Shri R.K. Shetty.

O R D E R (ORAL)

Shri Justice V. Rajagopala Reddy, Vice Chairman (J)

This Contempt Petition arises out of the judgment of the Tribunal in the above OA dated 02nd February, 2001. The direction granted in the above order was to reconsider the case of the contempt petitioner No.2 (Applicant No.2 in the OA) for appointing her on compassionate grounds.

OK

2. Learned counsel for the respondents filed an affidavit before us to state that the petitioner No.2 (i.e. Applicant No.2 in OA) has been reconsidered as directed, but she did not find a place in the merit list and hence her case was rejected.

3. In view of the above, we do not find any violation of the orders of the Tribunal. Contempt Petition is, therefore, dismissed. In the circumstances, no costs.

Shanta Shastray

(SMT. SHANTA SHAstry) (V. RAJAGOPALA REDDY)
MEMBER (A) VICE CHAIRMAN (J)

Am Gajalalay

Gajan