

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Dated this Tuesday the 20th November, 2001

Coram: Hon'ble Mr.B.N.Bahadur - Member (A) -

ORIGINAL APPLICATION NO.482 OF 2001 & 481 OF 2001

Mahesh V.Chavan,
s/o late Shri V.K.Chavan,
Group 'D',
R/o D-5/1 P & T Colony,
Santacruz (East),
Mumbai 400 029.

(By Advocate Shri B.S.Dhuri)

- Applicant

VERSUS

1. Union of India through
the Chief Postmaster General,
Maharastra Circle, II Floor,
Old G.P.O. Building,Near C.S.T.,
Mumbai.
2. Senior Superintendent,
Railway Mail Sorting Division,
Mumbai 400001.
(By Advocate Smt. H.P.Shah)

- Respondents

ORIGINAL APPLICATION NO. 481 OF 2001

1. Sanjivanjivani Vasant Chavan,
W/o Vasant K.Chavan.
2. Mahesh Vasant Chavan,
S/o late Shri Vasant K.Chavan
(Both applicants residing at
D-5/1, P & T Colony,
Santacruz East
Mumbai 400 029.
(By Advocate Shri B.S. Dhuri)

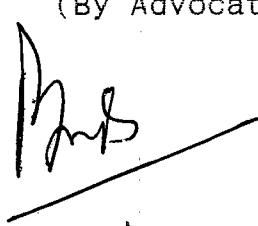
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(By Advocate Smt. H.P.Shah)

-Respondents

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COMMON ORAL ORDER

Two OAs are considered together, viz. OA 482 of 2001 and OA 481 of 2001, since the facts are common and the relief sought are inter-related. OA 482 of 2001 is filed by Mahesh Vasant Chavan, son of late Vasant K. Chavan. OA 481 of 2001 is filed jointly by the widow of late Vasant K. Chavan and Mahesh Vasant Chavan, son of late Vasant K. Chavan. I have heard, at some length the learned counsel Shri B.S. Dhuri who appears for the applicants in both the above OAs and learned counsel Smt. H.P. Shah who appears for the respondents in both OAs. OA 482 of 2001 is being taken first since it relates to issue regarding compassionate appointment.

2. The relief prayed in OA 482 of 2001, in substance, is that the Applicant Mahesh Vasant Chavan has been denied immediate appointment on compassionate grounds which as contended by him is arbitrary and violative of principles of natural justice. The Applicants seek a direction from the Tribunal to the respondents to appoint him on compassionate grounds within a period of thirty days. In the other OA i.e. OA 481 of 2001, the relief sought, in substance, is to the effect that denial of government quarters in the name of Applicant Mahesh Vasant Chavan, on the ground of non securing of compassionate appointment is arbitrary and unsustainable. A direction is sought to the respondents to regularise the government quarters in the name of Applicant Mahesh Vasant Chavan. Consequential reliefs are also sought. At

this stage it may be mentioned that MP has been filed by the applicant in OA 481 of 2001 seeking amendment to the effect that the allotment of house may be regularised in the name of the widow Smt. Sanjivanji Vasant Chavan till such time her son does not obtain appointment on compassionate grounds. This MP has been heard along with this OA.

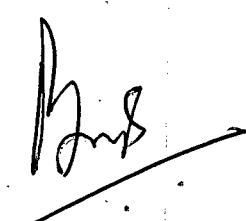
3. Taking OA 482 of 2001, it is seen that the basic claim therein is regarding grant of compassionate appointment to Applicant Mahesh Vasant Chavan, in view of the death of his father on 15.11.1997. The facts in the case are undisputed. In fact, here the matter enters into a short compass because the respondents have stated in their written statement that the claim of the applicant for appointment on compassionate grounds was considered by Circle Relaxation Committee in its meeting held on 9.10.1998. The applicant Mahesh Vasant Chavan was considered suitable and recommended for appointment. However, the stand taken is that since as per government policy, compassionate appointment is restricted to 5% vacancies of outstanding quota, and a wait list of approved candidates is maintained, the name of the applicant has been placed in Wait List and appears at serial no.9.

4. I have considered all papers in the case including the case law cited and have carefully heard the respective learned counsel. The main stand taken by learned counsel Shri Dhuri was

that the revised instructions viz. the claim for compassionate appointment under Central Government is dated 9.10.1998. Incidentally, the case of the applicant Mahesh Vasant Chavan was considered favourably decided on the same day. It was his argument that the orders restricting appointment to 5% cannot operate in the case of Mahesh Vasant Chavan who has to be appointed immediately without regard to the restriction of 5%. The instructions will apply prospectively. The learned counsel for the Applicants took up the second point that Ministry of Communications in its instructions (copy of which is filed at page 15 of the OA) stipulated that cases of compassionate appointment should be considered within one month. The learned counsel cited the cases of various Benches of this Tribunal which are as follows -

- (a) Smt. Durga Devi Vs. Union of India & others, OA 140/92 decided by Principal Bench on 17.8.1992.
- (b) Ashok Kumar Vs. Union of India & others, OA 849 of 1998 decided by Jabalpur Bench on 16.6.1999.
- (c) Harjit Singh Vs. Union of India, SWP No. 1285 of 1996 decided on 18.5.1998 by Jammu & Kashmir High Court where reliance is sought to effect that that amendments made in rules cannot be given effect for filling up vacancies which existed before coming into force of the amended rules.
- (d) He also strenuously depended upon the decision in the case of Sushma Gosain Vs. Union of India, AIR 1989 SC 1976.

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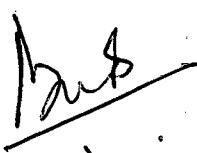


5. The learned counsel for respondents Smt.H.P.Shah after reiterating the facts, depended upon the case law cited in Para of the written statement viz. the following cases -

- (a) Himachal Road Transport Corporation Vs. Dinesh Kumar, (JT 1996 (5) SC 319)
- (b) Hindustan Aeronautics Limited Vs. Smt.A.Radhika Thirumalai, (JT 1996 (9) SC 197)

She depended on her written statement on details.

6. Now the first thing that is to be seen is that government orders under the Scheme (which are termed as instructions) have been issued on 9.10.1998. It is purely incidental that on the same day the Central Circle Relaxation Committee considered the case of the applicant, found him fit and placed him on Wait List. It must be noted here that the aforesaid Scheme (Revised Consolidated Instructions) have been stated in the preamble to come about as a result of review of "existing instructions". It is therefore clear that earlier instructions on the matter were also in the nature of executive orders. The learned counsel for the applicant Shri Dhuri stated that there were rules earlier but was unable to show any rules in this regard. Therefore, the Tribunal will have to go by written word in the instructions of 9.10.1998. Now once these are written instructions, the strict law depended on through the case law cited regarding amendment of rules having to operate prospectively does not come into relevance. These are executive instructions we are on. Support in this regard is also drawn from the judgements of the Hon'ble Supreme Court which is cited by the respondents. It must be



noted that the judgment of Umesh Kumar Nagpal Vs. State of Haryana & others, (JT 1994 (3) SC 525 and Hindustan Aeronautics Limited Vs. Smt.A.Radhika Thirumalai, (JT 1996 (9) SC 197) are especially relevant in this case not to speak of the basic law settled on this subject by Hon'ble Supreme Court in the well known matter of Life Insurance Corporation Vs.

Mrs.Asha Ramachandra Ambedkar & another, JT 1994 (2) SC 183. In fact, the case of Sushma Gosain (supra) relied upon by the applicant, cannot help the applicant here in view of what has been stated in Umesh Kumar Nagpal (supra).

7. The point regarding restriction of 5% not being operative in the present applicant's case was very strenuously argued by learned counsel for the applicant Shri Dhuri. In fact he also sought to distinguish the point made in the case of Smt.A.Radhika Thirumalai (supra) to show that there it was a question of vacancy not being available. Here vacancies are available and the applicant is suffering because of the 5% restriction. In this case we take guidance from the law settled by the Hon'ble Supreme Court in the aforesaid judgments. The Hon'ble Apex Court has deprecated the tendency to ignore the logic of law. In the case of Umesh Kumar Nagpal (supra) it has been stated that mere death of an employee in harness does not entitle the applicant to a job. Talking of financial conditions, it has also been stated that this is a system operating as an exception to a rule. Against this background it is difficult to come to the conclusion that we can draw or find distinction between lack of availability



of posts being different from 5% restriction. Also in the background of the decisions referred to above, we cannot at any stretch of imagination come to the conclusion that placing of a restriction by way of 5% etc. is contrary to principles of natural justice or that it implies that constitutional provisions are violated. On the contrary it must be held that the very object of placing of restrictions of 5% have come about as a result of Court judgments as clearly mentioned in the preamble of the O.M. dated 9.10.1998. Hence on this count I am not able to agree to the point of distinguishing of the judgment of Smt.A.Radhika Thirumalai (supra). Hence, the action of the respondents placing the applicant in a Waiting List cannot be faulted in law, or otherwise. Once we depend on Supreme Court judgments the Tribunal judgments cited by applicants' learned counsel cannot help him.

8. Now taking the other OA No.481 of 2001 and assuming for a minute that the MP for amendment is accepted despite the objections raised by the learned counsel for the respondents, it is seen that the amendment sought for is regarding regularisation of the house presently occupied by the applicants in favour of the widow of the deceased government servant and later in the name of the son of the deceased government servant, since the latter is seeking appointment on compassionate grounds. The learned counsel for the applicant Shri Dhuri took me over the facts of the case to state that once the appointment on

compassionate ground comes about, the applicant should be allowed to retain the house. In fact the view taken above in OA 482 of 2001 weakens the case of the applicant ipso facto.

9. I have considered all the papers in this case also and the arguments of learned counsel on both sides. The learned counsel for applicant based his case on the matter decided by the Hon'ble Supreme Court in the case of Smt. Phoolwati Vs. Union of India & others, (AIR 1991 SC 469) decided on 5.12.1990. The Hon'ble Supreme Court has issued those directions in the facts and circumstances of the case. In any case much water has flown on this subject since 1990 when this case was decided and considering the law laid down by the Hon'ble Supreme Court in the cases cited above, I cannot hold that the relief sought can be granted on the basis of Smt. Phoolwati's case (supra). Another case decided by the Calcutta Bench of C.A.T. in the case of Smt. Indrasan Devi and another Vs. Union of India & others, O.A.1490 of 1993 decided on 23.8.1995 (1995 (2) ATJ 478) was also cited. In that case the applicant no.2 was actually provided with employment on compassionate grounds about fifteen months after the death of the deceased employee. This case therefore cannot help the present case in any manner.

10. The other cases reported above, as relied upon by the respondents will also help their stand in the matter of retention of house. The main plea taken by learned counsel for respondents was that the rules as contained in SR 317 clearly show that the applicant i.e. either mother or son cannot claim right to



retention or regularisation of the house beyond a period of two years from the date of death of the employee. It is seen that the deceased government servant died on 15.11.1997 and as stated by learned counsel for the applicant, permission has been granted upto 14.12.1999. Here also the rule will have to decide the case.

11. In conclusion, it may be stated that as argued by learned counsel of both sides, there may be genuine hardships in some case but we may have to be guided on this in the light of the law laid down by the Hon'ble Supreme Court in the cases cited above.

12. In the light of the discussions, I am not convinced that there is any case for providing any relief to the applicants in either of the OAs. Consequently, both OAs No.482 of 2001 and 481 of 2001 are hereby dismissed with no order as to costs.

B.N.Bahadur

(B.N.Bahadur)
Member (A)

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