

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 463/2001 & 688/2001

THIS THE 29 TH DAY OF MAY, 2002

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

O.A. NO. 463/2001

Shri Suresh Uttam Bhagyawant,
Son of late Shri
U.B. Bhagyawant, Residing at
Near Manisha Theatre
Uttamnagar, PO Khadakwasala,
Pune-400 025. Applicant

By Advocate Shri S.V. Marne.

Versus

1. The Union of India, through
The Director General of
Military Training
General Staff Branch,
Army Headquarters,
DHQ PO, Delhi-110 001.
2. The Commandant,
National Defence Academy,
Khadakwasla,
Pune-411 023. Respondents

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

O.A. NO. 688/2001

1. Smt. Noorjehan Shaikh,
Wife of late Shri Mehboob
Gulab Shaikh,
2. Shri Sameer Mahboob Shaikh
Son of late Shri Mahboob Gulab Shaikh,
Both residing at At & Post: Lavale,
Tal. Mulshi, Dist: Pune. Applicants

Versus

1. The Union of India, through
The Director General of
Military Training
General Staff Branch,
Army Headquarters,
DHQ PO, Delhi-110 001.

....2.

2. The Commandant,
National Defence Academy,
Khadakwasla,
Pune-411 023. .. Respondents

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

O R D E R

Since the issue involved is common and the impugned order being challenged by both the applicants is same, I am proceeding to dispose of these two OAs together by a common order.

O.A. NO. 463/2001

2. The applicant is aggrieved that his request for compassionate appointment has been rejected illegally.

3. The father of the applicant was working as Laboratory attendant and he died in harness on 03.02.1996. He is survived by his widow i.e. the wife and four sons. Out of which two sons are employed, married and are living separately according to the applicant. After the death of the applicant's father the applicant's mother made an application for appointment of the applicant on compassionate ground. it was considered as per rule and at the appropriate level and was rejected. The same was intimated to the applicant vide letter dated 28.11.2000.

4. According to the applicant, the elder son Shri

Ganesh is employed in the Indian navy and is posted at Visakhapatnam and is staying along with his family. The second son Shri Ramesh is working as Peón in the Bank of Maharashtra and is posted at Patas, Taluka Daund. Thus they are staying away from the family and are not supporting the family. The applicant further states that the family received an amount of Rs.1,35,000/towards terminal benefits. An amount of Rs.30,000/- was paid to the elder brothers as they were the nominees, in fact the family received only Rs.1,05,000/-. The mother of the applicant was sanctioned family pension of Rs.600/-. The applicant submits that since the mother is suffering from Arthritis and she has been taking treatment since 1990, huge expenditure had to be incurred on the treatment and the terminal benefits received were not sufficient for maintenance of the family. The family has no other source of income and therefore, an application was submitted in march, 1996 for compassionate appointment of the applicant. The applicant kept receiving replies from the respondents stating that his case had been forwarded to the Army Headquarters, that only 5% of the vacancies are reserved for compassionate appointment and his case was still pending consideration as on 10.8.1998. On 15.01.1999 he was informed that his name had been in the panel at Sl. No.6 of the waiting list and would be considered as per his turn. On 13.5.2000 he was asked to present himself for an interview and to

submit information in the proforma. He accordingly submitted the information in the requisite proforma to the respondents on 23.5.2000. His case was finally rejected, according to the applicant by a cryptic order on 28.11.2000.

O.A. NO. 688/2001

5. This is a case for compassionate appointment. There are two applicants in this case. One is the widow of late M.G. Shaikh who was working as Groundsman in National Defence Academy, Khadakwasla, Pune. The other applicant is his son. Shri Mehboob Gulab Shaik died in harness on 02.9.1996. The applicant No.2 applied for grant of compassionate appointment on 19.12.1996 as the deceased left behind the Wife, two sons and two daughters applicant No.2 being the eldest son.

6. After the death of the deceased employee the family received rs. 70,000/- towards terminal benefits. applicant No.1 is receiving Rs.1800/- per month as family pension. According to the applicants huge expenditure had to be incurred on the treatment of the deceased employee and had to borrow from friends and relatives. Thus, the family is left with only the pension to look after the family and therefore, the family was in need of immediate financial assistance in the form of compassionate appointment.

7. The applicant submits that he has submitted his application along with all the requisite documents. The applicant was asked for a personal hearing on 13.5.2000 and thereafter, was informed on 28.11.2000 rejecting his request.

8. The applicants had submitted a representation to the Assistant Labour Commissioner, Pune on 08.01.2001 stating that the rejection by the respondents is illegal. The Assistant Labour Commissioner asked the respondents to submit their reply to the representation of the applicant. The respondents accordingly submitted a reply. The Assistant Labour Commissioner, Pune, vide his letter dated 27.3.2001 informed the applicant to look for alternate remedy after indicating the reply of the respondents in the matter.

9. The contention of the applicants is that no reason has been given for rejection of the case of the applicant. It is a non speaking order. At least he should know the grounds on which his case has been rejected. It is not clear from the order on 28.11.2000 whether the circumstances and conditions of the family of the applicant were considered by the competent authority while deciding the case of the applicants. The respondents considered more than 100 cases of compassionate appointment in the year 2000 and rejected most of them by passing a stereo type order.

10. The applicants submit that the Hon'ble Supreme Court has laid down the law that compassionate appointment should be granted without any delay and compassionate appointment is the rule and its urgency should be considered. The applicant is relying on the following judgments.

- i) 1989 11 ATC 878 sushma Cosain Vs. UOI.
- ii) 1992 SCC (L&S) 135 Phoolwati Vs. UOI.
- iii) 1994 27 ATC LIC Vs. Asha Ramachandra Ambekar.
- iv) 1994 27 ATC Umesh Kumar Nagpal Vs. State of Haryana & Ors.
- v) 1995 31 ATC 470 Jethi Devi Vs. Bhakra Beas Management Board
- vi) 1995 31 ATC 736 UOI Vs. Bhagwan Singh.
- vii) 1996 33 ATC 583 G B Yerwa Vs. UOI.

According to the applicants, the respondents ought to have decided their cases within a period of six months whether the applicants deserve compassionate appointment or not and there was no need to make the applicants to wait for over three years giving rise to expectations.

11. The applicants submit that in order to avoid irregularities while considering the case of compassionate appointment, Government of India, Ministry of Defence have issued notification dated 02.11.1993 in which a marking system is prescribed for considering the cases of compassionate appointment. According to this marking system, if applied, the applicants would

certainly get more than 60 to 70 marks. The applicants submit that the Tribunal had already held in one case that if the applicant obtains more than 50 marks he is entitled to get compassionate appointment. According to the applicants the respondents had not considered the applicants' cases as per the notification. One of the applicants is also claiming family pension for himself and his sister.

12. The respondents submit that the Government of India, Ministry of Personnel, Public Grievances & Pensions (Department of Personnel & Training) have issued a scheme for compassionate appointment vide OM dated 09.10.1998. The object of the scheme is to grant appointment on compassionate ground to dependent family member of Government servant dying in harness or retired on medical grounds without any means of livelihood to relieve the family from the financial crisis and to help to get over the emergency. Considering the guidelines laid down in this OM compassionate appointment can be made upto the maximum of 5% vacancies falling under direct recruitment quota in Group-D and Group-C posts. Keeping this in view according to the respondents a maximum of 3 to 4 appointments can be made on compassionate grounds in a year at NDA. The learned counsel for the respondents also submits that it has been held by the courts that offering compassionate

appointment as a matter of routine irrespective of financial condition of the family of the deceased or the employee retired on medical incapacitation, is legally impermissible. The Tribunal cannot give a direction for appointment of a person on compassionate grounds, but only direct for consideration of the case. It is further stated that Government orders were issued by Adjutant General Branch of Army Headquarters by their note dated 29.8.2000 mentioning that there is no point in keeping the wait list of candidates for more than one year. When it is not possible to provide employment for want of vacancy.

13. In the case of applicant in OA No.463/2001 the applicant's family received a sum of Rs.2,01,150/towards GPF and other terminal dues after the death of Shri V.B. Bhagyawant. The mother is in receipt of Rs.2717/- per month as family pension including dearness relief. The applicant's mother in OA No.688/2001 also received family pension of Rs.1800/-.

14. The respondents have also referred to the latest guidelines issued by the DOP&T and communicated vide Army Headquarters letter dated 12.7.2001 wherein the DOP&T had given the yardstick of poverty line to be applied to determine the financial destitution/penurious condition of the family. According to the Planning Commission the poverty line amounts to income

below Rs.1767.20 for a family of five members per month. Going by these yardstick, the applicant's family cannot be said to be below poverty line.

15. According to the learned counsel for the respondents a Committee of Officers met to consider 63 cases for compassionate appointment for shortlisting four names as per availability of quota and accordingly, the applicants and other candidates were granted personal interview by the Committee on 16.6.2000 for better appreciation of the facts of the case. The proforma asked to be filled by the applicants were also taken into consideration and finally only four candidates could be recommended and the applicants' names were deleted from the wait list as there were other cases where the indigent conditions of the family were more deserving than that of the applicants. In the circumstances, the applicants have no case.

16. The learned counsel for the applicants reiterated the point regarding the respondents not passing a speaking order. The learned counsel for the applicants also argued that the poverty line yardstick suggested by the Planning Commission cannot be applied for compassionate appointment. Each case is different and if one were to follow this yardstick no person who is getting family pension can be under the poverty line as the minimum pension is of Rs.1275/- and after adding

dearness relief, it certainly comes to above the yardstick of Rs.1767.20 for a family of five members.

17. I have heard the learned counsel for the applicants in both the OAs. Both are aggrieved by the letter dated 28.11.2000 whereby their request for compassionate appointment has been rejected. The main contention of the applicants is that it is a non-speaking order. The respondents do not seem to have gone by the marking system laid down by the Ministry of Defence. The yardstick of poverty line is irrational. The respondents have relied on the OM dated 09.10.1998 and the yardstick of poverty line. Their cases have been clubbed together and considered after a lapse of four years keeping them waiting in false hope. In my considered view the respondents' letter dated 28.11.2000 is no doubt a stereo type letter. They ought to have given reasons. However, the facts and reasons have now come out in the reply of the respondents. Even if the respondents were to be directed to pass a speaking order, no useful purpose will be served as has been held in the judgment in Aligarh Muslim University Vs. Mansur Ali Khan 2000 (SCC (L&S) 965. It will only be a useless formality. Moreover, in the case of applicant in OA No.688/2001 a detailed ^{report} was given by respondents to Assistant Commissioner of Labour and conveyed to the applicant. The applicants claim that they would have got 70 to 80 marks at least if the marking system had

been followed in selecting their cases. The circular of 02.11.1993 relied upon by the applicants has already been held to be irrational by the Tribunal in the case of Lata Dabhade vs. Union of India and others. Therefore, reliance on the aforesaid circular does not help the applicants. I agree with the applicants that the yardstick of poverty line cannot be applied to their cases. What is to be seen is not only the amount of pension but the condition of the family at the time of the death of the earning member of the family. Moreover the yardstick of poverty line has been prescribed now in 2001, whereas the applications of the applicants are of 1996. One has to go by the date of death of the bread winner. That is the material date, so also the OM of 09.10.1998 is a later guideline. Therefore, considering the applicants' cases of 1996 by the aforesaid OM issued in 1998 is not proper. The respondents have pointed out that they considered 63 applications from 1996 to 2001 together and shortlisted four candidates after calling for information regarding the financial conditions of the families of the deceased Government servant and also calling the candidates for an interview. Thereafter, the Committee of Officers of High Level scrutinised the applications. The respondents failed to produce the record till date. ^{in spite of reminder} Therefore, it is not clear whether the respondents considered the cases of the applicants according to the rules prevailing at the material time i.e. in 1996 or whether they simply relied on the OM

dated 09.10.1998 and the yardstick of poverty line recommended by the Planning Commission. The only course left open is to ask the respondents to reconsider the cases of the applicants as per the guidelines prevailing at the relevant time without ofcourse resorting to the marking system. The respondents are directed accordingly to reconsider the cases within a period of three months under intimation to the applicants. OAs are disposed of accordingly. No costs.

(SMT. SHANTA SHAstry)
MEMBER (A)

Gajan

dl 29/5/02
3/7/02
O.C. 463/01