

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

O.A.No.26/2001

~~Friday~~, this the 9th day of November, 2001.

CORAM;

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

1. Smt.Sarita.M.Mahadik,
Widow of late Madhukar G.Mahadik,
Aged about 43 years residing at
C/o 42/B/11/Veerdarshan Chawl,
2. Shri Shailesh Madhukar Mahadik,
Son of late Madhukar Ganpat Mahadik,
Aged about 25 years, residing at
C/o 42/B/11/Veerdarshan Chawl,
G.B.Ambedkar Marg, Parel,
Boiwada, Mumbai-400 012. -- Applicants

(By Advocate Shri S.S.Karkera)

Vs

1. The Union of India
Through the Chief Commissioner of Customs,
New Custom House,
Ballard Estate,
Mumbai-400 001.
2. The Commissioner of Customs(GN),
New Custom House,
Ballard Estate,
Mumbai-411 001.
3. The Superintendent(CHS),
O/o Commissioner of Customs,
New Custom House,
Ballard Estate,
Mumbai-400 001. - Respondents

(By Advocate Shri V.D.Vadhavkar)

O R D E R

SHRI T.N.T.NAYAR, ADMINISTRATIVE MEMBER

The applicants in this case are the widow and the son of

late Shri Madhukar G.Mahadik who was working as a temporary status Casual Labourer under the respondent-department, viz, Department of Customs. Shri Mahadik had put in approximately 21 years of service and had obtained temporary status in 1995 when he expired on 31.8.98. Though temporary status had been conferred on Shri Madhukar G.Mahadik from 9.8.95, subsequently it was modified and temporary status was conferred with retrospective effect from 1.9.93. But by that time, unfortunately he had died of tuberculosis. The first applicant requested the respondents vide her letter dated 23.9.98 for granting of compassionate appointment to one of the sons of the deceased employee(Exbt.D). This request did not evoke any response. A detailed application was subsequently filed on 3.12.98(Exbt.E) pointing out the penury and hardship of the family and seeking compassionate appointment for Shailesh Madhukar Mahadik, the 2nd applicant. However, the request of the applicants is seen to have been rejected by the communication No.S/5-64/99-Estt dated 28.1.99(Exbt.A) addressed by the Assistant Commissioner of Customs, Personnel & Estt., Department, Mumbai to Smt.Sarita M.Mahadik, the first applicant. Being aggrieved against this, the applicants have come up with this application.

2. Apart from the financial hardship and indigence of the family, it has been pointed out that the second applicant has done upto IInd year B.Com. and was therefore eligible for appointment on compassionate grounds. The family consisted of

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the widow, two unemployed sons and two unmarried daughters. The family did not have any immovable property or any liquid asset. With regard to the eligibility of the claim for compassionate appointment, the applicant has relied on this Tribunal's decision in Chameli Devi Vs Divisional Railway Manager, reported in [1992] 20 ATC 861.

3. The respondents have opposed the application by stating that the claim of compassionate appointment was applicable to Government servants appointed on regular basis dying in harness and that therefore, the dependant of a deceased employee who had been a daily rated casual worker was not eligible for compassionate appointment. Respondents have placed reliance on the decision of the Hon'ble Supreme Court in State of Haryana and others Vs Rani Devi and others reported in JT 1996(6) SC, 646 wherein extension of appointment on compassionate ground to all kinds of casual/ad hoc employees including those who are working as apprentices is held to be not justified on constitutional grounds.

4. I have heard the learned counsel on either side. Learned counsel for the applicant has contended that this was a case of extreme hardship since the sole bread winner of the family had been taken away by death after nearly 21 years of casual service. The tragic circumstances under which he could not avail ~~the~~ of the benefit of regularisation solely because of his untimely death should have evoked the sympathy of the

administration. Telecom department, under the Government of India has a scheme for allowing compassionate casual appointment to the dependants of deceased temporary status casual mazdoors, learned counsel would point~~ed~~ out. Accordingly, the request for compassionate appointment ought to have been considered with fairness and sense of justice, it is urged.

5. The learned counsel for the respondents has reiterated the pleadings in the reply statement and has contended that in view of the DOPT's existing scheme for compassionate appointment, the applicants would have no case as the deceased had never been appointed against any regular post. He was only carrying out casual work. The conferment of temporary status would not entitle his dependants to claim appointment on compassionate grounds. Referring to several decisions of the Supreme Court on the subject of compassionate appointment, learned counsel for the respondents has stressed the legal position that the benefit of appointment on compassionate grounds cannot be extended to dependants of casual/ad hoc employees or apprentices since that would not have constitutional sanction. In the circumstances, the application was liable to be dismissed, learned counsel urges.

6. I have given my anxious consideration to the pleadings in the O.A. and the contentions put forward by the rival counsel. In my view, the short question to be decided is whether under the existing rules the applicants had a claim for compassionate


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appointment. On a proper appreciation of the DOPT's consolidated instruction and the comprehensive scheme for compassionate appointment as per O.M.No.14014/6/94-Estt(D) dated 9.10.98, it would be clear that the benefit of compassionate appointment is admissible to the dependant of a Government servant who dies in harness, and that Government servant for the purpose of compassionate appointment means, a Government servant appointed on regular basis. In this case, despite considerable length of casual service, the deceased was not appointed against a regular post. He was at best a temporary status casual labourer who attained temporary status with retrospective effect from 1993. But there was no order of regularisation. The mere fact that in the Department of Telecom, there was provision for casual employment to the wards of deceased temporary status casual mazdoors would not be of any help to the applicants since Customs Department does not apparently have a scheme like that, and the letter is therefore squarely covered by the DOPT's instruction cited above. I do not consider it necessary to discuss the case law cited. Suffice it to say, there is no case law to support the applicants' claim that when a temporary status casual labourer dies in harness, his dependant can make a claim for compassionate appointment. The Tribunal is not in a position to distribute largesse on human considerations. I therefore find no scope for interference with the impugned order.

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7. The application is without merit and hence is liable to be dismissed. I do so. There will be no order as to costs.

Dated, the 9th November, 2001.



T.N.T. NAYAR
ADMINISTRATIVE MEMBER

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