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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 480/92

Transfer Application No:

DATE OF DECISION 29.1.93

Smt. Rajanibai C. Borwankar Petitioner

Shri C. Nathan Advocate for the Petitioners

Versus

Union of India Through General Respondent
~~Manager Ordnance Factory, Bhusawal~~ & another.

Shri R.K. Shetty, Advocate for the Respondent(s)

CORAM:

The Hon'ble ^{Ms.} ~~Shri~~ Hon'ble Usha Savara, Member(A)

The Hon'ble Shri

1. Whether Reporters of local papers may be allowed to see the Judgement ?
 2. To be referred to the Reporter or not ?
 3. Whether their Lordships wish to see the fair copy of the Judgement ?
 4. Whether it needs to be circulated to other Benches of the Tribunal ?
- No

U. Savara
(Ms. Usha Savara)
Member(A)
29.1.93

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A.480/92

Smt.Rajanibai C.Borwankar ..

Applicant

vs

Union of India
Through General Manager
Ordance Factory
Bhusawal and another. ..

Respondents

Coram: Hon'ble Ms. Usha Savara, Member(A)

Appearance:

Shri C.Nathan, Adv.
for the applicant

Shri R.K.Shetty, Adv.
for the respondents.

Dated: 29.1.93

Judgement

(Per: Hon'ble Ms.Usha Savara, Member(A))

The applicant was appointed as temporary labour-B, w.e.f. 5-4-1977 on compassionate grounds on the death of her husband . On completion of 14 years service, she was medically boarded out w.e.f. 12.6.91. She made an application to the respondent to give a compassionate appointment to her son, Prakash, who is 29 years old, and has passed his S.S.C. examination. However, the respondent did not accede to her request, and her application was rejected. The applicant has filed this O.A. praying for an order to the respondents to appoint her son Shri Prakash Chandrakant Borwankar to any suitable post, and also for an order to the respondents to allot quarter No.9/66(Type I) Ordinance Factory Estate, Bhusawal to the applicant's son.

A reply has been filed on behalf of the respondents. It is stated that the case of the applicant has considered at length, by the higher authorities, but it has been intimated that the appointment cannot be given as the case has no merits.

Shri Shetty, learned counsel for the respondents submitted

that the first son of the applicant was already employed in Central Railway drawing gross salary of Rs.2300/- or so, the applicant, herself was in receipt of double pension + 7½% D.A. and was also paid a lumpsum amount of Rs. 21,590 towards terminal benefits. All the daughters have been married, and the ^{only} liability is the 2nd son, who is 29 years old, and cannot be treated as dependent. As per Govt. instructions, compassionate appointment is to be provided in deserving cases, where family of a Govt. servant is left in indigent circumstances. However, the facts of this case do not merit such an appointment. It is also alleged by Shri Shetty that the applicant's claim that she has an unmarried daughter is false, as she has told the Labour Officer that she has only one liability, that is, her son, Prakash. Shri Shetty also relied upon an application made by the applicant on 31-12-1990 to the General Manager, Ordnance Factory for permission to celebrate her daughter's wedding in the Community Hall on 23-1-91. It is his case, that the applicant is enjoying 2 pensions, and has a 29 year old son, who cannot be treated as dependent.

Mr. Nathan, learned counsel for the applicant vehemently denied that the applicant was guilty of any falsehood. He produced an Invitation Card as evidence the marriage which actually took place on 23-1-91 was that of the applicant's neice. He further submitted that the elder son of the applicant lived separately, and had his own family to support. The respondents had rejected the applicant's request without application of mind and in violation of the Govt. instructions. He drew attention to Ex. R-13 dated 17-11-89. The applicant had asked for deletion of the name of Deepak Borwankar, her older son, as he had become self-dependent. She had also asked for deletion of the name of Ku. Sandhya, (who had been married) from the service records. It was contended by Shri Nathan that the applicant had not concealed

anything, and had taken the Community Hall for the marriage of her late brother's daughter, and her own daughter. Mangala, was still unmarried. The applicant is in receipt of double pension, but the total amount is only Rs.1000/- or so, and is insufficient to meet the applicant's medical and food expenses, and the expenses of her two dependent children. Shri Deepak, the applicant's older son, has to maintain his own family of 2 children and wife, and is not in a position to assist her. Shri Nathan also gave names of various persons who were given compassionate appointment, though one member of the family was already employed in the Ordnance Factory.

I have heard both the learned counsel at length, and perused the annexure filed by them. The first argument of the applicant's counsel is that the impugned orders are arbitrary inasmuch as they do not indicate any reasons for denying the compassionate appointment to the applicant's son. From a scrutiny of the original file produced by the respondents, I am satisfied that the request of the applicant was duly considered by the competent authority in accordance with the instructions issued by the Govt. from time to time. The decision was taken after giving due regard to all the relevant factors specified therein.

It is well settled that appointment on compassionate grounds cannot be claimed as a matter of right, and the dependents can only claim a right to be considered in accordance with the instructions. Each case has to be considered by the competent authority on merits subject to the fulfillment of the various conditions prescribed in the instructions. The fact that the applicant is in receipt of double pension may have weighed with the respondents, or the fact that the son for whom appointment is being sought is 29 years old, and can, by no stretch of imagination,

be considered to be dependent. It may be that the applicant's written statement given to the labour officer in which only the names of the elder son Deepak, younger son Prakash, and herself have been given, and which has been signed by her son-in-law Shri Zaskar, who is also working in the factory, has weighed heavily with the respondents. As long as the department has bestowed its ~~xxxxxxx~~ ~~ixx~~ attention and arrived at a conclusion after due consideration, the conclusion arrived at as a result thereof is not open to judicial review unless it is established that the matter has not been considered in the proper perspective or that the decision has been arrived at arbitrarily. The applicant has failed to establish this.

Various judgements had been cited by the learned counsel for the applicant. The facts of this case are clearly distinguishable from the facts in those cases. The fact that the widow was left with no means of livelihood was a major consideration. The applicant in the present case is in receipt of double pension + 7½% D.A. amounting to little over Rs.1000/- admittedly. The applicant is also not having any minor children to educate and bring up. The son for whom appointment is sought is 29 years old and is not a dependent in any sense of the term. Therefore, the citations do not apply to the applicant's case. In the case of Arun Mishra vs U.O.I. & Ors 1984(1) SLJ 615, the Allahabad High Court held that the Court cannot interfere and direct the Govt. to appoint the petitioner as such, because it is the discretion of the Govt. and not obligatory.

In the circumstances of the case, I am satisfied that the respondents considered the request of Shri Prakash in accordance with the instructions, and took the decision after giving due regard to all relevant factors. Consequently, I do not find any justification to interfere with the

decision of the competent authority. In the premises, the application is hereby dismissed. The interim order is vacated. Needless to say, the respondents will proceed in accordance with law. No order as to costs.

U. Savara
(Ms. Usha Savara) 29.1.93.
Member(A)

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Review Petition No. 22/93
in
O.A.480/92

Smt.Rajanibai C.Borwankar .. Applicant

-versus-

Union of India .. Respondent

Coram: Hon'ble Ms.Usha Savara, Member(A)

TRIBUNAL'S ORDER IN REVIEW
PETITION BY CIRCULATION :

Date: 30/4/93

Review Petition No. 22/93 has been filed against the order dt. 29-1-93 in O.A.480/92. The O.A. had been filed for considering the applicant's son for an appointment on compassionate grounds, and also for directing the respondents to allot Quarter No.9/66 (Type I), Ordnance Factory, Bhusaval to the applicant's son. After going through the original file, I was satisfied that the case of the appointment of the applicant's son had been considered in depth by the respondents in accordance with the instructions issued by the Govt. from time to time. The decision had been taken after giving due regard to all the relevant factors; however, the applicant's request was rejected.

2. The review petition does not allege any error apparent on the face of the record nor does it allege discovery of new facts or material which could not be produced at the time of hearing despite due diligence.

3. The scope of review is very limited.

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It is confined to the provision of Order 47
Rule 1 of C.P.C. I am not sitting in a court
of Appeal against the order, and the review
petition is only re-arguing of the case,
which is beyond the scope of the review.

4. In the circumstances, the Review
Petition has to be dismissed.

A. Savara
(USHA SAVARA)
Member(A)

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