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CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

~~NEW~~ BOMBAY BENCH

O.A. No. 1125/93

~~ExAxxxNex~~

198

DATE OF DECISION 21.2.1994

G.P. Patil & Another

Petitioner

Mr. D.V. Gangal

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondent

Mr. R K Shetty

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Justice M.S.Deshpande, Vice Chairman

The Hon'ble Mr. M.R. Kolhatkar, Member (A)

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 ?


VICE CHAIRMAN

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6
PRESCOT ROAD, BOMBAY- 1

OA No. 1125/93

G P Patil & Ors.

..Applicant

V/s.

Union of India & Ors.

..Respondents

Coram: Hon. Shri Justice M.S. Deshpande, V.C.
Hon. Shri M.R. Kolhatkar, Member(A)

APPEARANCE:

Mr. D.V. Gangal
counsel for the applicant

Mr. R.K. Shetty
counsel for the respondents


ORAL JUDGMENT:

DATED: 21.2.1994

(Per: M.S. Deshpande, Vice Chairman)

This is an application for appointment of the applicant no.1 on compassionate grounds. The applicant's father died on 27.6.1991 while he was on duty leaving behind him a daughter aged 10 years widow, the applicant no.2 and the first applicant the son aged about 21 years.

The application for compassionate appointment was considered thrice by the respondents and was rejected. The applicant has, therefore, approached this Tribunal for getting compassionate appointment and for regularisation of the quarter in which the applicants are residing after the death of the first applicant's father Pralhad Bhoju Patil.



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Respondents opposed the application on the ground that the applicant did not deserve any consideration because they are in receipt of Rs.96.700 as terminal benefits, family pension of Rs.615 + 95% thereof as dearness relief and the family comprises of only three members.

The learned counsel for the respondents took us through the instructions issued regarding allotment of marks in cases of compassionate appointments. When we questioned the learned counsel as to how the marks were allotted in the present case he told us that he does not have the necessary record. The order recorded ^{for} rejecting the prayer for compassionate appointment did not make any reference to the allotment of marks and the consideration which weighed with the respondents, except that the applicant no. 2 was in receipt of monetary benefits.

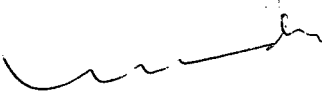
It must be noted that the first applicant is a handicapped person, as he has suffered from polio. Learned counsel for the respondents pleaded that at least 16 persons are waiting for compassionate appointment and has produced a list of 16 persons, who are to be granted compassionate appointment but that list does not contain a single case of handicapped person seeking compassionate appointment. The handicap of the applicant no.1

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is an additional factor which should have been taken into consideration by the respondents while considering the claim of the applicant for compassionate appointment. The fact that the family gets retiral benefits amounting to Rs.96,700 and family pension is not a circumstance which would out-weigh the first applicant's claim. There are three members in the family - one is a non-earning widow, the other is a minor daughter for whose marriage also provision would have to be made from the retiral benefits which have been paid to the applicants and the third is a handicapped unemployed son. In our view this is a fit case wherein the applicant's claim for compassionate appointment should be granted.

The next request is about the regularisation of the quarter which the applicants are occupying. It is clear that the first applicant cannot claim allotment of a quarter unless his services are regularised. We, therefore, direct the respondents to give compassionate appointment to applicant no.1 to a suitable job keeping in view his physical condition within a period of two months from the date of communication of this order. We also direct the respondents not to evict the applicants from the quarter in their occupation for a period of

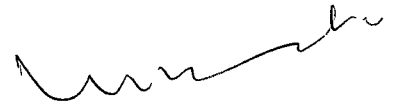


four months and shall consider the claim for allotment as well as regularisation of the after the appointment is made.

With these directions the application is disposed of. No order as to costs.



(M.R. Kolhatkar)
Meber (A)



(M.S. Deshpande)
Vice Chairman

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6
PRESCOT ROAD, BOMBAY-1

R.P. No. 85 of 1994
in
O.A. No. 1125 of 1993

G.P. Patil & Ors.

..Applicants

V/s

Union of India & Ors.

..Respondents

Coram : Hon.Shri Justice M.S.Deshpande, V.C.
Hon.Shri M.R. Kolhatkar, Member (A)

TRIBUNALS ORDER:(By Circulation)
(Per: M.B. Kolhatkar, Member(A))

Dated: 11th August 1994

This Review Petition is directed against our judgment and order dated 21.2.1994 in which we directed the respondents to give compassionate appointment to Applicant No.1 to a suitable job keeping in view his physical condition. The main ground for review urged by the original respondent is that according to the law laid down by the Hon. Supreme Court in the matter of compassionate appointments vide their judgement in LIFE INSURANCE CORPORATION OF INDIA Vs. MRS. ASHA RAMCHHANDRA AMBEKAR & ANR., JT 1994(2)S.C.183 High Courts and Administrative Tribunals should not grant compassionate appointment on benediction impelled by sympathetic consideration and disregardful of law. According to the respondents there is also an error in the judgment in as much as this Tribunal took into account instructions issued for allotment of marks in case of compassionate appointments appearing at A-7 of the application. These are instructions followed by Central Ordnance Depot which is ^a/_a distinct and independent establishment from the respondents viz., Ordnance Factory, Bhusawal. It is further stated that there is a pending list of ten cases which is enclosed with the Review Application.

which cannot be ignored and the Tribunal's ignoring this list is also another error apparent on the face of the record.

2. We have considered the grounds for review anxiously. So far as the law laid down by the Hon. Supreme Court in the case of MRS. ASHA RAMCHHANDRA AMBEKAR is concerned we are no doubt bound by the same. But we may observe that that judgment was delivered on 28.2.1994 i.e., to say prior to our judgment. Secondly the observations made by the Hon. Supreme Court regarding the orders passed by the High Court are made in the context of the High Court giving directions against^a statutory provision. The Hon. Supreme Court also observed that the High Court did not take into account the possible existence of more deserving cases. Thirdly the Hon. Supreme Court has observed that jurisdiction under mandamus should not have exercised so as to straight way issue a direction to appoint but there should have been a direction merely to consider the claim of the second respondent. Apart from the consideration that the law laid down by the Hon. Supreme Court would be binding in matters decided after 28.2.1994, the facts in context of which the law was laid down are also different. In the present case it is well known that guidelines issued by the Ministry of Personnel which are followed by other Ministries, including in this case the Defence Ministry, are not statutory in nature. The question of ignoring any statutory provision therefore does not arise. As laid down by the Hon. Supreme Court in AUDITOR GENERAL OF INDIA & ORS. Vs. G. ANANTA REJEWARA RAO in Civil Appeal No. 9998 of 1983, these guidelines did not violate Article 16 of the Constitution. The Hon. Supreme Court observed that the appointment on compassionate ground to a son, daughter or widow of the deceased government employee who died in

harness and who needs immediate appointment on grounds of immediate need of assistance in the event of there being no other earning member in the family to supplement the loss of income from the bread winner to relieve the distress ^{was} valid in exceptional circumstances for the grounds mentioned.

3. Regarding the contention that we had taken into account inapplicable additional instructions, a plain reading of our order shows that we had noted these instructions as referred to by the counsel for the respondents, but we also noted that the order rejecting the prayer for compassionate appointment did not make any reference to the allotment of marks.

4. So far as the third ground is concerned we had noted in our order that the counsel for the respondents had mentioned that at least 16 persons are waiting for the compassionate appointment, this number has now got reduced to ten. However, we had noted that that list does not contain a single name of ^a handicapped ^{person} and handicap of the applicant is an additional factor which should have been taken into consideration by the respondents. It is well known that there are Central Government instructions regarding reservation of 3% of the jobs for the physically handicapped persons and nothing was on record to indicate that the respondents had fulfilled the quota of 3%.

5. Lastly we note ~~that~~ the Hon. Supreme Court's observations that the High Courts and the Tribunals should not use Mandamus power ^{for} issue directions to do something but to issue directions only to consider doing something. We respectfully note ~~these~~ observations but in the circumstances of the case when the applicant ^{was} a handicapped person, we feel that the direction to

appoint the applicant was quite legitimate.

6 In the circumstances we do not see any ground to review our orders and the review application accordingly stands rejected.

M.R. Kolhatkar

(M.R. Kolhatkar)
Member(A)

M.S. Deshpande

(M.S. Deshpande)
Vice Chairman

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNALBOMBAY BENCH.O.A. NO.: 1125/93.Dated : 10.02.1995.C.P. NO.: 143/94.Tribunal's Order :

1. Shri D. V. Gangal for the applicant and Shri R. K. Shetty, Counsel for the respondents.

2. We have heard the Learned Counsel. It appears that though several allegations have been made by the applicant in para 2 of the application, no reply has been filed by Shri R. Ravishankar, Dy. General Manager, touching those allegations which attribute to him making of scandalous allegations against the judges. The advocate appearing for the applicant states that the conduct of Respondents amounts to the contempt of the Members of the Tribunal. Shri R. K. Shetty for the Respondents states that the Respondents did not think it necessary to rebut those allegations but he would now file a detailed affidavit in respect of each and every averment which has been made in the affidavit filed by Shri R. Ravishankar. We direct that such an affidavit, in view of the statement made by the Counsel, shall be filed within three weeks from today. The other grievance of the applicant is that he has not been examined by the Senior Medical Officer, who issued the certificate on 8.11.1994, exhibit R-3, touching the handicap which had been mentioned in the judgement. Since the applicant is not satisfied by the sort of medical examination conducted by the Senior Medical

Officer, we direct the Respondents to constitute a Medical Board comprising of Officers senior to the Medical Officer who issued the certificate and who are higher in the hierarchy to that Medical Officer and get the applicant examined touching the medical categorisation in which he could be placed, within three weeks from today and also indicating the suitability or otherwise, of the applicant for appointment to the handicapped category. The examination shall be done keeping in view the guidelines of the Ministry of Welfare about employment of handicapped persons in the quota reserved for the handicapped persons. We further direct the respondents, Shri R. Ravishankar, to be present on every hearing of this Contempt Application unless his presence is dispensed with by the Tribunal.

3. Copy of the order be made available forthwith to Shri R. K. Shetty, Counsel for the Respondents.

4. The case is adjourned to March 30¹³, 1995.

M. R. Kolhatkar

(M. R. KOLHATKAR)
MEMBER (A).

M. S. Deshpande

(M. S. DESHPANDE)
VICE-CHAIRMAN.

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