

(16)

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.R. Kolhatkar, Member(A))

Dated: 11<sup>th</sup> 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 <sup>a</sup>/<sub>a</sub> 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<sup>a</sup> 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 <sup>was</sup> 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 <sup>a</sup> handicapped <sup>person</sup> 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 <sup>for</sup> 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 <sup>was</sup> 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