

(9)

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH  
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Original Application No: 110/93

Transfer Application No:

DATE OF DECISION: 17-6-1994

Raghunath Lalu Tayade

Petitioner

Mr.C.Nathan

Advocate for the Petitioners

Versus  
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U.O.I. & one anr.

Respondent

Mr.R.K.Shetty

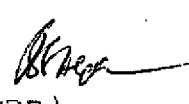
Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri B.S.Hegde, Member(J)

The Hon'ble Shri --

1. To be referred to the Reporter or not ?
2. Whether it needs to be circulated to other Benches of the Tribunal ?

  
(B.S.HEGDE)  
M(J)

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

O.A.110/93

Raghunath Lalu Tayade .. Applicant

-versus-

Union of India & one anr. .. Respondents

Coram: Hon'ble Shri B.S.Hegde, Member(J)

Appearances:

1. Mr.C.Nathan  
Counsel for the  
Applicant.
2. Mr.R.K.Shetty  
Counsel for the  
Respondents.

JUDGMENT:  
(Per B.S.Hegde, Member(J))

Date: 17.6.94

The applicant has filed this application u/s. 19 of the Administrative Tribunals Act, 1985 seeking to quash/set aside the order dated 29-8-91(Ex.'E') issued by the respondent rejecting the request of the applicant for providing employment to his son on compassionate grounds. The brief facts of the case are that the applicant joined the Ordnance Factory on 17-9-62 as a Labour and rose to the status of Sheet Metal Worker which is a skilled category. He had put in 28 years of unblemished record of service in the Ordnance Factory and the applicant was <sup>found</sup> completely and permanently incapacitated for further service and as per the recommendations of the medical board his services have been terminated w.e.f. 2-5-91. By that time the applicant was aged 54 years and six months and nearly 3½ years of service left for superannuation.

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2. Learned counsel for the applicant strenuously argued that in view of the type of the work which he was doing while he was in service he was found incapacitated to continue the said work and accordingly on the basis of the recommendation of the medical board he was found ~~unfit~~ unfit to continue in service and made him to retire. Accordingly he has sought compassionate appointment for his second son. Though he had made representation for compassionate appointment vide dated 10-6-91 the same has been considered by the respondents and sent a reply vide their letter dated 29-8-91 stating that his request for providing employment for his son on compassionate ground cannot be acceded to. Despite the same he repeated his request again. The respondents again on 14-12-92 intimated the applicant that his request cannot be acceded on the ground that the pecuniary conditions do not warrant compassionate ground employment.

3. During the course of hearing learned counsel for the applicant drew my attention to an O.M. issued by Department of Personnel and A.R. dt. 7-4-86 which reads as follows:

"The undersigned is directed to refer to Department of Personnel and A.R.'s O.M. No.14014/10/80 Estt(D) dated 18th March,1982 as amended vide O.M. No.14014/6/83 Estt(D) dated 1st March,1984 (copies enclosed) on the above subject,

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according to which only such of the Government servants who retire on medical grounds on or before attaining the age of 55 years are eligible for availing of the concession of appointment of their sons/daughters/near relatives on compassionate grounds. The raison d'être for granting the concession to those retiring on medical grounds was that they had to leave service substantially prematurely and as the normal age of retirement on superannuation is 58 years it was considered necessary to lay down the eligibility limit for Government servants retiring on medical grounds to avail of the concession for their wards, as 55 years."

In the light of the above, learned counsel for the applicant submits that since the applicant has found prematurely incapacitated for further service at the age of 54 years and six months, before the stipulated period of 55 years, his request for compassionate appointment for his son deserves consideration.

4. The respondents in their reply taken the stand that as per the instructions contained in Ministry of Defence letter dated 20-7-1987(Ex. R-1) employment on compassionate grounds is to be provided only in deserving cases where family of a Govt. servant is left in distressed condition and a selective approach taking into account the various terminal benefits awarded is to be followed.

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In the present case on verification of pecuniary condition of the applicant, it is revealed that one of his son is working with Contractor on temporary basis and the other one for whom the applicant has applied for giving employment on compassionate grounds, is running an Auto Rickshaw on rental basis. Apart from this, the applicant is in receipt of a lump-sum amount of Rs.54,838/- towards terminal benefits and invalid pension @ Rs.532/- plus 92% dearness relief thereon. He further points out that the decision of the Supreme Court in Life Insurance Corporation of India vs. Mrs. Asha Ramchandra Ambekar, Civil Appeal No.1381 of 94(SCALE 1994(I)748) it is held that:

"Whatever it may be, the Court should not have directed the appointment on compassionate grounds. The jurisdiction under mandamus cannot be exercised in that fashion. It should have merely directed consideration of the claim of the 2nd respondent. To straightway direct the appointment would only put the appellant Corporation in piquant situation. The disobedience of this direction will entail contempt notwithstanding the fact that the appointment may not be warranted."

5. The Supreme Court in Umesh Kumar Nagpal v. State of Haryana & Ors., JT 1994(3) SC 525 has observed that :

"....As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit..... However, to this general rule... there are some exceptions carved out in the interests of justice and ....One such exception is in favour of the dependants of an

employee dying in harness and leaving his family in penury and without any means of livelihood ... The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family appost much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Class-III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependant of the deceased employee in such posts has a rational nexus with the object sought to be achieved viz. relief against destitution. No other posts are expected ~~to~~ or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The ~~an~~ exception to the rule made in favour of the family of the deceased employee is in

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consideration of the services rendered by him and the legitimate expectations and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned."

The Supreme Court further observed that the decision of this Court in Sushma Gosain & Ors. v. Union of India & Ors. (1989) 4 SLR 327 has been misinterpreted to the point of distortion. The decision does not justify compassionate employment either as a matter of course or in employment in posts above Classes III and IV.


6. In the light of the above, though the applicant is found to be incapacitated in the year 1991 and has been making a representation to the respondent for compassionate appointment of his second son which has been considered and rejected twice, the question of compelling the respondents to appoint <sup>the second son of applicant</sup> ~~him~~ on compassionate ground does not arise keeping in <sup>i</sup>view of the ratio laid down in the aforesaid cases. However, the department has not considered the case of the applicant on the basis of the instructions issued by the Department of Personnel & A.R. referred to by the counsel for the applicant. <sup>to be</sup> The applicant has been found ~~incapacitated~~ <sup>to be</sup> before the age of 55. In the circumstances, <sup>it</sup> ~~in~~ it would be just and proper to direct the respondents to consider the claim of the applicant's son for compassionate appointment keeping in view his incapacity to continue in work because of the type of work which

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he had been doing while in service. However, since the respondent has not taken into consideration the O.M. of the Department of Personnel & A.R. vide letter dated 7-4-86 referred to above, and the aforesaid circular has been brought to the notice, during the course of hearing by the learned counsel for the applicant, It would be in the interest of justice to direct the respondents to consider the request of the applicant for compassionate appointment keeping in view of the contents referred to in the circular and pass appropriate order as they deem fit within two months from the date of communication of this order.

7. Subject to the above direction, the O.A. stands disposed of, there will be no order as to costs.

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(B.S. HEGDE)  
Member(J)