

(03)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH
CIRCUIT SITTING AT NAGPUR.

O.A.NO. 521/93
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DATE OF DECISION 8.11.1993.

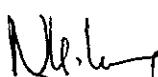
Shri S.S. Kayastha Applicant(s)

Versus

Department of Posts & 2 Others.. Respondent(s)

1. Whether it be referred to the Reporter or not ?
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ?

No


(N.K. VERMA)
MEMBER

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(4)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, CAMP AT NAGPUR.

O.A.521/93.

Shri S.S. Kayastha

.. Applicant.

V/s.

Department of Posts & 2 Others.

.. Respondents.

Coram : Hon'ble Shri N.K. Verma, Member (Admn.)

Appearances;

1. Shri A.S. Bhagat, Counsel for the Applicant.
2. Shri R.S. Sundaram, Counsel for the Respondents.

ORAL JUDGMENT :

Dated : 8.11.1993.

§ Per : Hon'ble Shri N.K. Verma, Member (A) §

This application has been filed by the son of the deceased postal employee for compassionate appointment in Gr. D of the Department of Post in relaxation of normal Rules of Recruitment. Shri Bhagat arguing for the applicant made submissions that deceased employee died in March, 1989 whereafter his widow made an application on 2.6.1989 for appointment of his second son Surendra Satyanarayan Kayastha on a class IV post in the department in relaxation of the normal rules of the recruitment. After a number of reminders she was informed by the Respondents that her case was not found acceptable for the appointment as her another son was already having employment Shri Bhagat brought to notice that the fact of employed one son was no bar to the consideration for compassionate appointment of another son as per existing orders on the subject. The employed son was already separated from the family of the deceased employee and he was not supporting the family. Shri Bhagat quoted the decision of the Tribunal at Jaipur Bench in O.A. 78 of 1991 decided on

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5.2.1992 wherein it was stated that in the peculiar circumstances of the family, compassionate appointment for another son of the applicant has to be considered. Comparison was also made about the amount of the family pension and DCRG gratuity paid to the widow of the deceased postal employee in the case before the Jaipur Bench and the family pension and terminal benefits given to the widow in the instant case which was very petty and insignificant.

2. Shri Sudame, learned Counsel for the Respondents vehemently opposed the application on the ground that applicant had not exhausted the available remedies in the department. As per departmental rules the Appellate Authority in respect of the decision made by the C.P.M.G., Bombay is the Director General at New Delhi. The applicant should have made an appeal to that authority before seeking redressal of this matter in the Tribunal. The next submission made was that of the eldest son of the deceased employee was supporting the family as he was already employed. Hence the application did not have any ground for seeking relief.

3. I have given careful consideration to the arguments of both the learned Counsels. Admittedly a son of the deceased employee is already employed. However the respondents had not made any efforts to find out the details of that employment and that the amount of salary etc. which eldest son was earning. This could have weighed in considering if with that salary, the son could support his own family and also deceased employees family. Simply ~~also~~ employment will not be a sufficient support to the deceased officials widow and ~~is~~ other dependent children. Respondents should have made proper and careful enquiries before rejecting the application for compassionate appointment.

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Secondly, the respondents had at no time ascertained whether the applicant would be prepared to take an employment herself in the Department in relaxation of normal rules of the recruitment.

4. In these circumstances, the application is disposed of with a direction to the respondents to consider the appointment of the widow Smt. Shantabai S. Kayastha in a suitable job at a place convenient for her to take the employment. Action in this matter should be completed within 3 months from the date of the receipt of this order. No order as to costs.

N.K.Verma
(N.K. VERMA)
MEMBER (A).

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(07)

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

R.P. NO. 2/94 in
O.A. No. 521/93

Surendra Satyanarayan Kayastha
Nanak Shahi Wada; Namuna
Amravati 444601

..Applicant

v/s.

Union of India & 2 ors.

..Respondents

Coram: Hon'ble Shri N K Verma, Member (A)

TRIBUNALS ORDER: (By Circulation) Dated: 22/4/1994
(Per: N.K. Verma, Member (A))

This is a Review Petition against judgment and order dated 8.4.1993 in which the application was disposed of with a direction to the respondents to consider the appointment of widow Smt. Shantabai S. Kayastha in a suitable job at a place convenient for her to take employment.

2. The applicant in this Review Petition and also in the Original Application is the son of the deceased Postal employee who had prayed for the following reliefs:

- (1) "Direct the respondents to consider the case of the applicant for recruitment for employment in the relaxation rules urgently since the family of the applicant is in indigent circumstances.
- (2) Grant any other relief which this Hon. Tribunal deems fit in the facts and circumstances of the case
- (3) Saddle the costs of this application on the respondents."

During the course of the arguments made by the learned counsel for the applicant and also for the respondents it came to notice that the widow of the deceased employee had applied for appointment of her second son on compassionate grounds in relaxation of normal recruitment rules which was not approved by the Chief Postmaster General (CPMG) of the Maharashtra Circle on the ground that her elder son was already

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employed, While making submissions learned counsel for the applicant brought to our notice that there was already a judgment of this Tribunal in Jaipur Bench ~~which had~~ decided that compassionate appointment of another son of the deceased employee could be considered after taking into consideration the financial and other circumstances of the family. Based on this ~~judgment~~ of the Jaipur Bench an observation was made that the respondents had not made any efforts to find out the details of the employment of the elder son and whether the amount of salary earned by him was sufficient to support his own family and that of the family of the deceased employee. Besides the respondents ~~had~~ also not ascertained whether the applicant meaning thereby the mother of the applicant in the present O.A. would be willing to take an appointment herself in the department in relaxation of the normal rules of recruitment. It was in the light of ~~these~~ observation that a direction was given to the respondents to consider the appointment of the widow of the deceased employee Smt. Shantabai S. Kayastha for a suitable job.

3. In the Review Petition the applicant has dwelt upon the point that the CPMG who had not approved the appointment of the applicant i.e., the son of the deceased employee, was now the Member(Adm.) of the of this Bench of the Tribunal hearing the matter as a Single Member Bench and he could not be a judge of his own cause in the terms of the Supreme Court judgment in the matter of ARJUN CHAUBEY V. UNION OF INDIA in Civil Appeal No. 2613 of 1983 decided on 23.3.1984 (SLR 1984(2) SC 16). The second objection raised in the Review Petition is that the applicant who is seeking compassionate appointment in the matter is the son of the deceased employee whereas the order relates to his mother and therefore it is an erroneous judgment. More over the review is justified for appointment on compassionate grounds to the petitioner.

4. I have given considerable thought to the matter. The Supreme Court judgment quoted in the matter does not apply in the instant case as the

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then CPMG had not approved of the appointment of the applicant sitting as the Chairman of a Committee to decide upon the compassionate appointments. The fact that it was committee decision headed by CPMG was communicated to the applicant in May 1992. The CPMG had no personal knowledge of the applicant or any animosity against him while arriving at a decision supported by the Committee of not approving his appointment. In the case referred to in the Supreme Court judgment the Respondent no. 3 was disciplinary authority who passed the order of dismissal against the applicant while there was a case of appellant's misconduct in relation to respondent no. 2. No such allegation of any previous prejudice held by the CPMG Maharashtra Circle against the applicant was canvased either in the pleadings or during the arguments. The learned counsel for the applicant during the arguments has not pointed out that the CPMG in question who decided the matter was the Hon. Member of the Tribunal hearing the matter for admission. Had this information been brought to the knowledge of the Member the matter could have been directed to be put up before another Bench of which I would not have been a Member. Besides, at the admission hearing the learned counsel for the respondents contested admission on the ground that the applicant had not exhausted the available remedies in the department by making an appeal against the decision of the CPMG to the Director General of Posts at New Delhi. In view of this and also the fact that the other ground that eldest of the deceased employee was supporting the family, he vehemently opposed the admission of the case. The matter was, therefore, disposed of at the admission stage itself by directing the respondents to consider the appointment of the widow which proposition is squarely covered by the relief no. 2 of the prayer viz., "grant any other relief which the Hon. Tribunal deems fit in the facts and circumstances of the case".

5. It would, therefore, appear that the review petition is wholly misconceived both in its contents and the discovery of facts. There are no errors apparent on the fact of the record. Compassionate appointment in Government of India is offered to provide financial support to a family in indigent conditions. The appointing authority has to satisfy himself whether the dependents of a deceased employee are really left indigent and provide for financial assistance by way of giving compassionate appointment and only then approve such appointment in relaxation of the normal recruitment rules. In ^{terms} spite of the provisions in the Government, a representation/an

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appeal could be made against the decision of a competent authority in the matter, to the next higher authority. The applicant chose to rush to the Tribunal for relief without any prayer for an interim relief. The fact that appropriate directions were given to the respondents to reconsider the case is a pointer that the order made on 8.11.1993 was a very balanced and judicious decision which cannot be faulted.

R.P. No. 2/94 is accordingly dismissed.

N. K. Verma

(N.K. Verma)
Member (A)