

(8)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 720/93

Transfer Application No: xx xx

DATE OF DECISION: 4.3.94

Smt. Shubhangi Prabhu Petitioner

Shri K K Shah Advocate for the Petitioners

Versus

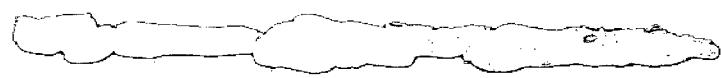
-Deputy Regional Director ESIC Respondent

Mr R M Jaikar Advocate for the Respondent(s)

CORAM :

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

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 ?

M R Kolhatkar

(9)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A. No. 720/93

Smt. Shubhangi Prabhu
Widow of Shri Kamalkant M. Prabhu

.... Applicant

Vs.

Deputy Regional Director,
Employees' State Insurance
Corporation, Regional Office,
Panchdeep Bhavan, N.M.Joshi Marg,
Lower Parel, Bombay - 400 013.

.... Respondents

CORAM : Hon'ble Shri M. R. Kolhatkar, Member (A)

APPEARANCE

Shri K. K. Shah counsel
for the Applicant.

Shri R. M. Jaikar counsel
for the Respondents.

JUDGMENT :

Dated : 4-3-94

(Per : Hon'ble Shri M. R. Kolhatkar, Member (A)

1. This is an application for compassionate appointment under section 19 of the Administrative Tribunals Act 1985. Applicant No.1 is the widow of the employee who expired on 10.1.91. Applicant No.2 is the son of Applicant No.1 aged 24 years in 1991. The applicant No. 1 on 28.1.91 vide page 9 made an application which contained two requests: (1) compassionate appointment of her son, Applicant No.2 (2) transfer of staff quarters at Andheri, Bombay which were allotted to her late husband in the name of her son. The application was rejected by the respondents by letter dated 12.7.93 vide page 8 of the application, on the ground that the case was not found fit in accordance with the Government rules on the subject. This order has been impugned. With her letter dated 22.6.92 (Page 23) the first applicant filed on affidavit dated 16.4.92 stating that her husband did not leave any movable/immovable property. The proforma particulars required for compassionate appointment were filed by the applicant on 13.4.92 (Page 27). Additional particulars in respect of two sons of the applicant No.1 who were not staying with the applicant were furnished on

27.1.93 (page 32). It was thereafter that the impugned order came to be passed.

2. The relief sought by the applicant is firstly to grant compassionate appointment to the second applicant and secondly permission to retain staff quarters allotted to the first applicant's late husband. Nothing was stated in the reply regarding the allotment of quarter. It appears that, in the meanwhile, the allotment was cancelled on 20 September 1991 and the proceedings under P.P. Act were initiated. Orders for vacation of staff quarter were issued by the Estate Officer on 22.1.92 (Page 19). Pending hearing of application, interim relief was prayed directing the respondents not to evict the applicants and their family from the staff quarters allotted to the applicant's late husband. This Tribunal by its order dated 23rd July 1993 granted interim relief as prayed for.

3. The respondents have filed a reply in which they have questioned grant of interim relief to the applicant in view of the eviction order of the competent authority. According to the respondents the applicants have received the following amounts as pensionary benefits consequent on the death of the employee.

i) Pension	:	Rs. 860/- being paid P.M.
ii) Gratuity	:	Rs. 55,760/-
iii) Group Insurance	:	Rs. 20,000/-
iv) Provident Fund	:	Rs. 57,353/-
v) Deposited Linked Ins.	:	Rs. 30,000/-
vi) Leave Encashment	:	Rs. 2,857/-
Total		Rs. 1,65,970/-
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The respondents have stated that only an amount of Rs. 1,000/- plus the monthly dearness relief of Rs. 791/- have been withheld as a security for handing over the vacant peaceful possession of the Government quarters.

According to the respondents, applicants have not clearly stated as to what they did with the cash benefits received to the tune of Rs. 1,65,000/- and that they have suppressed the particulars about their respective employments and income. According to the respondents it is difficult to believe that applicant No.2 who is B.Com/D.C.M. or his sister Sangita continue to remain unemployed inspite of their qualifications. It is stated that Applicant had purchased residential premises at Palghar under construction expected to be ready on March 93. It is contended that the applicant for compassionate appointment is merely a device for staking a claim to and continuing in the possession of Government Quarters.

4. The applicant has filed a rejoinder in which she has stated that she had agreed to vacate the staff quarter on or before 31.3.93 or the date on which decision regarding employment of the 2nd applicant was communicated, whichever, is later and that so far as purchase of residential premises at Palghar is concerned the first applicant has withdrawn from the said construction and on account of increase in the rate of properties she has not been able to make a fresh booking. The applicant has also stated that if it is not possible to offer the employment to the second applicant on compassionate ground the case of her daughter or her own case may be considered for employment.

5. The counsel for the applicant has relied on the following judgments in support of his case.

- (1) PHOOLVATI Vs. UNION OF INDIA, AIR 1991, SC 469. | These are well -
- (2) SUSHMA GOSAIN, AIR 1989 SC 1976. | Know judgment
- (3) PHOOLKUMARI case decided by Jaipur Bench vide (1993-(23) ATC 548) inwhich the applicant was receiving a family pension of Rs.900 plus dearness relief thereon per month and also had received a total sum of Rs.1,28,785/-

as other pensionary benefits. The court took into account the fact that the applicant has in all 8 sons and daughters of whom 4 daughters were to get married and only the eldest son was employed and was drawing a meagre salary of Rs.1400/- per month. The Tribunal, therefore, directed consideration of the case of a son of the applicant for compassionate appointment.

(4) SATYABHAMA UMA GAIKWAD Vs. UNION OF INDIA 1993(1)1993
(I) SLJ 358 decided on 22.9.92 by Bombay Bench. In this case the applicant was a widow of a labourer of the Ordnance Factory and her request for compassionate appointment was denied, on the ground that there was no vacancy. The Tribunal directed creation of a Supernumerary post in view of the ratio in SUSHMA GOSAIN case approved in PHOOLAVATTI case.

(5) The unreported case decided by this Tribunal in TR. 284/86 Ms. CHRISTIANA BARNAVAS Vs. UNION OF INDIA . In that case the late applicant was working as a motorman and his daughter was held entitled for appointment as a clerk in Class III and was allowed to retain the same quarter on the ground that on her compassionate appointment she may be entitled for a larger or similar quarter which she was then occupying.

6. It was argued by the counsel for the Applicant that two of the sons of the applicant No.1 were living separately and although they were getting Rs.4500 and Rs.2500 respectively per month, they had their own families to support. Hence, the widow and her son and daughter need assistance by way of compassionate appointment. The affidavit dated 17.6.92 regarding vacation of quarter was given to the respondents because the respondents had made it a precondition for communication of their decision regarding compassionate appointment. The lumpsum pensionary benefits received by the applicant are no longer available having been used up in the medical expenses during and for the illness of her deceased husband and also the continuing treatment of applicant

No. 1 who is old. According to the applicant, PHOOLKUMARI's case decided by Jaipur Bench as well as Barnavas case decided by this bench fully support her case as they relate to a similarly placed Class III employee,

7. The respondents in their arguments have contended that the cases quoted by the applicant do not apply. The Application for compassionate appointment has been made by Applicant No.1 only with a view to retain the Government Quarter. The eviction order of the competent Authority could not be implemented only because of the interim stay given by the Tribunal. The applicant has not approached the Tribunal with clean hands inasmuch as in her original application she has suppressed important facts relating to the booking of a flat in Palghar and her sources of financing it. In this connection the respondents relied on a judgment of the Allahabad Bench in HARBANS SINGH SETHI Vs. RENT CONTROLLER AND EVICTION OFFICER, NAINITAL, AIR 1966, Allahabad, 621. The respondents also relied on the case of A. RAGHUKUMAR Vs. POST MASTER GENERAL, (WELFARE) A.P. CIRCLE AND ANOTHER, 1993, (23) ATC, (Page 33) in which it has been held by Central Administrative Tribunal Hyderabad Bench that compassionate appointment is not a matter of legal right and it is meant only for a person who is in indigent circumstances.

8. The applicant in his reply to respondents' argument has relied on (1) the case of KRISHNAKUMAR decided by Ernakulam Bench vide 1992 (21) ATC page 142 in which the mere fact that the family has been able to survive for a long time was held not to constitute proof of absence of indigent circumstances. and on (2) the Full Bench Decision in the RASILARAM's case in which allotment and cancellation of accommodation are held to be service matters in which relief by way of restraint on eviction can be passed by the Tribunal.

9. We have considered the matter carefully. In her original application the applicant had clubbed her application for compassionate appointment with the application for retention of quarters. No doubt retention or cancellation of allotment of Government quarters is a service matter. Moreover in this case, it has to be treated as a consequential relief. We are required first of all to decide the question of compassionate appointment and retention of Government Quarters is conditioned on the compassionate appointment if granted. So far as the vacation of the retired deceased Government employee from the Government quarters is concerned, there is no doubt a separate machinery for deciding the dispute. However, this Tribunal is fully competent to stay eviction by way of interim relief in order to avoid inculpable loss which can not be compensated in monetary terms. The challenge to grant of interim relief by Respondents therefore must be repelled.

10. In this connection, it may be useful to consider the scheme of compassionate appointment for which comprehensive instructions were issued by Department of Personnel under the Office Memorandum No. 14014/6/86-Estt (D) dated 30.6.87. Relevant portions are extracted below:-

1. "To whom applicable

(a) To a son or daughter or near relative of a Government servant who dies in harness including death by suicide, leaving his family in immediate need of assistance, when there is no other earning member in the family."

2. "Eligibility

(i) In deserving cases even where there is an earning member in the family, a son/daughter/near relative of the deceased Government servant, leaving his family in distress may be considered for appointment with the prior approval of the Secretary of the Department concerned who, before approving the appointment, will satisfy himself that the grant of concession and liabilities left by the deceased Government servant, the income of the earning member as also

his liabilities including the fact that the earning member is residing with the family of the deceased Government servant and whether he should not be a source of support to the other members of the family."

3. "Relaxation

Compassionate appointments are made in relaxation of the following :-

(a) Recruitment procedure, i.e. without the agency of the Staff Selection Commission or Employment Exchange.

(b) Age limit wherever necessary. The relaxation of lower age limit should not be below 14 years of age.

(c) Educational qualifications to the extent stated in para 4 above.

(d) Clearance from Surplus Cell of this Department/ Directorate General of Employment and Training :

4. "Selective approach

(i) The scheme of compassionate appointments was conceived as far back as 1958. Since then a number of welfare measures have been introduced by the Government such as the following which have made a significant difference in the financial position of the families of Government servants dying in harness. The benefits received by the family under these schemes may be kept in view while considering cases of compassionate appointment."

11. "It will be seen from the above that the compassionate appointments are to be made under executive instructions. However, the constitutional and administrative context of compassionate appointments must be kept in view. It is the common observation that O.A.'s made to Central Administrative Tribunal generally rely on Articles 14 and 16 of the constitution. As is well known, Article 14 enshrines the fundamental right to equality before law and Article 16 deals with equality of opportunity in matters of public employment subject to provisions for reservation, in favour of backward

to provisions for reservation, in favour of backward class of persons. Therefore, recruitment to services is entrusted to Public Service Commissions vide Articles 315 to 323. It is the duty of Public Service Commissions to conduct examinations for appointment to services of the Union and the services of the State. The up shot of this summary is that there is equality of opportunity in public employment and the selection is made through examinations which test merit. In other words appointments to public service on ground of relationship with a Govt. employee or in other wards "hereditary appointment", to which compassionate appointment resembles has to be treated as an exception to the mandate of equality of opportunity and this exception has to be strictly related to objective of the scheme which is family's "immediate need of assistance" where there is an earning member in the family, the "distress test" is to be applied.

12. Hon'ble Supreme Court's observations in the well known case of SUSHMA GOSAIN and PHOOLVATI are fully in consonance with this reading. In SUSHMA GOSAIN'S case, the need of the widow of the ex-employee of Border Roads organisation was not in dispute. However, the Department having subjected the widow to the trade test subsequently dragged its fact on the count that there was a ban on employment of women in the organisation. In this context, Hon'ble Supreme Court emphasized the need for expeditious action in following terms.

"It can be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate grounds is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. If there is no suitable post for appointment, super-numerary post should be created to accommodate the applicant".

13. In PHOOLVATI's case, the Tribunal had dismissed the application of the widow on the ground that her husband died

about a year ago and she cannot retain the quarter which can allotted to her husband while in service. The Appellant approached Supreme Court by a Special Leave Petition praying for permitting her to stay in the quarter as well as to employ one of her three sons especially the second son who was literate in the Govt. printing press according to his qualification. On Government of India expressing inability to provide her second son with employment, the Supreme Court relying on SUSHMA GOSAIN's case gave relief. The relief was given in the facts of that particular case viz that applicant had received only an amount of Rs. 21,700 + Rs. 10,926 + Rs. 1,717 = Rs. 34,343/- as Gratuity and other benefits and a monthly pension of Rs. 290/- only.

13. We may also refer to RAGHUKUMAR's case decided by Central Administrative Tribunal, Hyderabad Bench of this Tribunal vide A. RAGHUKUMAR Vs. P.M.G. 1993(23) ATC Page 33 which high lights some basic points : In that case, the facts were as below :-

The Applicant, the son of the deceased had claimed employment on the ground that he and his mother were in penury and his two elder brothers though employed were not supporting the family. It was noted, however, that the family got Rs. 1,00,356/- as pensionary benefits plus Rs. 900 + Rs. 639 = Rs. 1,539 as monthly pension and the Applicant had two houses one ancestral and the other constructed out of Govt. loan. The Department held that the family was well settled and not in indigent circumstances and rejected the application for appointment. The Tribunal upheld the Department's action, noting that compassionate appointment is not a matter of legal right and the Department can not be said to have rejected the application in an arbitring manner.

14. From the above review, we may extract following general principles :-

(1) There is a constitutional mandate of equality of opportunity in the matter of public employment subject to reservations in favour of persons of backward class.

(2) Constitution provides machinery to enforce this mandate by way of public service commission, staff selection commission etc. which conduct examinations to test merit.

(3) Compassionate appointment which partakes of the characteristic of hereditary appointment is an exception to the mandate of equality of opportunity. Hence, there can be no such thing as a right to compassionate appointment.

(4) Compassionate appointments being an exception, Government instructions in this regard must be strictly construed.

(5) The tests of (a) "immediate need of assistance when there is no other earning member in the family" and (b) "distress test" when there is an earning member of family must be satisfied before compassionate appointment can be granted.

(6) When the tests are satisfied, Department should take expeditious decision and if there is no post, even a supernumerary post may be created.

(7) When compassionate appointment is validly ordered, the Court may also order regularization of Govt. quarter in favour of dependents of the deceased Govt. employee.

(8) The role of judicial review of compassionate appointment matters must, therefore be correspondingly construed.

15. So far as the facts of this particular case are concerned it is undisputed that the widow of deceased employee is entitled to family pension at the rate of Rs. 860 + Rs. 761 = Rs. 1621 per month and a gratuity of about Rs. 1,65,000/-. Two sons of the deceased are employed and the son in respect of whom the employment is claimed is a Commerce Graduate who has also completed

one year part time diploma course in computer management. There is one daughter to be married off but she appears to be well educated. The family had booked a flat in Palghar and no figures have been given in connection with the deposit for the flat or as to what amounts were spent in connection with the illness of the late husband and the illness of the widow of the deceased employee Applicant No.1. The cases on which the applicant has placed reliance are distinguishable. In PHOOLVATI's case, the applicant was widow of a class IV employee in receipt of family pension of Rs. 290 + Rs. 34,000 as other pensionary benefits. In the case of PHOOLKUMARI the deceased Government servant was survived by eight children of whom 4 were daughters to be married off. In SATYABHAMA GAIKWAD's case the deceased was a motorman of the railways. In CHRISTIANA BARNAVAS's case the need for compassionate appointment was not denied by the Respondents, the Railways and the financial data were not dealt with in the order. In the case of KRISHNAKUMAR the contention was taken that the fact of ability of family to survive for 9 years should be taken as sufficient evidence that family does not require compassionate appointment which was repelled. The financial data were not available.

16. The respondent has placed heavy reliances on RAGHUKUMAR's case. The applicant has tried to distinguish RAGHUKUMAR's case on the basis that in that case the family owned two houses whereas in the present case the family did not own any house. This certainly can not be taken as a ground for compassionate appointment. The ownership or occupation of accommodation is however not a conclusive factor. The factor to be considered is whether the test of "immediate need of assistance" is satisfied for us to direct compassionate appointment.

(20)

17. In the light of our detailed discussion we hold that in the circumstances of the case the Dept's refusal to make compassionate appointment does not call for any interference from the Tribunal. At the same time, the action of the Dept. in withholding Dearness Relief portion of the pension as a security for delivery of vacant possession of the Govt. quarters is not justified. We, therefore, dispose of the case by passing the following order.

O R D E R

Application is dismissed. Interim relief is vacated. However, Respondents are directed to release withheld portion of the Dearness Relief as well as any other withheld amounts minus the normal rents and electricity charges etc. if any, due to the Applicant with 12% interest from the date they became due. No order as to costs.

M.R. Kolhatkar
(M.R. Kolhatkar)
Member (A)