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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 789/93

Transfer Application No:

DATE OF DECISION: 1.12.94

Shri Shamrao G. Mali Petitioner
Smt. Anusayabai G. Mali

Shri D.V. Gangal Advocate for the Petitioners

Versus

Union of India and others. Respondent

Shri 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
(B.S. Hegde)
Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

(11)

Original Application No. 789/93

Shri Shyamrao G. Mali

Smt. Anusayabai G. Mali

... Applicants.

V/s.

Union of India through
Secretary, Ministry of Defence
South Block, New Delhi

The Chairman
Ordnance Factory Board
10-A, Aukland Road,
Calcutta.

The General Manager
Ordnance Factory
Bhusawal.

... Respondents.

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

Appearance:

Shri D.V. Gangal, counsel
for the applicant.

Shri R.K. Shetty, counsel
for the respondents.

ORAL JUDGEMENT

Dated: 1.12.94

(X) Per Shri B.S. Hegde, Member (J) (X)

Heard counsel for the parties. On the last occasion, counsel for the applicant submitted that one Shri Amar Singh had been appointed vide letter dated 9.11.93. Accordingly the respondents were directed to verify from the department, whether the statement made by the counsel for the applicant is found to be correct or not. Pursuant to the directions given by the Tribunal, the respondents have filed an affidavit dated 27.11.94, conceding that Shri Amar Singh Patil at Sl. No. 19 of the list of compassionate appointment annexed as Exhibit 'C' to the respondent's affidavit dated 12.10.94 reiterated that it is true that the applicant has been appointed as Class IV employee in November 1993. It is also

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stated that Smt. Leelabai S. Patil wife of Shri S.R. Patil, who died while in service on 27.11.91, thereafter, applicant No.2 applied for compassionate appointment on 27.12.91 which was rejected by the respondents on 6.3.92. Again applicant No.2 applied for compassionate appointment on 10.4.92 which was rejected on 11.6.92. Thereafter applicant No.2 applied for compassionate appointment which was also rejected on 12.1.93.

2. This pertains to compassionate appointment of applicant No.1. The main contention of the applicant is that the rejection of the request was made in redundant manner and no plausible explanation is made by the respondents. Further the counsel for the applicant submits that the ground stated by the respondents in rejecting the application of the applicant as well as of Amar Singh Patil are same. When it was pointed to the counsel for the respondents that when Amar Singh's case was rejected on the same ground how he has been considered for employment. Shri Shetty, counsel for the respondents states that it might have been on the basis of the Labour Officer's report. But in fact the Labour Officer's report is not on record. He further submits that the mother of Amar Singh made a further appeal or review on 21.4.93 which was referred to the Labour Officer and Civil authorities for verification of the pecuniary conditions and family circumstances of the deceased. Then on a judicious consideration of the Labour Officer's report, the competent authority has taken a decision to appoint Amar Singh on compassionate grounds on 9.11.93. Further they urged that the applicant's

father expired while in service when he was 57½ years, hardly six months to go, whereas Amar Singh's father was expired at the age of 49 nearly 11 years of service was left. In so far as the case of Amar Singh, the family consists of 7 members and so far as the applicant is concerned, the family consists of 3 members. In view of the facts and circumstances, the Labour Officer observed that the benefits available to the family would be sufficient to maintain themselves, thus on that ground re-consideration of the applicant's request for compassionate appointment could not be considered.

3. Both the counsel have referred to the Supreme Court's decision as well as the Tribunal's decision in support of their contention.

4. Shri Shetty has referred to the latest decision of the Supreme Court in the case of Union of India V/s. Smt. Mohamudabai Nawab in S.L.P No. 9421 of 1994, wherein the Supreme Court has set aside the order of this Bench in which a direction was given to the respondents to give appointment on compassionate ground. The Supreme Court while setting aside the order of the Tribunal further observed that the respondent's son on attaining the age of 14 years and on acquiring the requisite qualification prescribed for the job would be considered by the appellants for an appropriate appointment, in accordance with the offer made by the appellants on this behalf.

5. The learned counsel for the applicant submits that the decision of the Supreme Court in the case of LIC V/s. Mrs. Asha Ramachhandra Ambekar & Anr. does not strictly apply to the facts of this case, because in that case statutory provisions

have not been followed. In the instant case there is no such statutory provisions and there is no age bar for seeking compassionate appointment and the reasons given by the respondents that the applicant is 32 years is not germane to the issue involved and the same is not justified. Since Amar Singh has been given compassionate appointment at the age of 30 years, therefore it is not open to the respondents to discriminate between and to arrive at just and fair conclusion.

6. It is true that two cases cannot be compared, depending upon the facts of each case and its merits. In so far as Amar Singh's case is concerned, while rejecting Labour Officer's report was not called for despite the same subsequent to the application made by his mother his case has been re-considered. Accordingly counsel for the applicant submits that the applicant's case may also be considered keeping in view of the directions given by the Supreme Court as well as the ratio laid down in the case of LIC.

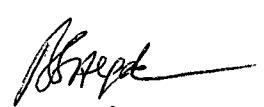
7. The purpose of providing appointment on compassionate grounds is to mitigate the hardship due to death of bread earner in the family, such appointment, therefore be provided immediately to redeem the family in distrust.

8. Employment on compassionate ground cannot be claimed as a matter of right when the competent authority has duly considered the circumstances of the family of the deceased employee on the request of the widow and rejected, there remains no case for judicial review. Mere death of an employee in harness does not entitle his dependent to a job, financial condition of the family must be taken into account.

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A job on compassionate ground cannot be offered as a matter of course irrespective of financial condition. In the instant case it has been thrice considered and rejected. Applicant's father died six months before his superannuation, whereas in the case of Amar Singh Patil, his father died and he has 11 years service left and seven members ~~to be taken~~ care. Therefore, each case has to be considered in accordance with merits subject to fulfilment of norms prescribed by the department. In the instant case similar norms should ^{have been} be applied by the respondents i.e. on the basis of the Labour Officer's reports or any other relevant information before arriving its decision on the facts of the case.

In the interest of justice I, hereby, direct the respondent to consider the case of the applicant for compassionate appointment, ignoring the age limit and consider his request for compassionate appointment made on earlier occasion, keeping in view of the pecuniary conditions of his mother and take proper decision within a period of three months from the date of receipt of this order and pass a suitable order in this behalf. O.A. is disposed of accordingly.


(B.S. Hegde)

Member (J)

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