

6

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 523/94

Transfar Application No:

DATE OF DECISION: 6.9.1994

Smt. H. H. Nikalje

Petitioner

Shri B. Ranganathan

Advocate for the Petitioners

Versus

Union of India & Ors.

Respondent

Shri R. K. Shetty

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

(M.R. KOLHATKAR)

MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

OA.NO. 523/94

Smt. Hausabai Hari Nikalje ... Applicant

v/s.

Union of India & Ors. ... Respondents

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

Appearance

Shri B.Ranganathan
Advocate
for the Applicant

Shri R.K.Shetty
Advocate
for the Respondents

ORAL JUDGEMENT

Dated: 6.9.1994

(PER: M.R.Kolhatkar, Member (A))

The applicant is the widow of the employee of Ordnance Factory Board who expired on 25.4.1991. The widow admittedly got various retirement benefits amounting to Rs.82,939 as Terminal Benefits + Family Pension of Rs.600/- + relief of Rs.582/-. The request of the applicant was for compassionate appointment in respect of her 4th son was rejected by letter dated 23.1.1992, which is not on record. Subsequently, she made further applications dated 2.7.1991, 16.11.1992 and 21.1.1994 to which the following reply has been given on 17.3.1994. The same is reproduced below :-

" Your appeal for re-consideration of your request for employment assistance to your son Shri Milind H Nikalji was again taken up with higher authorities. It has been intimated by the higher authorities that your son's case cannot be considered for employment assistance, as your elder son is employed as a regular employee in OFA itself. Further you have been paid terminal benefits amounting to Rs.82,939/- and also you are in receipt of Family pension Rs.600/- plus relief Rs.582/- (Total Rs.1182)/- per month.

The final decision on the case having been given, the case is treated as closed."

2. It is the case of the applicant that although her eldest son is employed in the Ordnance Factory, Ambernath itself, he stays separately from her. Her second son is the dismissed employee of the MTPF Ambernath, the 3rd son is unemployed and it is for the 4th son she claimed the benefit of compassionate appointment. She has also an unmarried daughter aged 23 who is studying in M.Com The applicant states that she is a cardiac patient and substantive amount from the retiral benefits was spent on her medical treatment. The applicant invites our attention to Government of India's orders dated 30.6.1987, Para 4 (e). As this is important, it is reproduced below :-

"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 is justified having regard to the number of dependents, the assets 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."

According to the applicant, in the circumstances enumerated the guideline is satisfied in her case and the 4th son should be given compassionate appointment.

3. The applicant also relies on the judgement of the Madras Bench dated 29.7.1991, K. Samuel vs. Union of India & ors. 1992 (1) SLJ (CAT) 9. This was also a case in which there was an earning member in the family and substantial retiral benefits were available. The Tribunal held that the case of the applicant was not considered duly in terms of the criteria as laid down in the 1987 O.M. and the matter was referred back to the Secretary to the Government of India. The applicant also relied on the case of Smt. Asha Devi Srivastava

Vs. Union of India & Ors., 1992(1) SLJ(CAT)38, decided on 30.8.1991 by the Principal Bench, New Delhi, in which it is laid down that " the respondents should evolve an appropriate scheme for considering the request made for compassionate appointments at the various Presses.

A panel of names of person who deserve appointment on compassionate grounds should be prepared and appointment must be made strictly in accordance with the panel so prepared in available vacancies and suitable vacancies. "

4. The respondents have resisted the application for compassionate appointment. The respondents have particularly relied on the judgement of the Supreme Court in Life Insurance Corporation of India V.s Mrs. Asha Ramchandra Ambekar & Anr. reported in 1994(1) SCALE page 748. In this case in para 7 of the judgement the Hon'ble Supreme Court stated that :

" Where the Corporation has acted bonafide and declined to appoint the 2nd respondent, that exercise of power cannot be interfered with. Shortly put, the Corporation cannot be directed by means of a mandamus to do something which is per se illegal. "

The learned counsel for the respondents argues that while the facts may not be identical all the same, the ratio laid down by the Hon'ble Supreme Court is binding on this Tribunal. He also urges that the benefit of compassionate appointment has to be given sparingly and if a large number of compassionate appointments are made, it would really mean that the Government machinery is being used by existing employees for self-aggrandisement and for empldment. To the specific question as to whether the Labour Officer of the respondents had made any efforts to ascertain the precise state of relationship

between the applicant and the first son who is an employee of the respondents, it is stated by the respondents under instructions that the Labour Officer had tried to find out whether the first son would be reconciled to the applicant, but the matter could not make much progress for want of help from the first son. However, this is an area which required further exploration.

5. In our view, the case of LIC Vs. Asha Ramchandra Ambekar is not on all fours with the present case. The facts of the case are similar to the case of K. Samuel Vs. Union of India. We also note that the reply from the Ordnance Factory Board cannot be the last word in the matter, firstly, because there is no indication that the matter was considered by the Secretary of Defence Ministry. as is laid down by Para 4 (e) of the Government Memorandum, secondly, the letter dated 17.3.1994 merely recites that " it has been intimated by the higher authorities that your son's case cannot be considered for employment assistance, as your elder son is employed as a regular employee in OFA " and makes it an apparent ground for holding that the application of the applicant cannot be considered although it is admitted by the respondents that the first son stays separately from the mother. We are, therefore, constrained to observe that the requirements of O.M. dated 30.6.1987 para 4(e) have not been complied with in this case and there is no alternative but to refer back the case to the Secretary, Ministry of Defence for considering all the facts of the matter and pass a speaking order keeping in view the instructions laid down therein. We, therefore, dispose of the case by passing the following order in the nature of directions.

ORDER

The applicant is directed to make a detailed representation to the Secretary, Ministry of Defence, Government of India within a month of communication of this order. The Secretary, Ministry of Defence, Government of India should consider the representation in the light of guidelines of the Government of India contained in the Circular Memorandum dated 30.6.1987 with special reference to Para 4(e) and pass a speaking order disposing of the representation. The Secretary to Government of India should decide the matter on the basis of the latest facts as ascertained including a finding as to whether the first son lives with applicant so as to constitute a family as envisaged by Para 4(e) or whether the first son is to be treated to be separate from the applicant.

If the applicant is aggrieved by the order of the Secretary, Ministry of Defence, she is at liberty to approach the Tribunal within a fortnight from the order. Till that time the respondents are restrained from evicting her from the quarters.
No order as to costs.

M.R.Kolhatkar

(M.R. Kolhatkar)
Member (A)

NS