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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 894/94

Transfer Application No:

DATE OF DECISION: 30.11.1994

M.B.Toney.

Petitioner

Mrs.N.V.Masurkar.

Advocates for the Petitioners

Versus

Union of India & Ors.

Respondent

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Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri Justice M.S.Deshpande, Vice-Chairman.

The Hon'ble Shri

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


(M.S.DESHPANDE)
VICE-CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH, BOMBAY.

Original Application No.894/94.

M.B.Toney.

... Applicant.

V/s.

Union of India & Ors.

... Respondents.

Coram: Hon'ble Shri Justice M.S.Deshpande, Vice-Chairman.

Appearances:-

Applicant by Mrs.N.V.Masurkar.

Oral Judgment :-

¶Per Shri M.S.Deshpande, Vice-Chairman Dt. 30.11.1994.

By this application, the applicant seeks a Compassionate Appointment. One Bhojraj who was employed with the Respondents was medically de-categorised on 24.3.1988. On 4.4.1988, the applicant who is the third son of Bhojraj filed an application for compassionate appointment and it was rejected on 8.1.1990. The applicant has therefore approached this Tribunal by filing Original Application No.1161/92 and by an order dt. 23.6.1993 a direction was issued to the Respondent No.1, the General Manager, Central Railway to examine the case of the applicant afresh after taking into consideration the financial status of the applicant and his family and to come to a definite conclusion whether the applicant deserve appointment on compassionate ground and the decision was to be communicated to the applicant by means of a reasoned order within a period of three months from the date of communication of the Judgment. The Tribunal while passing the order took note of the fact that the applicant was called to appear for a written/oral test on 4.7.1988 and though the applicant gave the test, his request for appointment

on compassionate ground was not considered. The Tribunal also found that the General Manager ~~had~~ was prejudiced by the consideration that the service record of Bhojraj was unsatisfactory though that could not have been a consideration for rejecting the application and what was important was the financial status of the family. No order was passed in the manner directed by the Tribunal, but on 20.9.1993 a cryptic order was passed that after having gone through the case there was not enough justification for offering a compassionate appointment to the applicant who could look after his landed property and support his family. A Contempt Application was filed and by an order dt. 8.4.1994, the Tribunal directed the Respondents to pass a reasoned order as directed by the Tribunal within two months from the date of the communication of the order and to pay Rs.200/- as costs to the applicant. On 1.6.1994, the General Manager passed an order observing that at the time of retirement Bhojraj was paid an amount of Rs.11,913/- as Provident Fund, Rs.12,150/- as D.C.R.G. and Rs.1,486/- as N.G.I.S. and he was receiving Rs.375/- + Rs.104/- DA as monthly pension. It was also noted that he had a joint family consisting of his wife, three sons, three daughters-in-law and three grand children and that till 1986 he was residing in rented house at Ganesh Mandir, Akalkot and thereafter he shifted to his own house "Sudha Nivas" after purchasing it. His elder son is an Ex-Serviceman and looked after agriculture, ^{the} yields of which was not high because of the dry climate prevailing in the region, and the land had been mortgaged. His second son who was working as a

Lecturer in Akalkot College was elected as a Corporator of Akalkot Nagar Parishad. Considering these facts and that Bhojraj had less than 1½ years service left at the time ^{he was} medically de-categorised the claim for his third son's compassionate appointment was not approved. This order is being questioned by the present application. The contention of the respondents was that the record of Bhojraj was unsatisfactory and that the financial status of the family was such that no compassionate appointment could be granted.

2. The learned counsel for the applicant urged that the certificate issued by the Talati on 18.4.94 show that the annual agricultural income from the applicant's 12 Hectars & 8 Acres in the year 1993-94 was Rs.30,000/- while his income from pension was Rs.6,300/- and since in the impugned order dt.1.6.94 it is mentioned that the income from the land was not high, the only inference should have been that the financial condition of the family was not good. Another certificate was filed to show that the applicant's brother who was a Lecturer turned Corporator drew only Rs.480/- as allowances as a Corporator. The house had been constructed in 1946 and it was not a Bungalow and considering the size of the family compassionate appointment should have been granted.

3. It is apparent that while considering the question of compassionate appointment, note is to be taken on the distress that would result to the family. Apart from Rs.6,300/- which was the annual pension, the income from the land was Rs.30,000/-

and the land was being managed by the Ex-serviceman brother of the applicant and that he earned Rs.30,000/- as income. The plea that there were 14 members of the family is mis-leading because the applicant's own family would be strictly his parents. The father was getting a pension and besides the retiral benefits Rs.30,000/- as income from the land. True, the Ex-serviceman son of Bhojraj had to maintain himself and the family from the income of the land, but that circumstance would not be decisive. The third son who was a Corporator may be receiving only an allowance, but if he left the job of a Lecturer to become a Corporator to enter into politics, the requirements of his family could not be relevant for ascertaining the distress^{ed} condition of the family.

4. The submission on behalf of the Respondents was that all the documents which have been produced before the Tribunal had not been produced before the authority when the question of compassionate appointment was being taken up. It is true that it is not open to the Tribunal to come to its own conclusion on the basis of material which was before the authority concerned or additional material which may be produced. What is necessary to look into is whether the relevant circumstances had been taken into consideration by the authority concerned. The authority had taken into consideration apart from the retiral benefits and the pension which Bhojraj was drawing, that he had a house and land and has come to his own conclusion on the basis of this evidence. It is not open for the Tribunal to enter into a consideration of facts and reappreciate the

evidence for reaching a proper conclusion and substitute its own findings for that of the authority. Though the Tribunal may reach a different conclusion on the basis of the said material, that would not be a ground for interfering with the decision of the authority.

5. The learned counsel for the Respondents urged that it would not be open to the Tribunal now to issue a direction and all that the Tribunal can ask the respondents was to re-consider the material if the Tribunal felt that some material had not been considered by the authorities. It is difficult to agree with the proposition that the direction cannot be issued by the Tribunal in view of the decision of the Supreme Court in *Smt. Phoolwati V/s. UOI & Ors. (A.I.R. 1991 SC 469)*, because in that case the Supreme Court had issued a direction to the Union of India to take immediate steps for employing the 2nd son of the applicant before the Supreme Court. If it were possible for me to differ ^{now} with the conclusion reached by the authorities on the basis of the material placed before the authority, I do not think that a direction could not have been issued for the appointment of the applicant.

6. However, since in the present case the entire material has been considered and the authority has passed an order in accordance with the directions issued by the Tribunal, I do not think that any interference would be called for.

The OA is therefore dismissed.

6.
(M.S.DESHPANDE)
VICE-CHAIRMAN