

CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A.No. 1433/95

Date of Decision 22/3/96

Kiran B Sapkale & Ors. Petitioner

Shri D.V.Gangal Advocate for the Petitioner.

Versus

Union of India & Ors. Respondent

Shri R.K.Shetty Advocate for the Respondents.

Coram:

The Hon'ble Mr.V.Ramakrishnan, Member (A).

The Hon'ble Mr.

1. To be referred to the Reporter or not? *No*
2. Whether it needs to be circulated to other Benches of the Tribunal? *No*

abp.


(V.RAMAKRISHNAN)
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL,
GULESTAN BLDG. NO.6, PRESCOT ROAD, 4TH FLOOR,
MUMBAI - 400 001.

ORIGINAL APPLICATION NO. 1433/ 1995

DATED THE 22ND DAY OF MARCH, 1996.

CORAM: Hon'ble Shri V. Ramakrishnan, Member (A)

Kiran B Sapkale & Ors. ... Applicant
(Advocate by Shri D.V. Gangal)

V/s.

Union of India & Ors. ... Respondents
(Advocate by Shri R.K. Shetty)

O R D E R (O R A L)

Per Shri V. Ramakrishnan, Member (A)

I have heard Shri D.V. Gangal for Applicants and Shri R.K. Shetty for Respondents.

2. The first applicant is the son and the second applicant is the widow of an employee who died in harness while serving in Ordnance Factory Board in Bhusawal in the Ministry of Defence. The applicants are aggrieved by the order of the department dated 21.3.95 as at Annexure A-1, where the request for compassionate appointment of the first applicant has been rejected. The deceased employee was in occupation of a Government quarter at the time of his death. The first and second applicants who are the son and widow of the deceased Government servant continued to occupy the same quarters

...2/-

as per the orders of the Tribunal dated 5.12.95, which was extended later as they secured an interim order restraining the department from evicting them from the Government quarters.

3. Shri Gangal for the applicants argues that the stand of the department in refusing compassionate appointment to the first applicant is violative of the guidelines and rules laid down by Government for such appointment. Shri Gangal also contends that the applicant's case has been rejected on the ground that the pecuniary condition is such that compassionate appointment is not required. He states that this stand has been taken by the respondents in the context of the retiral benefits which the family received on the death of the deceased which included a sum of over Rs.77,000/- towards Gratuity, Insurance, etc. besides family pension totalling to Rs. 1,500/- per mensem including dearness relief. He also says that the department has gone on the assumption that apart from the first applicant there is only the widow of the deceased Government servant to be looked after and there are no other persons who had depended on the deceased Government servant prior to his death. Shri Gangal contends that these assumptions are not based on facts. According to him, the applicant no doubt received over Rs.77,000/- as terminal benefits but the family had incurred large expenses in connection with the daughter's marriage of the deceased. Besides,

...3/-

he claims that the deceased was ailing for quite some time before demise and substantial sums had to be spent by way of his medical expenses. The stand of the applicants is that the lump sum on account of terminal benefits which the family received was wiped out as it had to be used to clear past liability. It is further argued that the assumption of the department that only the widow and the son were left behind by the deceased is also factually wrong as the deceased government employee and the applicants constituted an extended family and that the mother and brother and ^{his} ~~the~~ family of the deceased were also dependent on the deceased. (b)

Shri Gangal also refers to the report submitted by the Senior Labour Officer of the respondents which is enclosed as Exhibit R-3 to the written statement of the respondents themselves. The Senior Labour officer had recommended grant of compassionate appointment to the first applicant as he came to a specific finding that the pecuniary condition of the family was indigent and compassionate appointment in that case would be justified. The Learned Counsel states that the action of the department in refusing this relief despite a clear report by the Senior Labour Officer is arbitrary when the department had given compassionate appointment to a number of other cases whose pecuniary condition was better than that of the applicants. Shri Gangal states that the applicants had signed some papers regarding the GA

number of dependents etc. without understanding what they were doing and it cannot come in the way of their getting what is legitimately due to them.

Shri Gangal is also not sure whether the Board which is constituted to consider cases of such appointments had gone into the question properly. He submits that from the fact that the application had been rejected by the Board, it shows that it had not applied its mind. For these reasons, the Counsel states that the applicant is entitled to the relief sought for.

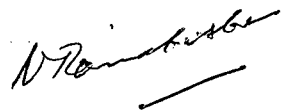
4. Shri Shetty resists the application. He says that the statement about having a large number of dependents is an after thought. He draws my attention to the statement given by the widow enclosed as Exhibit R-2 as also to the averment made by the first applicant, namely, the son, in the proforma attached to the letter dated 25.11.94 ^{Encl} R-3 where he had specifically stated that the liability only pertains to one son who is learning and his marriage is left. The applicants nowhere had brought out that there were other dependents to be looked after. Shri Shetty argues that the contention that a large part of amount has been spent on medical expenses is also not borne ^{out} by any material whatsoever. If the deceased had been ailing he should have taken treatment from the Government Hospital. The fact that he worked till the day prior to his death

would show that this contention also seems to be an after thought. The learned counsel also refers to the Supreme Court's observation that compassionate appointment is not a benediction to be conferred upon by the Courts disregarding the relevant rules and instructions. Shri Shetty therefore submits that this OA should be dismissed as it is totally devoid of any merit.

5. Shri Shetty makes available the relevant file where the applicants' case was considered by the Board of officers which has been constituted to consider cases of compassionate appointment. There is also a specific proforma which the Board had to fill in on the basis of the materials available before it. I find from this proforma that while the Board had awarded 16/ 20 in column for Family Pension and 10/ 10 against the column movable/ immovable property, it has given only 3/ 10 in respect of terminal benefits and 0/ 30 in the column for minor son and marriage of daughter. It is clear from the above that the respondents had held that the applicants had no other assets and the family pension is not large but they had gone on the assumption that the family had no other liability to meet and came to the conclusion that keeping in view the quantum of lump sum which has been paid towards terminal benefits, compassionate appointment would not be justified. They had also held that there were no minor sons and unmarried daughters who needed to be looked after by the family. The controversy relates to the questions

regarding the expenses stated to have been incurred for the marriage of the daughter and the medical expenses of the deceased which it is claimed had pre-empted the lump sum terminal benefits and also to the number of dependents which the family has to look after on the death of the government employee. The applicants contend that the terminal benefits had been practically wiped out on the marriage of the daughter and on account of the medical expenses of the deceased and also that the family has to look after the deceased's mother, brother and his family. As there is a dispute with regard to the factual position, I deem it proper to direct the respondents to hold an inquiry into the specific questions referred to above. It is needless to say that the burden is on the applicant to establish his claims in this regard by furnishing appropriate materials. To facilitate the process of holding a fresh enquiry and for the Board to reconsider the matter, I quash the order dated 21.3.95 as at Annexure A-1 rejecting the request for compassionate appointment. The respondents will complete this enquiry within three months from the date of receipt of this order subject to the cooperation of the applicants in this regard. The Board of officers will re-consider this question after such an enquiry is held and come to a proper finding keeping in view the enquiry report and the relevant rules for grant of compassionate appointment. This should be done within one month from the date of completion of enquiry referred to above. Till a further

decision is taken in this regard, the respondents are restrained from evicting the applicants from the quarters. With the above directions, the application is finally disposed of at the admission stage itself with no orders as to costs.



(V. RAMAKRISHNAN)
MEMBER (A)