

Deputy Commissioner of Income Tax
(Adm.) Aayakar Bhavan,
M.K. Road, Mumbai.

... Respondents.

By Advocate Shri Wadhavkar for Shri M.I. Sethna.

O R D E R

¶ Per Shri B.S. Hegde, Member (J) ¶

Heard counsel for the parties.

2. In all these applications the issue involved are common seeking compassionate appointment and regularisation of the quarters occupied by the erstwhile employee. Since the issue involved in these O.A.s are same, these O.A.s are disposed of by passing a common order. The details of which are given below:

O.A. 524/95

This application has been filed on 24.5.95. The applicants have prayed for interim relief to allow them to stay in the quarters till the disposal of the O.A. Though the Tribunal did not give any interim relief initially, since the reply is not forthcoming from the respondents the Tribunal vide order dated 12.10.95 "allowed the applicants to continue in the quarter till the out come of the O.A. payment of rent will be as per rules." The O.A. was admitted on 30.11.95. The interim relief was allowed to continue in the absence of the reply from the respondents. Again the respondents were directed to file additional reply clarifying certain points during the hearing vide order dated 26.11.96. In this case the applicant No.2 was allowed to retire from the post of Notice Server in I.T. Department,

Bombay and he was declared "Permently and completely incapacitated for further service with effect from 7.7.93, vide order dated 14.7.93. The applicant was granted invalid pension of Rs. 919/- p.m. Thereafter the applicant No.1 had applied for appointment to his son on compassionate ground on 19.7.93. The applicant No. 1 made an application for retention of quarter in view of his son getting compassionate appointment. The same was rejected by the respondents by order dated 25.4.95 stating that the quarter is deemed to have been cancelled with effect from 6.11.1994 as he was retired on 7.7.93. Accordingly was demanded a sum of Rs. 44,092/- towards rental dues / Thereafter the request for compassionate appointment of his son was rejected by the respondents vide letter dated 13.3.95. In view of the cancellation of the quarter, the applicant was directed to make market rent i.e. a sum of Rs. 44,092/- vide letter dated 10.5.95. The applicant vide letter dated 21.7.93 sought permission to stay in the quarter allotted to him for a further period of six months. The same was rejected by the respondents vide their letter dated 25.4.95.

O.A. 525/95

This application has been filed on 24.5.95. Applicant No. 2 was allowed to retire prematurely from the post of Notice Server in Income Tax Department, Bombay as he was declared "Permently and completely incapacitated for further service" with effect from 3.9.93. The applicant No. 2 was granted invalid pension of Rs. 1000/- p.m. . The applicant No. 2 was requested for compassionate appointment to his son as LDC which has been rejected by the respondents

vide order dated 13.5.95. Similar order has passed by the Tribunal while granting interim relief, allowed the applicant to continue in the quarter till the outcome of the O.A. Payment of rent will be as per rule." The respondents vide letter dated 4.4.95 cancelled the allotment of quarters with effect from 2.1.94 and directed the applicant to pay an amount of Rs. 46,444/- towards licence fees. The applicant has not paid the amount so far.

O.A. 526/95

This application has been filed on 24.5.95. Applicant No.2 was allowed to retire prematurely from the post of UDC in Income Tax Department, Bombay as he was declared "Permanently and completely incapacitated for further service with effect from 15.7.93. The applicant No.2 was granted invalid pension of Rs. 1500/- p.m. The applicant No.2 was requested for compassionate appointment to his son. The same was rejected by the respondents vide letter dated 13.3.95. At the time of invalid pension the applicant No. 2 was of 55 years of age, even otherwise normal date of retirement would be 31.8.96. The applicant No.2 made a representation vide letter dated 8.3.95. The main contention in the representation is for compassionate appointment to his son and for regularisation of the quarter in favour of his son.

O.A. 527/95

This application has been filed on 24.5.95. The applicant No.2 was allowed to retire prematurely from the post of Staff Car driver in Income Tax Department, Bombay as he was declared "Permanently and completely incapacitated for further service with effect from 18.6.94. The applicant No.2 was

granted invalid pension of Rs. 1051/- p.m. The applicant No.2 had applied for appointment to this daughter on compassionate ground as LDC. which has been rejected by the respondents vide letter dated 13.3.95. The respondents vide letter dated 4.4.95 cancelled the allotment of quarter with effect from 17.10.94 and directed the applicant to pay a sum of Rs. 15,706/- towards licence fees, which the applicant has not paid so far.

O.A. 528/95.

This application has been filed on 24.5.95. The applicant No.2 was allowed to retire prematurely from the post of Notice Server in Income Tax Department Bombay as he was declared " permanently and completely incapacitated for further service" with effect from 3.9.93. The applicant No.2 was granted invalid pension of Rs. 1000/- p.m. The applicant No.2 ~~had~~ applied for appointment to his son on compassionate ground as L.D.C, which was rejected by the respondents vide letter dated 13.3.95. So far as these applicants are concerned there is no mention for retention of quarter. Perhaps they might have vacated the quarter after expiry of normal period.

In the light of the above, in all these O.As the applicants states that they are entitled to retention of quarter even after their retirement on medical ground and seeking compassionate appointment to their son/daughter as the case may be. All the applicants have been prematurely retired on medical ground and having been receiving invalid pension. The applicants made application for compassionate appointment to their son/daughter. The same was

duly considered by the respondents and rejected by the respondents vide their letter dated 13.3.95, which is being challenged in these O.As and prayed for a direction to the respondents to appoint the son/daughter of the applicants as L.D.C. and to quash the cancellation order passed by the respondents.

The respondents in their reply submitted that the applications filed by the applicants are totally misconceived. The applicants are claiming plural reliefs which are not incidental and connection with each other, they are not entitled to any relief whatsoever. These applications are in contravention of Rule 10(4) of the CAT Rules. On this ground, these applications are required to be dismissed. Though the applicants have received the deemed notice for vacation of the quarters and arrears of rent, they could not be evicted by the respondents in view of the interim relief passed by the Tribunal dated 12.10.95. Which reads as below:

" Applicants be allowed to continue in the quarter til the out come of the O.A. Payment of rent will be as per Rules."

The applicants have not paid neither the normal rent nor the penal rent. The applicant kept quite till this stage on the ground of the stay given by the Tribunal. However having not paid the rent so far it was open to the respondents to bring it to the notice of the Tribunal at an earlier point of time. In that event of the matter, the Tribunal would have considered the earlier stay granted by them and would have modified the same in the facts and circumstances of the case. It

is true that in view of the stay order, the applicants could not be evicted from the quarter. Further, it is submitted that the rejection of the application for recruitment on compassionate ground was correctly done by following the existing rules for recruitment on compassionate ground. At the time of processing the application for recruitment on compassionate ground various factors are taken into account such as the total number of vacancies available for recruitment to such posts, in this case the post of LDC, the total number of applications pending vis-a-vis the vacancies available, number of applications in "died in harness" cases and number of applications in voluntary retirement on medical ground. If the appointing authority is fully satisfied that there is immediate need to provide for employment otherwise the family will not be able to meet the financial crisis. In the present case the sole purpose of making an application for recruitment on compassionate ground was not to seek immediate financial assistance but to seek relief of continuing the quarters allotted to the retired employee on medical ground even after his retirement. At the time of considering the cases for recruitment on compassionate ground the comparison is made in respect of the financial position of various applicants belonging to the same lot and taking into account the number of vacancies available in that particular post only those cases were the most urgency from financial point of view is there only such cases are considered.

The applicant's prayer for compassionate appointment to his son/daughter was considered under the relevant rules and the same was not found to be justified.

The guidelines given in the Swamy's complete Manual on Establishment and Administration wherein it is stated - only in exceptional cases where department is satisfied that the condition of the family is indigent and is in great distress, the benefit of compassionate appointment may be extended to son/daughter of a Government servant retired on medical ground under Rule 38 of Central Civil Service (Pension) Rules 1972. Initially the appointment of son/daughter of an official was permitted in the cases of death only. Subsequently, rules were amended to extend this benefit to the case of those officials also who have been incapacitated before reaching the age of 55 years. It cannot be stated that all the applicants are incapacitated mentally or otherwise. Therefore, the provision for giving employment to son/daughter on an incapacitated person was not intended for everyone who took voluntary retirement, thus before reaching the age of 55 years with a view to secure employment for his son/daughter. In support of their contention the respondents have relied upon various judgement of the Supreme Court which are given below:

I. (1994)27 ATC 174 - Life Insurance

Corporation of India V/s. Asha Ramchhandra Ambekar (Mrs.) and another.

The High Courts and the Administrative Tribunals cannot confer benediction impelled by sympathetic consideration.

The courts should endeavour to find out

whether a particular case in which sympathetic considerations are to be weighed falls within the scope of law. The Hardship of the candidate does not entitle him to compassionate appointment dehors statutory provisions.

II. 1996(4) SCALE 100 - The State of Bihar and Ors. V/s. Samzuz Zoha etc. Wherein the Apex Court has held that it is not in dispute that there is no right vested in the candidates for particular appointment on compassionate grounds. The State had taken policy decision to appoint all the candidates irrespective of the qualifications as Class IV post and, therefore, the committees consisting of the Secretary, Addl. Secretary and the Registrar met and decided the principle that all the available posts in Class IV should be made available to the candidates in the awaiting list for appointment on compassionate grounds. The High Court, therefore, was not justified in issuing directions in all the cases for appointment to Class III post.

III. 1996(1) SLR 7 - Jagdish Prasad V/s. The State of Bihar & Anr. Wherein the Apex Court held that the very object of appointment of a dependent of the deceased employees who die in harness is to relieve unexpected immediate hardship and distress caused to the family by sudden demise of the earning member of the family. Since

the death occurred way back in 1971, in which year the applicant was four years old, it cannot be said that he is entitled to be appointed after he attained majority long thereafter. In other words, if that contention is accepted, it amounts to another mode of recruitment of the dependent of a deceased Government servant which cannot be encouraged, dehors the recruitment rules.

IV. 1994 SCC (L&S) 930 - Umesh Kumar Nagpal V/s. State of Haryana and others, wherein it was held that mere death of an employee in harness does not entitle his family to such source of livelihood. Offering compassionate appointments in posts above Class III and IV is legally impermissible.

V. 1995 (31) ATC 736 - Union of India and others V/s. Bhagwan Singh - wherein the Apex Court held that all appointments on compassionate grounds should be made within a period of five years from the date of occurrence of the event entitling the eligible persons to be appointed.

VI. 1993 (25) ATC 158 - Nishith Nath Kandu and another V/s. Union of India and others. wherein it was held that an employee shortly before his retirement, is supposed to make some arrangement for running his family affairs and very strong grounds are therefore required for asking for compassionate appointment at that stage. Further hardly would a comparrison arise in a case where a person becomes unfit

for service at the fag end of his career and person is expected to make a provision for his family in due time though of course in certain cases notice may be taken of supervening events but that would not lead one to conclude that any untoward event occurring quite late in service would give rise to a cause for claiming the benefit not ordinarily admissible. The applicants claim for compassionate appointment was therefore rejected.

VII 1997 AISLJ 40 - Smt. M.P. Kanal V/s Union of India through the General Manager and Ors. wherein the Tribunal after analising the various case laws has held that Section 7 of P.P.E Act is not by itself a source of any right, it only enables recovery, it does not bar recovery of rent for unauthorised possession as per the rules framed under Article 309, Section 15 of P.P.E. Act also does not bar Government to make rules under Article 309 to deal with unauthorised occupants departmentally and for charging damage rent no notice is required and also obaserved that 'Dearness Relief' is not a part of pension and quarter rent arrears can be recovered from Dearness Relief. The said decision of the Tribunal is based upon the Full Bench decision in Ram Poojan's case 1996(1) ATJ 540 and since the Full Bench decision is binding on this Bench, the application has been rejected.

He ~~was~~ further drawn my attention to the recent decision of the Full Bench in the case of S.B. Kulkarni V/s Union of India OA 519/94 and 689/94 decided on 27.6.94

where the question " Whether the 'Dearness Relief' forms part of Pension and therefore no recovery of any Government dues can be made from it ? The Hon'ble Chairman has passed the order under Rule 3(a) of the C.C.S.(Pension) Rules reads as follows:

" Pension includes gratuity except when the term pension is used in contradistinction to gratuity, but does not include dearness relief" (as amended with effect from 9.2.1991.)

In the light of the provisions of Rule 72(6), the question is self answered. The Dearness Relief cannot form part of pension and, therefore, recoveries of dues can be made from it. Relying upon the Full Bench decision, the Tribunal held that " Dearness Relief" does not form part of pension and recovery of Government rent can be recovered from Dearness Relief."

In the light of the above, it is true that it is not for the Tribunal to consider the case of appointment on compassionate ground unless a case is made out on the ground of malafides or arbitrariness in the mode of appointment, no such case is made out by the applicants. Further at the time of processing the application for recruitment on compassionate ground, various factors are required to be taken into account such as the total number of vacancies available for recruitment to such posts, in these cases they are asking for the post of L.D.C. the total number of applications pending vis-a-vis the vacancies available, number of applications who 'died in harness' cases and number of applications in 'voluntary retirement' on medical ground. It is submitted that the last

appointment on compassionate ground to the post of LDC was given to Shri Vinod Ramesh Lad as per office memorandum dated 24.4.95. Such appointment was given by strictly following the rules and regulations in this behalf. Shri Vinod Ramesh Lad is the son of Shri R.J. Lad, LDC , an employee of this department who expired on 6.9.94. Considering the quantum of pensionary benefits and the meagre family pension the post of LDC was offered to Shri Vinod Ramesh Lad, who has requisite educational qualifications required for the post of LDC. The applicants have given list of 11 cases wherein the employees retired on medical grounds from 13.7.92 onwards, whose sons/daughters have been employed on compassionate grounds and also the quarters in the names of their sons/daughters, who have been recruited on compassionate grounds. In this connection the respondents have stated that serial No.1, 2, 4, and 7, the recruitment was made to the post of UDC, wherein sufficient vacancies were available for compassionate recruitment. As regards the cases mentioned at serial No.11, the employee namely Shri R.B. Jadhav, who voluntarily retired on medical grounds as Notice Server on 28.4.94 subsequently died on 19.10.94 (i.e. before the date on which he could have retired on superannuation). The recruitment of his family member was therefore, made to the post of Peon by giving due weightage to the fact of the death of the employee.

All the applicants were entitled to retain the quarter only for a period of four months after retirement. Thereafter, on payment of double the standard rent if an application in this regard had been made to Chief Commissioner of Income Tax. The

employment on compassionate grounds are generally given to the son/daughter/widow of the Government servant who dies in harness leaving his family in immediate need of financial assistance in the event of there being no earning member in the family. The quota for such recruitment on compassionate grounds has been fixed at 9.5% of the total vacancies arising during the year. The recruitment by this way i.e. on compassionate ground is an exception to the rules as per which appointments in the Public services are made directly on the basis of open invitation of applications and merit. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis when the object is not to give a member of such family a post held by the deceased and further mere death of an employee in harness does not entitle his family to such sources of livelihood. The Government concerned has to examine the financial conditions of the family of the deceased and it is only if it is satisfied that but for the provisions of employment, the family will not be able to meet the crisis that the job is to be offered to the eligible member of the family. The provision of employment in such lowest post by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependents of the deceased employee in such posts is a rational nexus with the object sought to be achieved vis. relief against destitution, before attaining the age of 55 years in case of group 'D' employee whose normal age of superannuation is 60 years, compassionate appointment may be considered where such group 'D' official retires on medical ground before attaining age of 57 years.

Therefore, it is clear that the recruitment on

compassionate ground is generally meant for the children/widow of Government servant who dies in harness and such scheme is extended to the case of voluntary retirement on medical grounds as an exception.

In the case of 5 applicants before the Tribunal, the contention of the respondents is that their approach was selective and in the absence of sufficient number of vacancies in the cadre of Group 'D' and L.D.C., they could not be accommodated. As the number of cases of employees dying in harness were more than the actual vacancies available for compassionate recruitment, the question of considering the cases of medically retired employees does not arise. While rejecting the claim of these 5 applicants a judicious view was taken by the respondents and there was no element of discrimination and arbitrariness. Therefore, there is no merit in the contention of the applicant. Further it may not be out of place to mention that all the 5 applicants are occupying the Government quarters even after their voluntary retirement on medical grounds and the relief which they were trying to seek was not immediate financial assistance to them but the relief of continuing the shelter allotted to them even after the retirement by seeking the appointment on compassionate ground to their wards.

The learned counsel for the applicant, Shri P.A. Prabhakaran, during the course of hearing draws my attention to the decision of the Tribunal in the case of Ms. G.B. Yerwa and Anr. v/s. Union of India O.A. 35/95. Wherein the Tribunal directed the respondents to consider the case of the applicant afresh and pass appropriate orders within three

months on the ground that the mere fact that the family has received benefits under various welfare schemes should not stand in the way of compassionate appointment. That case was decided on the basis of facts and circumstances of that case and the same is not applicable to the facts of these cases.

In the conspectuous ⁸ case laws and the facts and circumstances of these cases, I am of the opinion that the applicants have not made out any prima facie case for my interference. It is understood that the applicants were allowed to continue in the quarters but they have not paid neither the normal rent nor the market rent so far. The applicants were allowed to continue in the quarter with a clear stipulation that they shall pay rent as per law, despite that no payment has been made by the applicants. The only contention of these applicants is that they are expecting that their wards would be appointed on compassionate grounds and thereby they should be allowed to continue in the quarter. During the course of hearing I have ^{been} told that the applicants have received all the retiral benefits immediately after their premature retirement, nothing is due from the department. Needless to mention, that the compassionate appointment should be in consonant with the Rule. The Court or Tribunal cannot direct the Government to appoint a person on compassionate ground. Since the respondents have informed the respective applicants about their inability to take the wards on compassionate appointment in view of that, I do not find any justification in allowing the applicants in continuing in the quarters. The respondents have demanded damage/penal rent from the applicants from 4.4.95, although they have been continuing in the quarter

after their retirement as per rule, they are allowed to continue further period of 4 months on payment of normal rent thereafter double the rent. Therefore the applicants cannot be allowed to continue in the quarter after the respondents have rejected the application for compassionate appointment. Further the applicants are not allowed to continue in the quarter merely in anticipation that the wards are getting appointment. Even assuming that the wards are getting appointment on compassionate ground, they are not eligible to get the quarter on out of turn basis. Hence the plea is not sustainable and same is rejected. The applicants cannot take advantage of the interim relief passed by the Tribunal, the applicants were allowed to continue in the quarter on payment of rent as per law which has not been done in this case. Therefore, further stay in the quarter has to be treated as unauthorised. The applicant cannot take advantage of the reply of the respondents that compassionate appointment will be considered as and when vacancy arises, does not give them a licence to continue in the quarters after voluntary retirement.

In the result, I do not find any merit in these O.As. Accordingly, I hereby direct the respondents to take appropriate action for recovery of arrears of rent from the 'Dearness Relief'. Failure to vacate the quarters within a period of one month from the date of receipt of this order and the respondents are at liberty to evict them on the

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basis of the Full Bench decision in Rampoojan's case that on expiry of permissible period of extension of quarter after retirement, any continuation of quarter will be treated as unauthorised. Accordingly the O.As are dismissed on merits. No order as to costs.

(B.S. Hegde)
Member(J)

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