

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

OA 91/1997

Mumbai, this the 18<sup>th</sup> day of June, 2001

Hon'ble Shri S.L.Jain, Member (Judicial)  
Hon'ble Shri Govindan S. Tampi, Member (Admnv)

1. Shri Kiran Bhaskar Sapkale  
S/o Late Shri B.K.Sapkale  
Ex. Ticket No. 9691, D.S.Drum Section  
Ordinance Factory  
Bhusawal.  
R/o Quarter No. J/12/103 O.F.  
Estate, Bhusawal - 425 203.

2. Smt. Suman Bhaskar Sapkale  
residing at Quarter No. J/12/103 O.F.Estate  
Bhusawal.

...Applicants

(By Advocate Shri D.V.Gangal)

V E R S U S

1. Union of India :

through the Ordnance Factory Board,  
Director General, 10A, Auckland Road,  
Calcutta - 700001.

2. The General Manager  
Ordnance Factory  
Bhusawal - 425203.

3. The Estate Officer &  
Dy. General Manager (Admn.)  
Ordnance Factory,  
Bhusawal.

...Respondents.

(By Advocate Shri R.R.Shetty)

O R D E R

By Hon'ble Shri Govindan S. Tampi, Member (Admnv)

The applicants in this OA are challenging the letter No.F/01/LB/01 dated 5-10-1996, intimating that their case for compassionate appointment does not merit acceptance.

2. Heard Shri D.V.Gangal, learned counsel for the applicant and Shri R.R.Shetty, learned proxy counsel for the respondents.

3. The brief relevant facts of the case as presented in the pleadings are that applicants are the dependants of Shri Bhaskar K.Sapkale, who died on 27-2-1994, leaving eight individuals without any bread winner. The applicants had incurred considerable expenditure towards the medical expenses of the deceased as well as for the marriage of the deceased's daughter and has sought compassionate appointment to the applicant No.1, but the request was not heeded to. Though the Senior Labour Officer had originally recommended the case of compassionate appointment for the applicant No.1 subsequently he had reneged on the same, causing considerable difficulty to them. A large number of other persons who were similarly circumstanced or whose cases were not even half as deserving as theirs have been considered and given the benefits, while the applicants were denied the same. It included persons whose cases were rejected once earlier. On behalf of the applicant, it is even alleged that extreneous circumstances had weighed with the respondents in deciding the matter against them. The findings arrived by the respondents stating that the deceased did not have a daughter and casting doubts about the expenses incurred for her marriage were incorrect, urge the applicants. incorrect.

4. Shri Gangal, learned counsel for the applicant submits that the compassionate appointment was the rule and refusal thereof was exception and the same should have been gone in favour of the applicant in the circumstances of the case. He also refers to a few cases where according to him the benefits of compassionate appointment have been given, which have been illegally denied to the applicant. The relief claimed, therefore, are for quashing and setting aside the order dated 5-10-1996, and granting of compassionate appointment to applicant No.1 alongwith regularisation of the quarters occupied

by them by recovering of normal rent. Shri Gangwal also states that the respondents have not acted in obedience to the directions issued by the Tribunal in the earlier case filed by the applicant. It was very forcefully argued by Shri Gangal, who states that as the various judgements would show compassionate appointment was a matter of right and examination of the case for the same should not be dealt with in a mechanical manner, but should be on the basis of correct and proper exercise of mind. The earlier decision of the Tribunal dated 22-3-1996 while disposing of the OA No. 1433/95 had been gone in their favour. It was, therefore, incumbent on the respondents to consider the case of the applicant and appoint him without inventing new reasons to reject it or acting irrationally, argues Shri Gangal. The method and the manner adopted by the respondents in this case would suggest that the respondents were acting against specific directions of the Tribunal, and the same was in clear contempt of the Tribunal. In the circumstances of the case, the application should succeed, is his plea. Shri Gangal also referred to a few judgements which according to him, clearly covered the case of the applicants, and would go to support the case of the applicant.

5. Appearing on behalf of the respondents Shri R.R.Shetty, learned counsel very strongly repudiates the points raised by Shri Gangal. He refers to the decision dated 22-3-96 of the Tribunal in OA 1433/95 filed by the applicant and states that in pursuance of the Tribunal's order a Board of Officers was constituted on 29-5-1996 who visited the house of the deceased's employee and made enquiries, but those present in the house did not and could not give any satisfactory reply. Though time was granted for the same for more than one occasion the

result remained the same. A number of details were asked from them to ascertain the details and they were requested to be present before the Board on 6-6-1996 to present the case and they were also allowed to present their case through counsel or advocate, but they have not done the same. Therefore, Board had come to the conclusion that :

(a) the deceased did not have a daughter for whose marriage expenses were incurred ;

(b) expenditure on account of the illness of the deceased had not been proved ;

(c) the applicants' belief that all members of HUF are dependents of the deceased employee for the purpose of reckoning his financial capabilities was incorrect as the elder brother of the deceased, his wife and three children as well as the deceased's mother who was receiving the pension had also brought as dependent ; and

(d) that only as a welfare measure applicant's case was originally considered for compassionate appointment.

6. Shri R.R.Shetty also points out that as the deceased had attended office even the day immediately prior to his death, it was difficult to accept the applicant's plea that considerable expenditure had been incurred on the deceased's treatment. The Board had, after examining all the facts, come to the conclusion that there were only two members in the family of the deceased i.e. the two applicants. Therefore, it could not be held that the Board had come to wrong decision. As they had strictly gone by the directions of the Tribunal, nothing further remained to be done by them".

7. During the oral submissions Shri Gangwal, learned counsel refers to minutes of the Board Officers constituted to consider the case and points out that the marks under various heads have been given incorrectly. If the same had been done properly, he would have become correctly eligible for the appointment. Shri Gangwal also refers to a few judgements which according to him would cover the case while Shri R.R.Shetty, learned counsel for the respondents intimated that issue involved is clearly covered by the decision of the Hon'ble Supreme Court in the case of Life Insurance Corp. of India Vs. Mrs. Asha Ramchandra Ambekar & Anr. (JT 1994 (2) SC 183) holding that the Courts and Tribunals should not direct the respondents to make compassionate posting. He also state that once the respondents had acted strictly in accordance with the directions given by the Tribunal, nothing further remained to be done by them.


8. We have carefully gone through the rival contentions and perused the papers brought on record.

9. In this case, the applicants are seeking compassionate appointment to the son of a deceased employee on the ground that he had left a large number of dependents in indigent circumstances and pleads that his case should have been favourably considered. They also want a direction from the Tribunal for regularisation, on normal rent, in respect of quarter they have been holding. It is seen that in this matter the applicants had already approached this Tribunal in OA 1433/95 which is decided on 22-3-96 with following directions :-

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"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 21-3-1995 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 as 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."

10. In view of the above what remains to be done is to see whether the respondents had acted in pursuance of the directions and if so to what extent. It is observed that following the decision of the Tribunal the respondents had constituted a Committee of Officers who have made considerable efforts and gave adequate chances to the applicants to come out with details in support of their case, the same had not been done, a fact admitted by the learned counsel for the applicant himself during the hearing. The respondents, therefore, after considering of the facts took the decision which is communicated in the impugned order dated 5-10-1996, which is quoted as below :-

 "In reference to the orders of the Hon'ble CAT quoted above the G.M. has re-inquired into the financial conditions and certain statements made by you in connection with your application for compassionate appointment.

In this connection, Shri V.G.Phansalkar, Sr.LO of this factory had requested you to furnish documentary or other evidence in support of the following points which you have raised before the Hon'ble CAT :-

- 1) Expenses connected with the marriage of daughter.
- 2) Medical expenses in respect of your late husband.
- 3) Number of dependents.

In pursuance of the enquiry the Sr. Labour Officer and Shri S.A.Karkwar, Foreman/LB visited your quarter on 31-5-1996, but you were found missing from the said quarter. Subsequently on 3-6-96 you were found in your quarter along with your son and Smt. Rukhamini bai, the mother of the deceased employee. the purpose of the visit was explained to you, and you were asked to produce relevant documents on 4-6-96 in the office of Sr. LO. You did not appear on the grounds of illness and requested 02 days' extension, by phone. Accordingly the next date was fixed on 6-6-96. On this date you submitted an application which was drafter by an Advocate. In short, the Board's view on the points raised in the Advocate's letter has been communicated to you through an order of inquiry dated 24-6-1996.

On enquiry from the records available (since you have failed to submit the requisite documents) the Hoard of Inquiry has concluded at that the financial condition of the family is reasonably good.

As regards the marriage of the daughter of the deceased employee the Board has concluded that the deceased had no daughter and that Smt.Sapkale has not produced any evidence in support of the claim.

As regards medical expenses, the Board has concluded that the claim of having incurred heavy expenditure is not supported by facts, in view of the fact that, for reasons best known to the employee, he did not avail of factory medical facilities.

As regards the number of dependents, the Service Book and related documents of the employee have beenperused and it has been concluded that only 02 members, namely, Smt. Suman Bhaskar Sapkale and Shri Kiram Bhaskar Sapkale are the dependents of the deceased employee.

The General Manager is satisfied that the inquiry has been completed, giving due opportunity to the dependents of the deceased employee, as directed in the order of the Hon'ble CAT dated 22-3-96 and, therefore, concluded that the case does not merit appointment on compassionate grounds".

11. Perusal of the above would clearly indicate that the respondents have taken sincere action and have taken decisions in pursuance of the directions issued by the Tribunal. It would also be seen that they have clearly covered all the points raised by the Tribunal's order and recorded its findings in the impugned letter. The appilcants who have admittedly not

provided any details cannot on a later stage seek the Tribunal's intervention to upset the proceedings of the Committee and arrive to a different finding based on the evidence. The applicants also have made a few remarks which to say the least are intemperate and are not based on facts. As the respondents having correctly gone into the proceedings and indicated the findings, we are not inclined to reappreciate the evidence, which the applicants now want us to do, particularly when there is no evidence and the self servicing allegation of the applicant is sought to be accepted.

12. The applicants had referred to a few other cases where persons similarly placed or even placed better have been given compassionate appointments. We do not have to examine the same, as in this case the respondents have acted correctly and in terms of Tribunal's instructions dated 22-3-1996 and the case is totally covered by the Hon'ble apex Court's decision.

13. In this regard, we would like to observe that compassionate posting as has been held time and again, is not a matter of right but a matter of humanitarian consideration on the part of the employer to help the dependants of the deceased individual who have been placed in indigent circumstances with the sudden demise of the deceased. It was only necessary, therefore, for us to find out whether the Committee charged with the responsibilities of examining the case had discharged the same correctly. And we find, they have acted properly in this matter. Nothing further remains to be done by us. As pointed out above, re-appreciation of the evidence is not our responsibility and we do not intend to take it up. We also find that Hon'ble Supreme Court has in Life Insurance Corporation of India Vs. Asha Ramchandra Ambekar and Another (supra) observed as below :

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"Of late, this Court is coming across many cases in which appointments on compassionate grounds is directed by judicial authorities. Hence, we would like to lay down the law in this regard. The High Courts and the Administrative Tribunals cannot confer benediction impelled by sympathetic consideration. No doubt Shakespeare said in Merchant of Venice:

"The quality of mercy is not strain'd;  
It droppeth, as the gentle rain from heaven.  
Upon the place beneath it is twice bless'd;  
It blesseth him that lives, and him that takes;"

11. These words will not apply to all situations. Yielding to instinct will tend to ignore the cold logic of law. It should be remembered "law is the embodiment of all wisdom". Justice

according to law is a principle as old as the hills. The Courts are to administer law as they find it, however, inconvenient it may be. "

The above constitute the law and, therefore, in the circumstances of the case the action taken by the respondents to deny compassionate posting to the applicant cannot be assailed.

12. The applicant has not made out any case for our interference. The OA, therefore, fails and is accordingly dismissed. No costs.

(Govindan S. Tampi)  
Member (Admnv)

Vikas/

(S.L. Jain)  
Member (Judl)