

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 286/97.

Date of Decision : 01.05.1998.

Smt. Sulbha B. Bangale & Another. Petitioner.

Shri S. S. Karkera. Advocate for the
Petitioner.

VERSUS


Union Of India & Others Respondents.

Shri P. M. Pradhan Advocate for the
Respondents.

CORAM :

HON'BLE SHRI JUSTICE R. G. VAIDYANATHA,
VICE-CHAIRMAN.

- (i) To be referred to the Reporter or not ? *Yes*
- (ii) Whether it needs to be circulated to
other Benches of the Tribunal ? *No*


(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 286/97.

Dated this Friday, the 1st day of May, 1998.

CORAM : HON'BLE SHRI JUSTICE R. G. VAIDYANATHA,
VICE-CHAIRMAN.

1. Smt. Sulbha B. Bangale,
Wd/o. Late B. S. Bangale,
residing at - Devdharwada,
Hanuman Ali at Pen,
Dist. Raigad 420 102.

2. Shri Shirish B. Bangale,
S/o. Late B. S. Bangale,
Residing at - Devdharwada,
Hanuman Ali, At Pen,
Dist. Raigad - 420 102.

... Applicants

(By Advocate Shri S. S. Karkera)

VERSUS

1. Union Of India through
The Secretary,
Department of Telecommunication,
Sanchar Bhavan, Ashoka Road,
New Delhi - 110 001.

2. The Chief General Manager,
Maharashtra Telecom Circle,
G.P.O. 2nd Floor,
Mumbai - 400 001.

3. The Telecom District Manager,
Mumbai City Divn. (Raigad),
Mohta Market, Paltan Road,
Mumbai - 400 001.

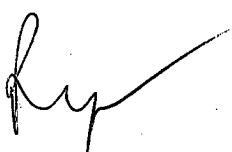
... Respondents.

(By Advocate Shri P. M. Pradhan)

: OPEN COURT ORDER :

¶ PER.: SHRI R. G. VAIDYANATHA, VICE-CHAIRMAN ¶

This is an application for compassionate
appointment. The first applicant is the widow of the
deceased government employee and the second applicant

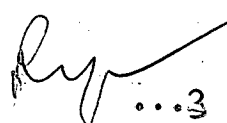


is the son of the deceased employee. Respondents have filed their reply. I have heard the Learned Counsels appearing on both sides.

The applicant no. 2 is the son of Shri B. S. Bangale, who was working as a Junior Telecom Officer at Pen, Raigad district. He died on 22.05.1989. Then the applicant no. 2 made an application to the department for appointment on compassionate grounds. By the impugned order dated 22.01.1992 the application was rejected. Hence, the present O.A. is filed challenging the order dated 22.01.1992 and for a direction to the respondents to give the second applicant an appointment on compassionate grounds. Since there is a delay in filing the application, the applicants have filed a miscellaneous petition for condonation of delay.


2. The respondents have filed a reply stating that the applicant is not entitled to appointment on compassionate grounds. It is stated that the second applicant's brother is employed and the family has sufficient income and assets and, therefore, the applicant is not entitled for appointment on compassionate grounds.

3. The Learned Counsel for the applicants submitted that though another son of the family is employed, he is not contributing to the family and that the family is in difficult circumstances and, therefore, the applicant no. 2 has made out a case

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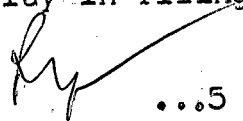
for compassionate appointment. He also commented that the impugned order is passed by an authority who is not the head of the department as per the Government circular. On the other hand, the Learned Counsel for the respondents supported the impugned order and justified the action taken by the respondents.

4. From the materials on record, it is seen that admittedly, the second applicant's brother is working in All India Radio, therefore, the family has a earning member. It may be in a given case, ^{even} if there is one earning member in the family, the Government can grant compassionate appointment on special grounds which are mentioned in Government circular dated 30.06.1987, which is at Appendix-2 in Swamy's Pension Compilation, 13th Edition, 1995. I have perused the relevant circular. Under para 4(e) it is stated that in deserving cases the Government can grant compassionate appointment even if there is a earning member, taking into consideration the assets and liabilities left by the deceased, income of the earning member and other circumstances. In the present case, the department has issued the impugned letter mentioning that the family has already an earning member and having regard to the monthly income and terminal benefits, the family is not found to be in indigent condition so as to grant compassionate appointment. In a matter like this, this Tribunal cannot sit in appeal over the decision taken by the competent authority. If there is a mistake or fault in the decision making process, then only this Tribunal can interfere but if the

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authority has applied its mind and considered all facts and rejected the claim, then the order cannot be interfered with on the ground that another view is possible from the same fact.

5. In the very nature of things, appointment on compassionate grounds is like a back door entry. The normal rule is, people should be appointed who fulfill the appointment condition on open invitation. But in certain circumstances when a bread winner dies in harness, a special rule is made to see that the family is saved from distress. Can we say that in the facts and circumstances of this case the applicants come within the meaning of indigent or distress condition of the family? The family has already an earning member. Then the widow of the deceased received Rs. One Lakh as retirement benefits. She is getting now pension of Rs. 1,500/- p.m. in all, which must have now been revised after the Fifth Pay Commission Report. In addition to this, from the record, it is seen that even in 1990 two brothers of the second applicant were studying in final and 3rd year of engineering. Now eight years have lapsed, therefore, those two brothers must also have got some employment. In addition to this, there is a question of delay. The father of the second applied died in 1989. The applicant No. 2's claim was rejected in 1992. The present O.A. is filed in 1997. If the object of the rule is to help a family in distress due to the death of the bread winner, no appointment can be given to the applicant in 1997 for the death of the father in 1989. It is not a question of mere condonation of delay in filing

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the O.A. If the family could maintain itself for the last seven years, then the inference is that the family is not in indigent or difficult circumstances to maintain itself.

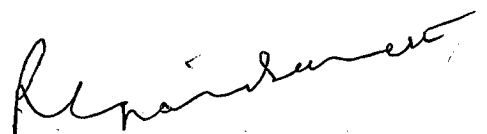
Having regard to the facts and circumstances of the case, it is not a fit case to interfere with the order passed by the competent authority.

6. The grievance of the Learned Counsel for the applicant that as per the circular of 1987 the decision should have been taken by the Secretary to the Department and not by the lower authority. Reliance was placed on para 4(e) of the said circular. What that circular says is that, in deserving cases even if there is an earning member in the family, another member of the family may be considered for appointment with prior approval of the Secretary of the Department. That means, the ^{competent} ~~compassionate~~ ^{authority} ~~appointment~~ will have to take a decision that it is a fit case for grant of compassionate appointment but he cannot pass final order without the prior approval of the Secretary of the Department. Since the Local Authority himself decides that it is not a fit case for compassionate appointment, then taking prior approval of the Secretary of the Department does not arise. The object is that, normally no compassionate appointment should be given when there is an earning member in the family but an exception

and
is made/to see that the exception is not misused
by giving compassionate appointment indiscriminately,
a check is put by the rule making authority by
providing for prior approval from the Secretary
to the Government. In the present case, on facts,
the competent authority himself decided that no
case is made out for compassionate appointment and,
therefore, he was competent to reject the request
of the second applicant without submitting the
papers to the Secretary of the Department. The
procedure adopted by the respondents is perfectly
justified and there is no illegality.

In my view, no case is made out for
granting any relief to the applicant.

7. In the result, the O.A. fails and his
dismissed. In view of the application being
rejected on merits, the miscellaneous petition for
condonation of delay does not survive. In the
circumstances of the case there will be no order
as to costs.



(R. G. VAIDYANATHA)
VICE-CHAIRMAN.