

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 469/97

14.1.99

Date of Decision:

Mrs. Phoolkumari Gupta

.. Applicant

Shri S.N.Pillai

.. Advocate for
Applicant

-versus-

Union of India & Ors.

.. Respondent(s)

Shri S.C.Dhawan

.. Advocate for
Respondent(s)

CORAM:

The Hon'ble Shri D.S.Baweja, Member (A)

The Hon'ble

(1) To be referred to the Reporter or not ?

(2) Whether it needs to be circulated to other Benches of the Tribunal ?

D.S.B.
(D.S.BAWEJA)
MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA.NO. 469/97

this the 14th day of Jan 1999

CORAM: Hon'ble Shri D.S.Bawaja, Member (A)

Mrs. Phoolkumari Gupta,
R/o Room No. 171,
Galli No. 7, Anand Nagar,
Kopri Bridge, Thane (E).

By Advocate Shri S.N.Pillai

... Applicant

V/S.

1. Union of India through
the General Manager,
Central Railway, C.S.T.,
Mumbai.
2. The Divisional Security
Commissioner, R.P.F.
Bombay Division (Central Rly.),
C.S.T., Mumbai.

By Advocate Shri S.C.Dhawan

... Respondents

ORDER

(Per: Shri D.S.Bawaja, Member (A))

This application has been filed seeking
the relief of appointment on compassionate ground.

2. The applicant is the widow of late Shri Shivprasad Gupta who while working as Assistant Security Inspector (ASI), Railway Protection Force (RPF), Central Railway died on 1.6.1993 in an accident on duty. The applicant made a request for compassionate appointment for herself on 24.8.1993. Thereafter, the applicant had sent several reminders and also personally visited the office of Respondent No. 2, i.e. Divisional Security Commissioner, R.P.F., Mumbai Division, Central Railway but did not get any response. Thereafter, her case was also taken up by one of the recognised unions.

Finally, the applicant got a reply dated 13/17.9.1996 rejecting her request for grant of compassionate appointment. The respondents in this letter have indicated that the son of the first wife, namely, Shri Jagannath had also made a request for compassionate appointment. The applicant avers that Shri Jagannath had already withdrawn the request for the compassionate appointment as per his letter dated 12.6.1993. It is the contention of the applicant that her husband died on duty in an accident and therefore her case falls under Category - I for compassionate appointment. Further, she satisfies all the conditions/requirements for compassionate appointment as per the rules laid down by the Railway Board. She has to support the family of two daughters and is unable to manage with the meagre amount of pension she receives. Feeling aggrieved by the rejection of her request as per order dated 13/17.9.1996, the present OA. has been filed on 25.4.1997.

3. The respondents have contested the application through the written reply. The respondents contend that compassionate appointment is not a vested right and the competent authority has to consider each case on its own merits. In the present case, the competent authority has not found any merit in the claim of the applicant for compassionate appointment as she has received settlement dues of Rs.1,26,903/-. Apart from this, she is getting family pension. The respondents further submit that the son of the first wife has also applied for the compassionate appointment and the submission of the applicant that he had already

withdrawn his claim for compassionate appointment is denied as no such request was received in the office. The respondents have also brought out that the applicant has not come with clean hands as in the OA. she has mentioned that she has to support the family of two daughters only while in the affidavit filed on 11.12.1993 she has shown two more sons aged 18 and 16 in addition to step son of the first wife. In view of these submissions, the respondents contend that the application is misconcieved and the same deserves to be dismissed.

4. The applicant has filed rejoinder reply contesting the submissions of the respondents. The applicant has maintained that the son of the first wife, namely, Shri Jagannath had withdrawn his claim for employment as per his letter 12.6.1993 and the same was handed over to Assistant Security Officer personally who had also acknowledged the letter as referred to earlier. The applicant submits that the family pension received by her is not enough and due to financial constraints she is not able to manage her family. The applicant has further clarified that in the affidavit dated 11.10.1993, the two sons who were mentioned in the family were born before her marriage to her late husband Shri Shivprasad Gupta when she was working as a Mate without any marriage. She has further alleged discrimination as widows of RPF personnel who have died after the death of applicant's husband have been appointed on compassionate appointment and one example of Mrs. Rupadevi has been cited to support her contention.

5. I have heard the arguments of Shri S.N.Pillai, learned counsel for the applicant and Shri S.C.Dhawan, learned counsel for the respondents.

6. The respondents in the written statement have made averments that the son of the first wife had made allegation in his application for compassionate appointment that the applicant in the present OA, was not legally married to his father. However, during the hearing, the learned counsel for the respondents submitted that averments made to this effect in the written statement may be ignored as regard to there is no dispute with the applicant being the wife of late Shri Shivprasad Gupta. In view of this, this aspect is not being gone into.

7. The law concerning the compassionate appointment has been well settled by the Hon'ble Supreme Court through catena of judgements recently laying down the considerations under which the judicial interference is called for in the matter of compassionate appointment. During the course of the arguments, the learned counsel for the applicant has cited two such judgements of the Hon'ble Supreme Court to support the contention that compassionate appointment is not a matter of right and is to be allowed only by the competent authority in exceptional cases of extreme hardship and distress on account of the death of an employee. The two cited judgements are (a) Umesh Kumar Nagpal vs. State of Haryana & Ors. 1994(2) ATJ 387. (b) Life Insurance Corporation of India vs. Mrs. Asha Ramchandra Ambekar & Anr. 1994(2) SLR 1.

In the case of Umesh Kumar Nagpal, the Hon'ble Supreme Court has held that the only ground which justified compassionate appointment is the penurious conditions of the family of the deceased. It would be appropriate to reproduce the observations of the Hon'ble Supreme Court in Para 2 as under :-

"The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family."

In the case of Life Insurance Corporation of India, their Lordships of Supreme Court have held that Court or Tribunal cannot direct the respondents to give an appointment. If the facts and circumstances warrant compassionate appointment, then order can be passed directing the concerned authority to consider the claim as per the extant rules. In the background of what is held by the Hon'ble Supreme Court above, the relief prayed for in the present OA. will be considered.

8. Before going ⁱⁿ to the merits of the relief claimed by the applicant, the controversy with regard to the application for compassionate appointment by the son of the first wife will be gone into. The applicant has submitted that Shri Jagannath, the son of the first wife, as per his application dated 12.6.1993 had withdrawn his claim for the compassionate

appointment. She further states that this application was handed over to Assistant Security Commissioner and acknowledgement obtained for the same as per Annexure-'A-5'. The respondents in the written statement have denied about the receipt of any such communication from Shri Jagannath. During the arguments when this issue came up, the counsel for the applicant was directed to indicate the name of the Assistant Security Commissioner who/received the letter dated 12.6.1993. The applicant through the Misc. Application indicated the name of Assistant Security Commissioner as Sh. D.T. Mane. The respondents were therefore directed to verify this fact and file an affidavit with regard to genuineness of the document. The respondents through the affidavit have denied of having/any such letter. The respondents further contended that this letter does not carry any stamp of the office. Further, the respondents have indicated that Shri Mane, Assistant Security Officer has since retired. The counsel for the applicant, however, stated that Shri Mane though has retired/is still available and he could be asked to certify his signature on the letter. The counsel for the respondents submits that even without verifying his signature, the non-submission of any letter dated 12.6.1993 by the son of first wife can be established. He submitted that the applicant in her first application dated 16.10.1993 for compassionate appointment submitted after June, 1993 had not made any averment of withdrawal of the claim by the son of first wife. There were several communications from thereafter as brought on record the applicant/and therein also no reference had been made.

If the son of the first wife had withdrawn the claim for compassionate appointment, this should have been mentioned by the applicant in her representation as this was an important information to be presented before the respondents. Considering the facts of the case and the contents of the order dated 13.9.1996, I am of the opinion that this controversy is not material to the issue at dispute. The respondents while rejecting the claim of the applicant for compassionate appointment had indicated that the competent authority had not found any merit in the case of either the applicant or the son of the first wife warranting compassionate appointment. Who is eligible for compassionate appointment is a secondary issue. The first issue is whether the competent authority considers that compassionate appointment is warranted. Once the view is taken that compassionate appointment is not warranted, then who should get it no longer is material. In ^{consider} view of this, I do not L it necessary to go into this controversy.

9. The respondents have rejected the request of the compassionate appointment stating that there is no merit in the case. The applicant has stated that the order passed by the competent authority is ^a not speaking order and does not disclose reasons. In an administrative order, the reasons for rejection may not be indicated but, however, if such an order is challenged for a judicial interference, the Government would be required to place before the Tribunal the reasons based on which the claim had been rejected. In the present case, the respondents have brought out detailed reasons as to why merit has not been found in

the present case for compassionate appointment. As held by the Hon'ble Supreme Court in the case of Umesh Kumar Nagpal, the competent authority has to examine the financial condition of the family and if only it satisfies that but for the provisions of the employment, the family will not be able to meet with the crisis, the compassionate appointment may be called for. In the present case, the respondents have disclosed that based on the settlement dues received by the applicant and the family pension being drawn, the competent authority had not considered that the family was indeed in financial crisis. The applicant in the OA, as well as in the rejoinder has not brought out any substantial material to rebut the contention of the respondents except stating that she is not able to manage the family. The applicant has to make out a case before the competent authority as to how the family is not able manage and the compassionate appointment is necessary to tide over the crisis. As indicated earlier, the Hon'ble Supreme Court in the case of Life Insurance Corporation of India has laid down that no direction can be issued by the Tribunal or Court to give compassionate appointment and if at all warranted, the direction can be given for consideration of the claim of the applicant as per the rules. In the present case, it is noted that the request of the applicant has already been considered based on the material produced. In this connection, the respondents brought to our notice the order of the Tribunal in the case of Shri Praveesh Kumar vs. Union of India & Ors., 1997(1) ATJ 72. In this order, it is held that Tribunal can only order

consideration of the case of the applicant to compassionate appointment and in the OA, under reference the same had been considered by the competent authority. It is further held that the reasons for rejection were not perverse or irrational. In the present case, the facts and circumstances are identical and I am therefore in respectful agreement with what is held in the case of Pravesh Kumar. The plea of discrimination is also not tenable as compassionate appointment is not a matter of right and each case has to be considered on its own facts and circumstances.

10. For the reasons cited above, I am unable to find any merit in the OA, and the same is dismissed with no order as to costs.

D.S. Bawej
(D.S. BAWEJ)
MEMBER (A)

mrj.