

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 562/97

16.11.99
Date of Decision:

Smt. S. P. Sa want Applicant.

Shri G. S. Walia Advocate for
Applicant.

Versus

Union of India & Ors. Respondent(s)


Shri Vadhavkar for Shri M. I. Sethna Advocate for
Respondent(s)

CORAM:

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

Hon'ble Shri.

- (1) To be referred to the Reporter or not? ✓
- (2) Whether it needs to be circulated to other Benches of the Tribunal?
- (3) Library ✕


(D. S. BAWEJA)
MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.562/97

Dated this the 16th day of November 1999.

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

1. Smt.Sushama P.Sawant,
Widow of late Shri P.G.Sawant
2. Amit P.Sawant
Son of Applicant No.1

R/o Sri Ram Sadan, 2nd Floor,
Above Dr.Patravali Nursing Home,
Prarthana Samaj, Vile Parle (E),
Mumbai.

... Applicants

By Advocate Shri G.S.Walia

V/S.

1. Union of India through
Collector of Customs,
New Customs House,
Ballard Estate, Mumbai.
2. Asst. Commissioner of Customs,
Personnel & Estt. Deptt.,
New Customs House,
Ballard Estate, Mumbai.

... Respondents

By Advocate Shri V.D.Vadhavkar
for Shri M.I.Sethna

O R D E R

{Per : Shri D.S.Baweja, Member (A)}

The Applicant No. 1 is a widow of late Shri P.G.Sawant who while working as Preventive Officer under the Collector of Customs, Mumbai died in a road accident on 14.3.1989 at the age of 43 years. The Applicant No. 2 is the eldest son of late Shri



: 2 :

P.G.Sawant. Applicant No. 1 made an application on 10.4.1990 to the Department for considering the case of her minor son, i.e. Applicant No. 2 for appointment on compassionate basis. This request was rejected by the Department as per letter dated 23.4.1990 on the ground that Applicant No. 2 was minor at that time with date of birth as 28.2.1977. On attaining the age of majority, the Applicant No. 1 made an application dated 30.9.1996 for appointment of Applicant No. 2 on compassionate ground. The respondents through letter dated 11.10.1996 sought for certain documents from the applicant No.1 and the same were furnished by her. However, the request for compassionate appointment was rejected by the respondents as per order dated 7.11.1996. The applicant No.1 made another representation dated 26.11.1996 stating that no reasons have been given for rejecting the case of Applicant No. 2 for compassionate appointment. She also brought out the details with regard to condition of the family and as to why the compassionate appointment is warranted. The respondents however rejected this representation also as per order dated 13.3.1997. Feeling aggrieved by this rejection for compassionate appointment, the present application has been filed jointly by widow and her son on 28.4.1997 seeking the relief of setting aside the order dated 13.3.1997 and to direct the respondents to consider the case of Applicant No. 2 for appointment on compassionate basis.

(W)

..3/-

2. The applicants have contended that the family is in dire need of compassionate appointment as financial condition of the family is very poor. The respondents have not given any valid reasons for not granting the request of the applicants and therefore the respondents have acted arbitrarily and the impugned order dated 13.3.1997 has been issued without application of mind. The applicants have further stated that though the Applicant No. 1 is working in Western Railway, but the mother is not to be considered as a bread-winner of the family and her appointment cannot be a ground to deny compassionate appointment to the Applicant No. 2.

3. The respondents have filed a written statement opposing the application. While confirming the various details with regard to date of birth and the representations made by the applicants and the rejection of the same, have submitted that the case of Applicant No. 2 for compassionate appointment was scrutinised in detail keeping in view the relevant rules and the same was not found to be a fit case for compassionate appointment as the Applicant No. 1 was already employed in a Government service. The respondents have further stated that Applicant No.1 was drawing a salary of Rs.5,339/- at the time when the request for compassionate appointment was made in 1996. Referring to the Department of Personnel and Training instructions in O.Ms. dated 30.6.1987 and 9.12.1993, the respondents have stated that the purpose of compassionate appointment is to give assistance to the



family in the event of there being no other earning member in the family to supplement the loss of income due to death of breadwinner. If the son was minor at that time, the widow could have taken employment and since in the present case, the widow was already employed in Government service, there was no immediate need for assistance. The compassionate appointment has been demanded after a long gap and therefore the request was belated in terms of the instructions in para 7 of the O.M. dated 30.6.1987. With these facts, the respondents plead that the case of the applicant for compassionate appointment has been carefully considered keeping in view the extant rules and the applicants have no case and therefore the present OA. deserves to be dismissed.

4. The applicants have not filed any rejoinder reply for the written statement.

5. We have heard the arguments of Shri G.S.Walia, learned counsel for the applicants and Shri V.D.Vadhavkar for Shri M.I.Sethna, learned counsel for the respondents.

6. The question of grant of compassionate appointment and scope of judicial review has been the subject in several cases before the Hon'ble Supreme Court and the Hon'ble Supreme Court has laid down the law in catina of judgements. Before going into the merits of the relief prayed for by the applicant, it would be pertinent to cite ^{and} ~~or~~ review some of the judgements as under :-

(a) Umesh Kumar Nagpal vs. State of Haryana & ors.

1994 (2) SLR 677 (S.C.).



Relevant Para 2 is reproduced below which sums up the views expressed by the Hon'ble Supreme Court on the objective behind the grant of compassionate appointment :-

"2. The question relates to the considerations which should guide while giving appointment in public services on compassionate ground. It appears that there has been a good deal of obfuscation on the issue. As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependents of an employeedying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependents of the deceased who may be eligible for such employment. 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."

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(b) Haryana State Electricity Board & Anr. vs. Hakim Singh, 1997 (2) ATJ 665.

In this case, the respondent was a minor at the time of death of his father and he made a request for compassionate appointment after attaining the age of majority. The High Court allowed the relief to the respondent stating that the period within which the prayer for compassionate appointment has to be reckoned is to be from the date of attaining majority. The Hon'ble Supreme Court has set aside the judgement of the High Court observing as under in para 11 :-

"11. We are of the view that the High Court has been in over stretching the scope of the compassionate relief provided by the Board in the circular as above. It appears that High Court would have treated the provision as a lien created by the Board for a dependent of the deceased employee. If the family members of the deceased employee can manage for fourteen years after his death one of his legal heirs cannot put forward a claim as though it is a line of succession by virtue of a right of inheritance. The object of the provisions should not be forgotten that it is to give succour to the family to tide over the sudden financial crisis befallen the dependents on account of the untimely demise of its sole earning member."

(c) Jagdish Prasad vs. State of Bihar & Anr.

1996 SCC (L&S) 303.

In this case, the Hon'ble Supreme Court has held that the claim made for compassionate appointment by the son after several years of death of his father is not tenable.

(d) Union of India & Ors. vs. Bhagwan Singh,

1996 SCC (L&S) 33.

In this case, Railway servant died leaving behind his widow, two major sons and a minor son of 12 years. Compassionate appointment was claimed subsequently by the minor son on attaining the age of majority. The Tribunal allowed the claim for compassionate appointment. The Hon'ble Supreme Court has set aside the order of the Tribunal holding that the Tribunal acted without jurisdiction in directing the authorities to consider his case and, if found fit, to provide him with an appointment.

7. Keeping in view the law laid down by the Hon'ble Supreme Court in the above cited judgements, I will now consider the claim of the applicant for compassionate appointment. In the present case, the father of the Applicant No. 2 died on 14.3.1989. The Applicant No. 2 was minor at that time and on attaining the age of majority in 1996, he made a request for compassionate appointment which was rejected by the respondents. The respondents in the written statement have brought out that the request for compassionate appointment has been carefully considered by the competent authority and the case has not been found fit for giving compassionate appointment keeping in view the extant instructions laid down by the Department of Personnel and Training in O.Ms. dated 30.6.1987 and 9.12.1993. The

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respondents have brought out that the mother, i.e. Applicant No. 1 is employed in Railways with salary of Rs.5,339/-. The request made for compassionate appointment for the minor son in 1996 is belated in terms of the instructions laid down in para 7 of O.M. dated 30.6.1987. Keeping in view the law laid down by the Hon'ble Supreme Court with regard to need for compassionate appointment and the facts brought out by the respondents, I am inclined to subscribe to the stand of the respondents. As brought out by the Hon'ble Supreme Court in the case of Umesh Kumar Nagpal, the Government has to examine the financial condition of the family while considering the request for compassionate appointment. In the present case, on the death of husband of Applicant No. 1, if the son was minor, the widow could have taken appointment to meet the financial requirements of the family. Since the Applicant No. 1 was already employed in Railways, there was no such need. Any request made now after a period of six years on attaining the age of majority by the Applicant No. 2, will only mean that the appointment now being sought is not with the purpose of providing immediate relief to the family to meet with the financial crises due to death of husband of Applicant No. 1 but as a matter of right to appointment after the death of the father. As held by the Hon'ble Supreme Court, this is not the scope of Scheme of Compassionate appointment. I am, therefore, of the opinion that the rejection of the request of the Applicant No. 2 for compassionate appointment can not be faulted.



8. The applicant in the OA. has brought out that the impugned order through which request for compassionate appointment has been rejected is not a speaking order as no reasons have been advanced. On going through the impugned order dated 13.3.1996, I find that the respondents have indicated that the request of the applicant cannot be accepted in terms of the provisions and orders of the Government on the subject. I am of the view that the reasons indicated are adequate to convey the applicant as to why the request was rejected as the applicant can claim compassionate appointment only as per the extant rules. Even accepting for a moment the contention of the applicant that the reasons are not conveyed, the rejection order cannot be vitiated on this account as the respondents have disclosed the reasons now in the written statement and the matter has been gone into the merits.

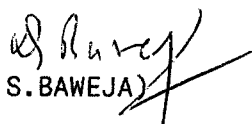
9. The learned counsel for the applicant also made a statement referring to the O.M. dated 30.6.1987 which is relied upon by the respondents, the case of the Applicant No. 2 for compassionate appointment falls under item 4 (e). He pleaded that proposal for compassionate appointment should have been referred to Secretary of the Department for approval. The learned counsel for the respondents, however, contested this stating that the proposal could be sent to Secretary to the Department only if merit is found in the case and in such an event the authority at lower level could not exercise power for



appointment and the matter had to be referred to the Secretary to Government for approval. The respondents therefore plead that since there was ^{no} merit in the claim of the applicant for compassionate appointment, the case was not required to be referred to higher authority. Keeping in view ^{provisions in} item 4 (e), I am inclined to endorse the stand of counsel for respondents and do not find any merit in this plea made by the applicant.

10. The learned counsel for the respondents has also relied upon the order dated 16.7.1998 in OA.3/98 of this Bench. I have carefully gone through this order and ⁱⁿ respectful agreement with what is held in this order in view of the deliberations above and the law laid down by the Hon'ble Supreme Court.

11. In the result, the OA. lacks merit and is accordingly dismissed with no order as to costs.


(D.S. BAWEJA)
MEMBER (A)

mrj.