

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 3/98

Date of Decision: 16.7.1998

Kum.Lekha Arjunan.

.. Applicant

Shri P.A.Prabhakaran.

.. Advocate for  
Applicant

-versus-

Union of India & Ors.

.. Respondent(s)

Shri V.D.Vadhavkar.

.. Advocate for  
Respondent(s)

CORAM:

The Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman.

The Hon'ble

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

(2) Whether it needs to be circulated to other Benches of the Tribunal ? *no*

*R.G.Vaidyanatha*  
(R.G.VAIDYANATHA)  
VICE-CHAIRMAN.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 3/1998.

Thursday, this the 16th day of July, 1998.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman.

Kum. Lekha Arjunan,  
Quarter No. 207/2798,  
Sector-III, C.G.S. Colony,  
Antop Hill,  
Mumbai - 400 037. ... Applicant.

(By Advocate Shri P.A. Prabhakaran)

V/s.

1. The Chief Commissioner of Income-Tax,  
Mumbai,  
3rd Floor, Aaykar Bhavan,  
M.K. Road,  
Mumbai - 400 020.
2. The Commissioner of Income Tax (DR),  
Settlement Commission, Addl. Bench,  
Mahalaxmi Chambers, Mahalaxmi,  
Mumbai.-
3. The Estate Manager,  
3rd Floor, Old CGO Annexe,  
M.K. Road,  
Mumbai - 400 020. ... Respondents.

(By Advocate Shri V.D. Vadhavkar)

ORDER

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

This is an application filed by the applicant seeking compassionate appointment and for a direction to the respondents that she should be allowed to continue in the quarters which is still in <sup>her</sup> possession. The respondents have filed their reply. I have heard the learned counsel <sup>for applicant,</sup> the learned counsel for Respondents No.1 and 2 and the learned counsel for Respondent No.3.

2. The applicant is the daughter of Late Shri P. Arjunan who was working as Senior Personal Assistant in the office of the Commissioner of Income-tax at Bombay. He died in harness on 15.5.1996. He has

left behind his widow and two daughters, the applicant and her handicapped sister. The applicant has come to this Tribunal stating that the family has no properties and is in indigent circumstances and she is entitled to appointment on compassionate grounds. She has continued to reside in the quarters which had been allotted to her father and therefore seeks for a direction that she should be allowed to continue in the quarters till she gets compassionate appointment and the respondents should be directed to allot her either the same quarters or any other suitable quarters to the applicant.

3. The respondents No.1 and 2 have filed their reply stating that the applicant's case for compassionate appointment has been considered on various grounds and has been rejected by the Competent Authority. The respondents have given reasons as to why the request of the applicant for a compassionate appointment was rejected.

The respondent No.3 who is the Estate Manager who had allotted the quarters to the applicant's father has filed a reply stating that irrespective of the question of compassionate appointment, the applicant has no right to continue in the quarters beyond 12 months from the date of death of the deceased.

4. The learned counsel for the applicant contended that the applicant is in difficult circumstances and the family has no sufficient income and therefore the applicant has made out a case for appointment on compassionate grounds and further entitled to continue in the quarters. The same has been disputed by the learned counsel appearing for the respondents.

...3.



5. As far as the question of compassionate appointment is concerned, its purely a case which would depend on the facts and circumstances of each case. There cannot be any general rule that in every case compassionate appointment should be given when a government servant dies in harness or a request must be rejected in every case. The object of compassionate appointment is that when a bread winner of a family dies in harness by unexpected and premature death and the family is in distress or in indigent circumstance, then government should provide an appointment to one member of the family on compassionate grounds. There is no statutory rule governing the compassionate appointment. The scheme is based on the guidelines of Circulars or Executive Directions given by the Government of India. It is well settled that right to compassionate appointment is neither a statutory right nor a vested right, but it is a concession given by the Government on certain terms and conditions.

6. In the present case, the respondents have placed on record some reasons to show that the applicants family is not in distress or in indigent circumstances to entitle the applicant to claim compassionate appointment. From the materials on record, I find that the family received Rs.2,19,000/- as benefits after the death of the deceased, the wife is getting a family pension of about Rs.3000/- and odd p.m., there is a telephone connection in the house in the name of the wife, a chauffeur driven ~~driven~~ car, the family is in possession of four pet dogs and further the wife viz. the applicant's mother is carrying on political activities and is a member of a political wing <sup>called</sup> Bharathiya Rajiv Congress.

...4.



7. The applicant admits most of these allegations except stating that instead of four dogs the family has two dogs. Now in the Rejoinder, the applicant has come out with a theory that though she and mother are residing together they had nothing in common for years. I can take notice that in Mumbai rearing of dog is certainly a costly hobby and the family has four dogs according to the respondents, but according to the applicant they have only two dogs. The learned counsel for the respondents also submitted that the telephone bills are also huge and excessive, but according to the applicant the telephone bills are paid by the political party and even the car is maintained by the applicant's party. These circumstances show that the mother has been having sufficient income and is having a chauffer driven car and having the luxury of a telephone and other facilities.

8. Can it be said in the facts and circumstances of the case that the family is ~~in~~ indigent or in distress so as to get compassionate appointment to the applicant? My answer is certainly in the negative. As already stated the compassionate appointment is not as of right, there are hundreds and thousands of persons who are standing in queue in the open market for getting appointment. Therefore, if one has to get an appointment by indirect method or a back-door <sup>entry</sup> then the Court must be satisfied that all circumstances are made out as laid down by the Government. There is one more thing that I have to point out that the respondents have given some reasons and rejected the

...5.



claim of the applicant. Even if another view is possible ~~that~~ there is no ground <sup>to</sup> this Tribunal to substitute its own finding in the place of the view taken by the Competent Authority. This Tribunal is not sitting in appeal over the orders of the competent authority under the Compassionate Appointment Scheme. We are only having a judicial review and the scope of judicial review is <sup>to</sup> finding out whether the competent authority has passed the order within the four corners of the law or orders suffer from mala fides. Even if it is possible to take a different view on merits this Tribunal cannot substitute its view in the place of the view taken by the competent authority. As regards ~~to~~ the facts mentioned above it cannot be said that the view taken by the respondents in rejecting the claim of the applicant is perverse or illegal so as to call for interference by this Tribunal by exercising the power of judicial review.

9. The learned counsel for the applicant invited my attention to two authorities.

In AIR 1991 SC 469 - (Smt. Phoolwati V/s. Union of India & Ors.), the widow of the deceased wanted compassionate appointment to her son and the only contention of the respondents in that case was about the meagre retirement benefits received by the widow to the extent of Rs.31,000/- and odd. There is no other contest to the claim by the applicant except stating that she had received Rs.31,000/- and odd as retirement benefits. Under these circumstances, the Supreme Court directed the Government to provide compassionate appointment.

...6.



In AIR 1989 SC 1976 - Smt. Sushma Gosain & Ors. V/s. Union of India and Ors., the question whether the applicant had made out a case for getting the compassionate appointment was not disputed at all. The only <sup>plea</sup> test in that case was that the applicant being a woman the respondents have no suitable job for a woman and therefore the compassionate appointment cannot be provided. Therefore, the question whether in that case the applicant had made out a case for appointment on compassionate grounds or not was never in doubt.

Hence, in my view, the above two decisions have no bearing on the facts of the present case.

10. On the other hand, the learned counsel for the respondents invited my attention to two authorities.

In 1996(4) SCALE 100 - The State of Bihar & Ors. V/s. Samsuz Zoha etc., where it is clearly observed that there is no right vested in a candidate for appointment on compassionate grounds. This is relied only to show that no party has vested right under the scheme.

In 1994 (27) ATC 174 - Life Insurance Corporation of India V/s. Asha Ramchandra Ambekar (Mrs.) and Another., the Supreme Court has observed that the High Courts and 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 rules for compassionate appointment.

11. Therefore, the applicant cannot claim compassionate appointment as of right. On facts, I find

 ...7.

that the respondents have given sufficient reasons to reject the claim of the applicant and this Tribunal cannot sit in appeal over the findings of the Competent Authority. Hence, in my view, no case is made out for interference by this Tribunal in favour of the applicant as far as the compassionate appointment is concerned.

12. On the question of applicant's continuation in the quarters is concerned, it depends upon the right to get appointment on compassionate grounds. If once that right is rejected, the right of the applicant continuing in that quarters <sup>does</sup> do not arise. As rightly pointed out by the counsel for R-3 in case of an official dying in harness, the family can continue in the quarters for a period of 12 months from the date of death. The said period of 12 months is already over. Now the applicant's claim for compassionate appointment is also rejected. Therefore, the applicant has no right to continue in the quarters. However, since we are in the midst of monsoon ~~and~~ the applicant may have to be given some reasonable time to move out of the quarters. I feel that on humanitarian grounds, the respondents may be directed to allow the applicant to continue in possession of the quarters for a further period of two months from to day. The question whether the applicant is liable to pay penal rent or normal rent is left open.

13. In the result, the O.A. is rejected at the

 ...3.

admission stage. However, the respondents are directed to allow the applicant on humanitarian grounds to continue in the quarters for a period of two months from to day. In the circumstances of the case there will be no order as to costs.



(R.G. VAIDYANATHA)  
VICE-CHAIRMAN.

B.