

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 809/98

Date of Decision: 17/12/98

D.R.Koli

.. Applicant

Shri D.V.Gangal

.. Advocate for
Applicant

-versus-

Union of India & Ors.

.. Respondent(s)

Shri R.K.Shetty.

.. 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)
VICE - CHAIRMAN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH 'GULESTAN' BUILDING NO:6
PRESCOT ROAD, BOMBAY:1

Original Application No. 809/98.

~~Pronounced~~ the 17th day of December 1998.

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

Smt. Kamlabai Ramchandra Koli

Dilip Ramchandra Koli
Residing at
Quarter No. J-6/45
Ordnance Factory Estate
Bhusawal.

... Applicants.

By Advocate Shri D.V. Gangal.

V/s.

Union of India through
Secretary
Ministry of Defence
South Block
New Delhi.

The Secretary
Ordnance Factory Board,
10-A Oakland Road,
Calcutta.

General Manager
Ordnance Factory
Bhusawal.

The Estate Officer
Ordnance Factory
Bhusawal.

... Respondents.

By Advocate Shri R.K. Shetty.

ORDER

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

This is an application filed under Section 19 of the Administrative Tribunals Act 1985. The respondents have filed reply. I have heard the learned counsel for both sides. Since the point involved is short, I am disposing of the O.A. at the admission stage itself.

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2. The first applicant is the wife and the second applicant is the son of the deceased employee, Shri Ramchandra Sonu Koli. The deceased was working in the Ordnance Factory Bhusawal. He died on 23.8.1994 while in service. The applicants were requesting the respondents to give appointment to the second applicant on compassionate basis. The respondents have delayed the matter. The applicant was interviewed and he has got more than ⁴⁰15 marks under different heads and therefore he is entitled to get compassionate appointment. The respondents have now rejected the claim of the second applicant for compassionate appointment by their letter dated 11.9.1998. The applicant's case is that the rejection of the request by the administration is illegal and liable to be set aside. It is stated that the applicant do not have sufficient income for the family and the elder son is working elsewhere and is not taking care of the family and therefore the second applicant should be given an appointment to support the family. Therefore the applicants have approached this Tribunal challenging the orders of rejection of compassionate appointment made by the respondents and for a direction to the respondents to give compassionate appointment to second applicant with effect from 1.8.1994 with backwages and continuity of service and also they want regularisation of the quarters which is in the occupation of the applicants.

3. The respondents in their reply have opposed the application. It is stated that the family is not indigent. Therefore compassionate appointment cannot be granted to the second applicant. It is stated that the first applicant, widow of the

deceased employee, got terminal benefits to the extend of Rs. 66,299/-, after the death of the employee and ^{1/4}she is also getting family pension of Rs. 1275/- ^{+ P}plus corresponding D.A., per month. One of the sons of the first applicant has been employed in Maharashtra State Electricity Board. Both the daughters are married. It is therefore stated that the applicants are not entitled to the relief of compassionate appointment and the request has been rightly rejected by the respondents. It is therefore stated that the applicants are not entitled to any of the reliefs prayed for. Hence it is prayed that the application be dismissed.

4. After hearing both the counsels, the point for consideration is whether the second applicant had made out a case for getting compassionate appointment under respondents.

5. The learned counsel for the applicants submitted that since the respondents have prescribed the mode of giving marks on different heads and since the applicants have secured more than 50 marks, the second applicant is entitled to an order of compassionate appointment. He placed reliance on the mark sheet of the applicant which is at page 83 of the paper book.

In my view, the marksheet is one of the criterion for deciding the claim for compassionate appointment. The marklist is a guideline to find out the requirements and status of the family.

In all cases of compassionate appointment the test is whether the family is in distress and requires

help in the form of getting compassionate appointment to one of the members of the family. The learned counsel for ^athe applicant placed reliance on an unreported decision by the learned Single Member of this Tribunal in O.A. No.987/95, where under order dt. 21.1.1997, the learned Single Member had given direction to the administration to consider the case of the applicant in that case for compassionate appointment. As rightly argued by the learned counsel for the respondents, in that case the Tribunal took into consideration that the applicant had a brother who was handicapped and therefore a fit case for compassionate appointment.

In my view, each case depends on its own facts and circumstances. The question whether the second applicant in this case is entitled to compassionate appointment or not has to be decided on the admitted facts and circumstances of the present case.

6. It is seen from the record that after the death of the employee, husband of the first applicant, the first applicant received Rs.66,000/- and odd as terminal benefits, then she is getting pension of Rs.1,275/- + D.A., which at the present rate comes to Rs.1800/- and odd. Then it is further seen that the first applicant's ^{first}son has been gainfully employed. It is not even disputed and it is brought on record that the first applicant's first son Narayan Ramchandra Koli has been employed as a Watchman in the Maharashtra State Electricity Board and getting gross salary of Rs.3,500/- and odd (vide Ex. R-4 at page 56 of the paper book). Then it is also seen from the record that the family has two daughters and both are married. Though the eldest daughter was divorced,

but later she has undergone second marriage, therefore as on to day both daughters are married and one son is gainfully employed and the widow is getting pension of Rs.1,800/- and odd in addition to getting terminal benefits of Rs.60,000/- and on these grounds the respondents have rejected the claim of another son viz. the second applicant for compassionate appointment. These facts are not in dispute.

This Tribunal cannot sit in appeal over the decision of the Administration on the question whether second applicant is entitled to compassionate appointment or not. The scope of judicial review is to see whether the Competent Authority has passed orders according to Rules or de hors the rules, if the competent authority has applied his mind to all the relevant facts and has come to the conclusion that the family is not indigent and the family has some financial support and one of the son's is gainfully employed, it is not for this Tribunal to re-examine the facts and come to a different conclusion, even if another conclusion is possible.

7. It was argued that the first son is living separately from the family and he is not supporting the family. In my view, this theory cannot be pressed into service while deciding the question of compassionate appointment. Even if we give compassionate appointment to second son and suppose here also, after marriage, if he lives separately and does not support his mother, can the mother again come to Court and ask for compassionate appointment to herself or to another son or to her daughter. The object of the Rule is that the family should not be a destitute; if one earning member is there the family cannot get compassionate appointment for

any other member of the family and more so when the widow is getting a pension of Rs.1,800/- and odd and has received terminal benefits.

8. In this connection, I would like to refer to two authorities of the Supreme Court which clearly explains the nature and scope of Compassionate Appointment and the scope of judicial interference.

In the case of Umesh Kumar Nagpal V/s. State of Haryana & Ors. (JT 1994(3) S.C. 525), the Supreme Court has observed that the normal rule is appointment to public service is by open competition and on merit. Then it is further pointed out that one of the exceptions to this Rule is in favour of dependants of an employee dying in harness and leaving his family "in penury and without any means of livelihood." It is further pointed out that the whole object of granting compassionate appointment is to enable the family to tide over the sudden crisis. The object of the scheme is not to give a member of such family the post. It is ^{clearly} ~~fairly~~ mentioned that merely on the death of an employee in harness no right is created in favour of the family to get compassionate appointment. It is for the government to examine the financial condition of the family of the deceased, but for the provision of the employment, the family will not be able to meet the crisis, then a job is offered to the eligible member of the family. It is clearly mentioned that the object is to relieve the family of the financial destitution and to help it get over the emergency. Then it is further observed as follows:

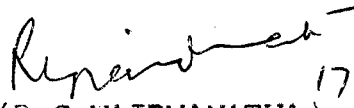
"It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute."

Similarly, in another case reported in JT 1994(2) SC 183 (LIC V/s. Mrs. Asha Ramchandra Ambekar and Anr.), the Supreme Court sounded a note of caution to High Courts and Administrative Tribunals not to confer benediction impelled by sympathetic consideration and dis-regardful of law. The Supreme Court has clearly observed that the facts and circumstances of the case must be taken into consideration and even then the Court or Tribunal cannot issue a mandamus for compassionate appointment, but only a direction to the Administration to consider the case of a particular party.

9. It is therefore, clear that compassionate appointment cannot be claimed as a statutory right or as a vested right. The question whether compassionate appointment has to be granted or not has to depend upon the peculiar facts and circumstances of the case. In the particular case before us the administration has taken into consideration all the relevant facts and has come to the conclusion that it is not a fit case to grant compassionate appointment to second applicant. I do not find that there is any illegality or infirmity in the order of the administration. Since the scope of judicial review is limited, I am not inclined to interfere with the order passed by the Administration. None of the arguments addressed by the learned counsel for the applicants appeal to me. We may have sympathies for the applicants, but since the scope of compassionate appointment is with a particular object and the administration has applied its mind and given good reasons for rejecting the claim of applicant, it is not a fit case for this Tribunal to interfere with that order, even if it is possible to take a different

view by giving reasons. Hence, I do not find any merit in the application and it is liable to be rejected at the admission stage itself.

10. In the result, the application is rejected at the admission stage. As a consequence, M.P. 697/98 filed for amendment in the O.A. does not survive and accordingly it is rejected. There will be no order as to costs.


(R.G. VAIDYANATHA) 17/12/98
VICE - CHAIRMAN

NS/B.