

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.958/92

Dt. of order: 24-1-1995.

Shri Murli Motiani & Anr. : Applicants

Vs.

Union of India & Ors. : Respondents

Mr.S.Kumar - Brief-holder of Mr.J.K.Kaushik, for applicant.

Mr.M.Rafiq : Counsel for respondents

CORAM:

Hon'ble Mr.O.P.Sharma, Member(Adm.)

PER HON'BLE MR.O.P.SHARMA, MEMBER(ADM.)

Shri Murli Motiani, aged about 20 years, S/o late Shri Lokumal Motiani and Smt.Mahini Motiani, W/o late Shri Lokumal Motiani, have filed this application under Sec.19 of the Administrative Tribunals Act, 1985, in which they have prayed that order Annx.A1 dated 24.1.91 passed by Superintendent, RMS, Ajmer, declining to grant appointment to applicant No.1 on compassionate grounds may be quashed and the respondents may be directed to consider the case of applicant No.1, for appointment on compassionate grounds according to the existing rules, with all consequential benefits.

2. The case of the applicants is that late Shri Lokumal Motiani was appointed in the Postal Department in Ajmer in May 1959 and he expired on 9.9.1988 while working on the post of LSG Sorting Assistant at Ajmer. The deceased left behind his widow (Applicant No.2) 3 sons (including applicant No.1) and a daughter. Applicant No.2 was not in a position to undertake any employment due to her age, qualifications, etc. The two major sons of late Shri Lokumal Motiani who were elder than the applicant No.1 separated from the family immediately after the death of their father. Applicant No.1 was minor at the time of the death of his father and the daughter of the deceased was also not in a position to take up any employment. When the applicant No.1 attained majority, an application dated 15.12.90 was made to the department for his appointment on compassionate grounds on any suitable post (Annx.A2). The third respondent namely, Superintendent, RMS, Jaipur Division, Ajmer, rejected

the application vide his letter dated 24.1.91 (Annex.A1) on the grounds that the two sons of the deceased employee are already in employment and are supporting the family, the widow is getting Rs.840/- per month as Family Pension plus Dearness relief and a sum of Rs.90,000 had been paid to the family as terminal benefits. The applicant No.1 appealed to the CPMG, Rajasthan Circle Jaipur, respondents No.2, against the said decision of the Superintendent RMS, Ajmer (Annex.A3). Reminder dated 4.2.92 (Annex.A1) was also sent. However, there has been no response from the Authorities. The family is in indigent condition and great distress. The benefit of compassionate appointment ought to have been extended to applicant No.1, according to the Govt. of India's instructions dated 30.6.87. Since the applicant's claim was rejected by the Superintendent, RMS, respondent No.3, without considering the complete facts of the case, the rejection order deserves to be quashed, being violative of Article 14 of the Constitution.

3. The respondents in their reply have stated that the application for appointment on compassionate grounds was in fact rejected by the Chief Post Master General, Rajasthan Circle, Jaipur and the consequential communication dated 24.1.1991 was sent by the Superintendent, RMS. Since the original representation itself was rejected in fact by the Chief Post Master General, Rajasthan Circle, Jaipur, further representation made to him did not require any fresh consideration. 2 sons of late Shri Lokamal Motiani were already employed at the time of his death and his widow is in receipt of Family Pension. She also received other terminal benefits. The family of the deceased is not in^{an} indigent condition. The order passed by the respondents denying appointment on compassionate grounds was perfect and legal and not in violation of Article 14 of the Constitution.

4. A rejoinder has been filed by the applicant in which it has been reiterated that the representation seeking employment on compassionate grounds was rejected without any basis. Although 2 sons of late Shri Lokamal Motiani are employed, they are not supporting the family and are living separately. Further the

amount of terminal benefit have already been spent in marriage ceremonies as stated in Annex.A3 which is the representation made to the Chief Postmaster General on 17.9.1991.// During the arguments the learned counsel for the applicants cited the following judgments in support of his plea that the rejection of the request for compassionate appointment to the applicant No.1 was in the circumstances of the present case unjustified. The first case cited is the judgment of the Hon'ble Supreme Court in Smt.Sushma Gasain & Ors. Vs. Union of India & Ors. AIR 1989(2)CAT 435. The second case cited is Smt.C.Jhansi Vs. G.M., Indian Drugs and Pharmaceuticals Ltd, Hyderabad & Anr. decided by the Andhra Pradesh High Court, reported at 1991(3)SLJ 25. The third case cited is K.Samuel Vs. Union of India & Ors. decided by the Madras Bench of the Tribunal, reported at 1992(1) SLJ (CAT) 9. He added that particularly in Smt.Sushma's case the Hon'ble Supreme Court has directed that where a post against which appointment on compassionate grounds ^{is to be made does} ~~and~~ not exist a supernumerary post should be created to accommodate the person to be appointed on compassionate grounds. In the applicant's case two brothers who were living separately and were not providing any financial assistance to the family and therefore their employment was of no relevance in judging the family circumstances for deciding whether compassionate appointment should be granted to applicant No.1 or not.

Q 5. The learned counsel for the respondents relied upon 3 judgments of the Tribunal to support the case of the respondents. The first one is in the case of Smt.Tejo and Anr. Vs. Union of India & Ors. reported at (1990) 12 AIC 48 decided by the New Delhi Bench of the Tribunal. The second judgment relied upon is in the case of Smt.Gain Devi & Anr. Vs. Union of India & Anr. also decided by the New Delhi Bench of the Tribunal and reported at (1991) 17 AIC 601. The third case relied upon by him is Smt.R.Vidya-shriomani Vs. Union of India decided by the Madras Bench of the Tribunal and reported at (1992) 20 AIC 793. He added that since 2 sons of the applicant No.1, who were elder brothers of applicant No.1 were employed, it was their duty to support ~~the~~ family of the deceased.

Considered in the light of this fact ~~that~~ and the fact that the applicant No.2 receives Family Pension and also received an amount of about Rs.90,000 by way of terminal dues of late Shri Lokumal Motiani, the family cannot be said to be in indigent circumstances. Therefore, the respondents were justified in rejecting the request of the applicants for compassionate appointment to Applicant No.1.

6. The learned counsel for the parties have been heard, records have been examined and the judgments cited have been gone through. In Smt.Sushma's case appointment on compassionate grounds was denied on a primary ground that appointment of ladies in the organisation concerned i.e. Deptt. of Director General Border Road was prohibited. Also in that case after Smt.Sushma Gosain had made application for appointment on compassionate grounds in Nov. 1982, she had been put to a trade test and interview in 1983 which she had passed. It was in 1985, after the ^{that} ban on appointment of ladies was imposed, ^{that} she was informed that appointment should not be granted to her. It was in these circumstances that the denial of appointment was considered to be arbitrary. There appears to be no dispute in that case that the financial condition of the family of Smt.Gosain was such ~~as to~~ justified appointment on compassionate grounds. It was in these ^{that} circumstances, ^{the} the Hon'ble Supreme Court directed that if necessary a supernumerary post may be created to accommodate ^{the} person who is to be given a compassionate appointment. The other two judgments relied upon by the learned counsel for the applicant are on the peculiar facts of those cases. In Smt.C.Jhansi's case the respondents had initially declined to grant appointment on the ground that the financial condition of the organisation, Indian Drugs & Pharmaceuticals Ltd., was bad and it had been suffering financial losses. This contention was negatived by the Hon'ble High Court stating that this logic cannot be applied to appointment on compassionate grounds. The High Court took into account the amount of Family Pension received by Smt.C. Jhansi, which was Rs.439/- per month and other dues which amounted to about Rs.36,000/-. Having regard to these and certain other

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circumstances, the Andhra Pradesh High Court held that the applicant should be granted appointment on compassionate grounds. In the third judgment i.e. in the case of K. Samuel, the Tribunal noted that the applicant had retired prematurely on being permanently incapacitated. His pension was Rs. 435/- plus dearness relief thereon and the total amount of other terminal benefit was received about Rs. 40,000. A son of the applicant was employed on Rs. 500 per month and was living away as he was posted at another place. It was having regard to these circumstances that the Tribunal held that the case of the applicant's son should be considered for compassionate appointment.

7. In Smt. Tejs's case relied upon by the learned counsel for the respondents, the Tribunal had noted that if the lumpsum amount received by the widow of the deceased which was Rs. 62,819 had been deposited in fixed deposit, she would receive a fair amount of interest every month besides the Family Pension of Rs. 490 plus dearness relief received by her. The Tribunal held that it would not ^{be} appropriate on ^{its} part to review the decision taken by the respondents to reject the request for compassionate appointment which was after due consideration of all the relevant facts. In Gopin Devi's case the family had received terminal benefits of Rs. 1,83,772 and ^{was} also in receipt of Family Pension of Rs. 1576/- In these circumstances, the Tribunal held that the family could not be said to be in indigent circumstances. In Viddashriomani's case the Tribunal after noting the financial condition of the family observed that the eldest son of the applicant who retired on medical invalidation was employed as Postman and there was an obligation cast upon him towards maintenance of his parents. On appreciating the total financial condition of the family, the Tribunal held that the applicant was not entitled to ^{have} her second son appointed on compassionate grounds.

8. The factual position in the case of the present applicants is that the family received terminal benefits of about Rs. 90,000 and the applicant No. 2 is in receipt of Family Pension of Rs. 840 per month plus dearness relief. The total amount of Family

Pension would now amount to almost Rs.1900 per month. If the amount of Rs.90,000/- received by way of terminal benefits had been put in fixed deposit, the applicants would have received another about Rs.900/- per month thereby making the gross income of the family at about Rs.2,800/- per month. If the applicant No.2 chose to spend away the terminal benefits of Rs.90,000/- on marriages, etc. it was her choice but she could not claim at the same time to be in indigent circumstances. Two sons of the applicant No.2 are employed but they are reported to be living separate. They have in fact an obligation to render some support to the family and it is for the applicant No.2 to draw their attention to their obligation rather than ask the government to provide a job to her third son, on compassionate grounds. Smt. Gosain's case cited by the learned counsel for the applicant has no application in this case, in view of the facts of the case briefly stated above. The other two cases relied upon by him has also no application in the present case.

8. The Hon'ble Supreme Court in the case of Umesh Kumar Negpal Vs. State of Haryana & Ors. (1994) 27 ATC 537 held that before granting appointment on compassionate grounds, the government or the public authority concerned have 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. They have further held that their earlier decision in Smt. Sushma Gosain's case does not justify compassionate appointment as a matter of course. Considering the financial circumstances of the family, the respondents were justified in denying ^{appointment on} compassionate grounds to applicant No.1. Also the decision not to grant compassionate appointment was taken after a due consideration of the facts and circumstances of the case including the financial condition of the family. This Tribunal has powers of judicial review, in that it examines the process of decision making but it is not an Appellate Court which can reappreciate the facts and circumstances of

and then
a case, /substitute its own opinion or decision for that of the
departmental authorities. Since the respondents had applied
their mind to the facts of the case and taken a decision which
is neither perverse nor arbitrary nor is actuated by malafides
the Tribunal cannot interfere with the decision.

9. The application is, therefore, dismissed with no order as
to costs.


(O.P. Sharma)
Member (Adm.).