

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH: HYDERABAD

O.A. NO. 329 of 1989.

I.A. NO.

DATE OF DECISION 2.5.1990

Bibijan

Petitioner

Shri G.V.Subba Rao,
Advocate.

Advocate for the
Petitioner (s)

Versus

The Director-General,
Department of Telecommunications,
New Delhi and three others.

Respondent

Shri E.Madan Mohan Rao,
Addl. CGSC

Advocate for the
Respondent (s)

CORAM

The Hon'ble Mr. J.Narasimha Murthy : Member(Judl).

The Hon'ble Mr. R.Balasubramanian : Member(Admn).

- 1. Whether Reporters of local papers may be allowed to see the Judgment ?
- 2. To be referred to the Reporter or not?
- 3. whether their Lordship wish to see the fair copy of the Judgment?
- 4. whether it needs to be circulated to other Benches of the Tribunal ?
- 5. Remarks of Vice-Chairman on columns 1,2,4, (To be submitted to Hon'ble Vice-Chairman where he is not on the Bench)

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CENTRAL ADMINISTRATIVE TRIBUNAL, HYDERABAD BENCH
AT HYDERABAD.

Date of decision: 2.5.90.

O.A.No. 329 of 1989.

Between:

Bibfjan. Applicant.

Vs.

The Director General,
Department of Telecommunication,
New Delhi and three others. Respondents.

Sri G.V.Subba Rao, Counsel for the Applicant.

Sri E.Madan Mohan Rao, Additional Standing counsel for
the respondents.

CORAM:

Hon'ble Sri J.Narasimhamurty, Member (Judicial)

Hon'ble Sri R.Balasubramanian, Member (Administrative).

Judgment of the Bench delivered by
Hon'ble Sri J.Narasimhamurty, Member
(Judicial).

This application is filed seeking a direction to
the respondents to appoint the applicant's son Shaik
Ghouse Mohiuddin to Class III Post by declaring the
letter dated 23--2--1988 issued by the General Manager,
Telecommunications, Hyderabad as illegal, arbitrary
and violative of Articles 14 and 16 of the Constitution.

The averments in the application are as follows:

The applicant's late husband Shri Shaik Nayab Rasool,
Line Inspector, Phones under the control of Divisional
Engineer, Telecommunications, Cuddapah has put in nearly
30 years loyal and unblemished services in various
capacities and at various places while in service.
He was last posted as Line Inspector, Phones, Cuddapah.

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He was almost attending to duties and on certain occasions even during nights attending to faults in telephone lines and he continued to be at the work spot upto early hours of the day to complete the work without rest and sleep. Throughout his 30 years of official career he performed his duties with utmost devotion to duty and to the satisfaction of his superiors without adverse remarks from anyone of his superiors or from the public. He was affected by severe Asthma and Bronchitis due to his exposure to unfavourable climatic conditions prevailing in the interior of Cuddapah region and became a victim to it. As a result of ill health, the applicant's late husband applied for sick leave during the periods from (1) 8-3-1981 to 7-4-1981 for 31 days, (2) from 28-7-1981 to 31-8-1981 for 35 days (3) from 22-10-1981 to 30-12-1981 for 70 days (4) 2-11-1982 to 5-2-1983 for 96 days and for all the above periods no pay was drawn as there was no leave to his credit and because of frequency of his applying for leave, an adverse remark was written in the A.C.R., for the period 1981-82. As there was no improvement in the health condition of the applicant's late husband he has decided to seek retirement on medical invalidation and he has submitted his application dated 9-2-1983 to the Divisional Engineer, Telecommunications, Cuddapah for sending him for Medical Examination. He was sent for medical Examination on 15-3-1983 after a delay of one month 6 days which was deliberate to deprive his son for appointment at a later date. The applicant states that date of the letter which was originally 2-2-1983 was altered as 15-3-1983. The Superintendent Govt. Headquarters Hospital, Cuddapah gave Medical Unit report dated 12-4-1983. There was a delay of nearly 28 days in giving the medical report. All these delays

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have become fatal and injurious to the cause of the Applicant's son's appointment.

3. Consequently on the Medical invalidation of the Applicant's late husband, the Divisional Engineer, Telecommunications Cuddapah by his Ir.No.Q.2/SNR/Pan/27 dated 3--10--1983 had struck off his name from the rolls.

4. Pursuant to the said medical invalidation with effect from 12--4--1983 the applicant's husband submitted an application for appointment ^{of} to his son on compassionate grounds on 19--4--1983. He was directed to submit two separate applications (1) requesting for retirement on Medical invalidation with effect from 12--4--1983 and (2) a request for providing his son with a job. The applicant's late husband submitted the application of his son for appointment with all necessary certificates and complying with all requirements. But there was no response to the applications.

5. The applicant's late husband expired on 30--12--1984 without cherishing his ambition of getting his son appointed. The applicant's family thereby put to untold suffering as there is no other earning member in the family.

6. The applicant has put number of representations dated 12--2--1985, 11--11--1985, 19--1--1986, 11--6--1987 and 13--1--1988. As there was no response from the respondents, the applicant approached the Member of Parliament Shri Sultan Salahuddin Owisi, who wrote a letter dated 20-4-1987 to Hon'ble Minister for Telecommunications, P & T and reminders thereon. Ultimately the respondent No.1 sent a reply to the applicant that the applicant's son Sri S. Ghous Mohiuddin is not entitled for appointment on compassionate grounds

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since the applicant's husband took retirement on invalidation after attaining x 55 years. The applicant submitted appeals dated 15--4--1988 and 11--8--1988 to the Authorities to re-examine the case in the light of the new facts given x in her representation and to appoint her son on compassionate grounds.

7. The applicant states that there are instances where appointments on compassionate grounds were given to the sons of employees who were medically invalidated after attaining 55 years. She quoted the cases of one A.Srinivasa Reddi son of A.Konda Reddy, Telephone Supervisor, Telephone Exchange, Proddutur who was medically invalidated and he was about 55 years by four days. Sri A.Narasimhulu Naidu, Telephone Cable Jointer, Cuddapah. His son A.Venkateswara was appointed as Clerk in D & T Office, Cuddapah from 6--7--1988. This A.Narasimhulu Naidu has passed 56 years when he was medically unfitted. The applicant states that the applicant was singled out and discriminated in the matter of appointment to her son on compassionate grounds. She states that the ~~apply~~ her son is qualified to be appointed as a Class III employee against any suitable post.

8. The applicant states that the decision of the respondents based on a Circular No.TA/STA(2)/13-1/Rly. dated 11--8--1985 forwarding Director General P&T New Delhi No.268/64/82 of 20-7-1983 is not applicable in the case of the applicant's son for appointment as this will apply to future cases but not in the instant case wherein Medical invalidation was on 12--4--1983 which arose prior to 20--7--1983. The Home Ministry's Circular was not notified to applicant's husband and it was only circulated on 11-8-1985. All these developments took place subsequent to 9-3-1983 the date of request of applicant's husband and hence not binding on the applicant. Hence the application.

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9. We have heard Sri G.V. Subba Rao, learned counsel for the Applicant and Sri E. Madan Mohan Rao, Additional Standing Counsel for the respondents.

10. It is an admitted fact that the Applicant's husband worked in the Telephones Department and put up 30 years of service and he is an hard working man and while he was working at Cuddapah because of his ill-health, he was on sick leave. He was in a very serious condition and that he could not continue in service. He was treated for his ailment but there was no improvement in his health condition. He was sent for Medical Examination. There was delay in sending him to Medical test and there was also delay in giving the Medical report also.

11. The applicant's husband
11. The applicant sent representations to the Authorities to consider his son's appointment on compassionate grounds in his place as there was no other earning member in his family. Subsequently, the Applicant's husband also expired. Even after his death, the applicant sent representations to the Member of the Parliament and also to the Minister but ultimately the applicant received a communication that his son is not eligible for appointment and finding no other alternative, she approached this Tribunal with this application.

12. The Applicant's son studied S.S.L.C., in any one of the and he is fit to be appointed as/Grade III Posts. So the applicant requested the Authorities to accommodate her son in Grade III Post as there are no other earning members in the family.

13. The counsel for the respondents argued

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that the son of the applicant has not complied with the rules for appointment and therefore, he cannot be appointed.

14. The learned counsel for the applicant relied on a decision reported in MD. ISRAFIL Vs. UNION OF INDIA & ORS. (A.T.R.1987(2)C.A.T. 117 wherein it was held that the son of the petitioner is entitled to get an appointment on compassionate grounds.

He also relied on a decision reported in SMT. SUSHMA GOSAIN & ORS. Vs. UNION OF INDIA & OTHERS (A.T.R.1989(2)SC.659 in which Their Lordships of the Supreme Court observed:

(i) "We heard counsel on both sides and gave our anxious consideration to the problem presented. It seems to us that the High Court has made the order in a mechanical way and if we may say so, the order lacks the sense of justice. Sushma Gosain made an application for appointment as Lower Division Clerk as far back in November 1982. She had then a right to have her case considered for appointment on compassionate ground under the aforesaid Government Memorandum. In 1983, she passed the trade test and the interview conducted by the DGBR. There is absolutely no reason to make her to wait till 1985 when the ban on appointment of ladies was imposed. The denial of appointment is patently arbitrary and cannot be supported in any view of the matter.

(ii) We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate grounds is to mitigate the hardship due to death of the bread earner in the family.



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Such appointment should, therefore be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant.

The learned counsel for the applicant also relied on a decision of the Principal Bench of the Central Administrative Tribunal in Smt. Munni Devi V. General Manager, Northern Railways and others (A.T.R.1986 C.A.T. 105) wherein Justice Madhava Reddy speaking for the Court held:

"The contention that because of serious ailments like heart disease or cancer, the employees to be given the benefit of the circular should have been 'medically decategorised' for the job they are holding does not govern the clauses 'when the Railway employees become crippled while in service or develop serious ailments like heart disease or cancer etc.'. The distinct categories of railway employees to whom the benefit of the circular is given are mentioned in clause (iv) of para 1 of the Circular. It is not necessary that railway employees who have become crippled while in service or railway employees who developed serious ailments like heart disease and cancer should be further medically decategorised to earn the benefit of the circular dated 7--4--1983. An employee who is crippled or has developed serious ailments or even one who is 'otherwise medically decategorised' would be entitled to the benefit of the circular. Where, therefore, the records show that the employee had suffered serious heart ailments and was forced to go on leave due to serious illness then the respondents were in error in holding that she, although suffering from serious ailment (heart disease), could not be given the benefit of the circular unless she was also medically decategorised. The respondents were directed to give the benefit of the circular to the employee by appointing her daughter in terms of the circular."

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15. In the instant case the petitioner who had put in 30 years of service had applied for retirement on grounds of medical invalidation before he attained the age of 55. The administration took its own time and final retirement took effect from 12.4.83, 12 days after he attained the age of 55. The applicant cannot be held responsible for the delay. We therefore feel that the son of the applicant is not debarred from securing employment on compassionate grounds.

16. In the circumstances we direct the respondents to offer appointment to the son of the applicant in his turn and consistent with the qualification possessed by him. Accordingly the application is allowed. There is no order as to costs.

AS

R.Balasubramanian

(J.NARASIMHA MURTHY)
Member(Judl).

(R.BALASUBRAMANIAN)
Member(Admn)

ANM 7/5/83
Dated: 2-5-90 DEPUTY REGISTRAR(J)

TG:

1. The Director General, Department of Telecommunication, New Delhi.
2. The General Manager, Telecommunications, Govt. of India, Hyderabad.
3. The Director of Telecommunications, Govt. of India, Tirupathy.
4. The Divisional Engineer, Telecommunications, Cuddapah-516 001.
5. One copy to Mr.G.V.Subba Rao, Advocate, 1-1-230/33, Jyothi Bhavan, Chikkadpally, Hyderabad-500 020.
6. One copy to Mr.E.Madan Mohan Rao, Addl.CGSC, CAT, Hyd.
7. One spare copy.

* * *

k.j.

Subba Rao 7/5/83