

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.35 of 1992

DATE OF JUDGMENT: 15th SEPTEMBER, 1992

BETWEEN:

Mr. K.M.Sastry

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Applicant

AND

1. Union of India
represented by its Secretary
to Government of India,
Ministry of Defence,
New Delhi.
2. The Chief of Naval Staff,
Naval Headquarters,
New Delhi.
3. The Flag Officer,
Command-in-Chief,
Headquarters,
Eastern Naval Command,
Naval Base,
Visakhapatnam.

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Respondents

COUNSEL FOR THE APPLICANT: Mr. V.Venkateswara Rao

COUNSEL FOR THE RESPONDENTS: Mr. N.V.Ramana, Addl.CGSC

CORAM:

Hon'ble Shri C.J.Roy, Member (Judl.)

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JUDGMENT OF THE SINGLE MEMBER BENCH DELIVERED BY THE HON'BLE
SHRI C.J.ROY, MEMBER (JUDICIAL)

This application was filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 claiming a relief to set-aside the letters No.CP(SC)/6670, dated 8.2.1991 and CP(SC)/6670, dated 4.7.1991 issued by the 2nd respondent and direct the respondents to offer suitable employment to the son of the applicant i.e., Shri K.V.N. Brahmaji on compassionate grounds with all consequential benefits such as arrears of salary and allowances, seniority and promotion etc.

2. The facts as narrated in the application are briefly as follows:-

The applicant while working as Office Superintendent in the C.B.Office of the Naval Base at Visakhapatnam was retired on medical grounds from service with effect from 4.5.1989. Since there is no other source of income to support himself and his family members consisting of his son, and daughter-in-law and since the pension received by the applicant is hardly sufficient for himself to maintain, the applicant made a representation to the 3rd respondent on 26.5.1989 seeking appointment to his son on compassionate grounds which was followed by another representation ~~in~~ in June 1989. The 3rd respondent vide his letter dated 7.01.1991 recommended the case of the applicant's son for compassionate appointment but the 2nd respondent vide his letter dated 8.2.1991 rejected the same on the ground that the applicant is getting pension and that there is no unmarried daughter in the family. He

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made an appeal dated 27.3.1991 which was also rejected by the 2nd respondent on 4.7.1991 on the ground that the applicant has not ~~made~~ brought out any new substantial grounds. Hence this application.

3. The respondents in their counter stated that only in exceptional cases when the department is satisfied that the condition of the family is indigent and is in great distress, the benefit of the compassionate appointment can be extended to a son/daughter/near relative of a Government servant. The applicant consequent upon his retirement on medical grounds, was granted and paid, Gratuity amounting to Rs.23,100/-, Capitalised value of commuted portion of Pension of Rs.34,086/- and he is getting pension @ Rs.692/- per month. Further, the applicant has a house in Visakhapatnam and his son who is married is a major and also he has no unmarried daughter as such. Hence, the applicant has no liability except his own self for which he is in receipt of a pension of Rs.692/- per month. Hence, the request of the applicant for compassionate appointment to his son was rejected. Employment assistance is not a right to the retired Government servant and it is only a privilege which depends upon the situation of the family. It is purely left to the Department to consider various aspects and only in exceptional cases, the Department, when it is satisfied, can provide the employment assistance. The applicant has not made out any substantial case and no injustice has been done to him. Hence, the application is liable to be dismissed.

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others" of the High Court of Allahabad, wherein his lordship observed, "unfortunately in the order no reasons have been recorded for rejecting the claim of the petitioners. The order passed on 2nd September 1989 is quoted below:-

"In reference to this office Regd. letter No.A/25(PF)/88/7075, dated 23.7.1988 vide which the papers regarding your appointment on compassionate grounds were forwarded to our Zonal Office/Regional Office. In this connection, it is to inform you that the case has been examined in details at our Zonal Office, New Delhi, in accordance with the existing instructions, wherein the case could not find favour on its merit."

His lordship opined:-

"In my opinion, petitioners by means of the affidavit filed by them and other documents fully established their claims and the authorities made a favourable recommendation for giving appointment under class III or class IV as found suitable by the authorities. However, the claim has been rejected in arbitrary manner without assigning any reason. Shri N.P.Singh, learned counsel appearing for the respondents has sought to defend this order by placing the Circular dated 31st May, 1977 and para-12 of the counter affidavit. In the circular as well as in para 12 of the counter

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4. The applicant filed a rejoinder to the counter affidavit stating that neither the pension received by him nor owning a small dwelling house, should not come in the way of offering an appointment on compassionate grounds to the applicant's son.

5. This case was reserved for orders on 20.8.1992 after hearing the learned Counsel for the Respondents as the applicant's counsel was not present. Subsequently, the applicant's counsel filed a letter dated 24.8.1992 for reopening the O.A. After considering the letter dated 24.8.1992 the case was posted for hearing on 3.9.92.

6. Heard the learned counsel for the applicant, Mr. V.Venkateswara Rao and the learned Additional Standing Counsel for the Respondents, Shri N.Rajeswara Rao for Mr. N.V.Ramana, Addl.CGSC.

7. The point for consideration is whether the applicant is entitled for consideration of appointment of his son on compassionate grounds.

8. One of the grounds attacked ~~HEREIN~~ by the applicant is that the impugned orders dated 8.2.1991 and 4.7.1991 are not speaking orders nor shows the application of mind. The ground that the applicant is having a dwelling house ~~is~~ was not raised nor considered while disposing of the representation of the applicant. Therefore, a ground not mentioned in the impugned order, now mentioned in the counter cannot be taken into consideration as per the law laid down by the ruling given by his lordships in, "I(1991) CSJ (HC) 318, Nanhki Devi and another Vs. Food Corporation of India and

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affidavit, the requirements for giving preference on compassionate grounds have been given but as the impugned order does not mention any deficiency suffered by petition No.2 in establishing his claim, the order cannot be sustained. The substantial requirements for such claim are that the claimant may be dependent of the employee dying in harness, they may be destitute and may be qualified for the post ~~x~~ on which he sought to be appointed. All these necessary ingredients are present in the case of the petitioners and, in my opinion, they are entitled for favourable consideration. Learned counsel for the respondents cannot be permitted to supplement the order by giving reasons, now."

9. Considering the view expressed by his lordship in the above case, I am of the opinion, that the claim of the applicant cannot be rejected in mechanical manner as has been done by means of the impugned order. Owning of a dwelling house is not a disqualification as mentioned in the scheme for compassionate appointments. I have also gone through the scheme. A married son also, if he is dependent, is not excluded in the scheme to be considered. Only thing for consideration is whether the applicant is in indigent circumstances or his son is in immediate need of employment or not. The receipt of retirement benefits and pension etc., is also not a ground for rejecting

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the case of compassionate appointment as held by the Hon'ble Members of the Central Administrative Tribunal, Calcutta Bench reported in 1989(3) SLR CAT p.166 (Adhir Kumar Nath Vs. Union of India and others). Their lordships while disposing of the application before them, held that, "it is nowhere stated in the order of the Railway Board that the amount of retirement benefits has to be taken into consideration while determining the fitness of an employee's prayer for employment of his son on compassionate grounds."

10. I would like to add that these retirement benefits, no doubt, need not be taken into consideration while giving the compassionate appointment but it can better be applied depending upon the facts and circumstances of a given case.

11. The retirement on medical grounds also is not a bar for considering the claim of Compassionate Appointment of the son of the retired employee on medical grounds, as held by the Calcutta Bench of the Central Administrative Tribunal in the above cited case viz., 1989(3) SLR CAT p.166. That was the case where the petitioner therein was declared incapacitated for further service in the Railways by the Medical Board thereby the petitioner claiming appointment of his son on compassionate grounds. His claim was rejected by the Railways contending that the petitioner therein attained the age of 58 years on 2.1.1984 and had crossed the age of 58 years before he was declared medically unfit though according to simplified procedure of retirement the petitioner was to retire on 31.1.84. This contention of the Railways was rejected by their lordships as not maintainable. Their lordships directed the respondents therein to consider the prayer of the petitioner therein as per the instructions issued by the Government.

11. The learned counsel for the applicant cited the Judgment viz., "1990(7) SLR Punjab & Haryana High Court p.86 (Devinder Yadav Vs. State of Haryana and others)", in support of his contention that a married son also, if he is dependent, is not excluded in the scheme to be considered for compassionate appointment. I have gone through the Judgment. That was the case where the father of the petitioner died while in service and the petitioner claiming for compassionate appointment which was rejected by the Department on the ground that the married son of the deceased could not be treated as dependent. His lordship held that, there is no bar to a married son being given an appointment under the ex-gratia scheme, especially when the respondent had earlier given such appointments to married sons of the deceased employees. It cannot be said that a married son cannot be dependent on the father. In view of the above, I am of the opinion that the applicant's claim for compassionate appointment to his son cannot be rejected on the ground that his son is married. However, I hasten to add that all cases cannot be treated alike. Each and every case has to be examined in the light of the facts and circumstances. As the compassionate appointment is not a vested right but meant to provide for the immediate need of dependents who are in indigent circumstances.

13. The main contention of the respondents herein is that preference will be given to the persons died in harness but this is not the case which warrant to consider for an appointment on compassionate grounds. I am unable to agree with this contention. The question to be considered

is whether the applicant is in indigent circumstances or not.

14. Answering a question raised by the Bench with regard to the retirement benefits received by the applicant, the learned counsel for the applicant stated that the wife of the applicant was suffering from cancer before her death and the applicant incurred heavy medical expenses for her treatment. The amounts received by him towards retirement benefits could not be saved by him since he was indebted on account of huge expenditure incurred for treatment of his wife.

15. In AIR 1989 SC 1976 (Smt. Sushma Gosain and others Vs. Union of India and others) and the Judgment in 1991 Lab.I.C. 392 Supreme Court, "Smt. Phoolwati Vs. Union of India and others", their lordships even stated that supernumerary post should be created for compassionate appointments and no delay should be made and these two Judgments were followed with approval in the case of "Smt. Asha Devi Srivastava Vs. Union of India and others" (AISLJ 1992(1) CAT 38), by the Central Administrative Tribunals, New Delhi.

16. In view of the discussions in the preceding paragraphs, I am of the opinion that it is a fit case for considering the case of the applicant for compassionate appointment to his son.

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17. I, therefore, direct the respondents to consider the case of the applicant's son for an appointment on compassionate grounds within a period of three months from the date of receipt of a copy of this order.

18. The application is accordingly disposed of with no order as to costs.

(C.J.ROY)
Member(Judl.)

Dated: 18th September, 1992.

Deputy Registrar (J)

To

1. The Secretary, Union of India,
Govt. of India, Ministry of Defence, New Delhi.
2. The Chief of Naval Staff, Naval Headquarters,
New Delhi.
3. The Flag Officer, Command-in-chief,
Headquarters, Eastern Naval Command, Naval Base,
Visakhapatnam.
4. One copy to Mr V.Venkateswar Rao, Advocate, CAT.Hyd.
5. One copy to Mr.N.V.Ramana, Addl.CGSC.CAT.Hyd.
6. One copy to Deputy Registrar(J), CAT Hyd.Bench.
7. One copy to Hon'ble Mr.C.J Roy, Member(J)CAT.Hyd.
8. Copy to All Reporters as per standard list of CAT.Hyd.
9. One ^{VSN} spare copy.

pvm.

10th Sept 1992
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