

(4)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, HYDERABAD BENCH
AT HYDERABAD

O.A.No. 1152 of 1993.

Between:-

A. Raghu Kumar, S/o. Late A. Mallesha,
aged about 26 years, R/o. Hyderabad.

Address for service is that of his counsel

Sri P. Naveen Rao, Advocate, H.No.1-1-561/2,

Gandhinagar, Hyderabad - 020.

... Applicant.

And

1. The Post Master General (Welfare),
Andhra Pradesh Circle, Department of Posts,
Government of India, Hyderabad - 1.

2. The Senior Superintendent,
Railway Mail Service, Hyderabad Sorting
Division, Department of Posts,
Government of India, Hyderabad - 027.

... Respondents.

DETAILS OF APPLICATION:-

1. Particulars of the order against which application
is made:-

Application is filed questioning the decision of

Circle Office rejecting the claim of the applicant for
compassionate appointment due to death of his father.

The decision of the Circle Selection Committee is communicated
to the applicant by the second respondent in his letter

No. B1/appt./Relax/A.Mallesha, dated 26.2.1993.

2. Jurisdiction:-

The subject matter of the Application is within
the jurisdiction of this Hon'ble Tribunal under Section
14(1) of the Administrative Tribunal Act, 1985.

3. Limitation:-

The applicant is questioning the decision of the
circle office which is communicated to the applicant in
his Letter dated 26.2.1993 by the second respondent and
therefore the application is within the time prescribed in
Section 21 of the A.T. Act, 1985.

4. FACTS OF THE CASE:-

a) The applicant's father, late A. Mallesha was employed in the Department of Posts as sorting Assistant with effect from 1.8.1952. While working in officiating capacity as HSG-II Cadre, A. Mallesha met with an unfortunate death on 4.12.1987 due to cancer. (Annexure-A) is the death Certificate). A. Mallesha served the Department of Posts for 35 years (~~Annexure-B is the service Certificate~~). Ms.

b) The applicant has two elder brothers, two sisters and mother Smt. Sarojini. The two brothers of the applicant got married during the life time of his father and are living separately from their father much prior to their father's death. Applicants' elder brother Sri Naresh Kumar is working as sorter in Posts and Telegraphs Department at Hyderabad and the second brother, Sri Vinod Kumar is working as Stenotypist in the City Civil Court, Hyderabad. The applicant's elder sister was also married during the life time of his father. At the time of late Mallesha's death, Mallesha's family consisted of his wife Smt. Sarojini, the applicant, his second sister and himself. Second sister got married in the year 1989. As the applicant was not employed the applicant was ~~living~~ and was depending on his father's income. The applicant is a Graduate in Commerce from Osmania University and holds a second class certificate in Typewriting (Higher) having passed the examination conducted by the State Board of Technical Education and Training., Andhra Pradesh in Nov/Dec. --- Mallesha the applicant and his mother are living in virtual poverty without any proper source of income and the applicant's brothers are not

supporting them. In order to bail out the family from the difficulties the mother of the applicant represented the Post Master-General, A.P.Circle, Hyderabad, the first Respondent herein praying to him to provide employment to his third son i.e. the applicant in his Department on compassionate grounds in view of the pitiable family condition after her husband's death.

c. To the utter surprise and dismay, Smt. Sarojini's representation for compassionate appointment is rejected by the Circle office. The reason for rejection is that there are three earning members in the family of the deceased Official. The decision of the Circle Office is communicated to Smt. Sarojini by the second Respondent in Lt.No.B1/Appt./Mr. Relax/A.Mallesha dated ~~26.2.1993~~ 19.7.1989 (Annexure-B). *M.L.*

Aggrieved by the rejection of applicant's claim for compassionate appointment, applicant filed O.A.No.383/91 in this Hon'ble Tribunal, questioning the proceedings No. B1/Appt./Relax.A.Mallesha dt. 19.7.1989 and seeking for a direction to appoint him on compassionate appointment. The respondents opposed the relief prayed by the applicant

- a) that the family of the deceased was paid a sum of Rs.1,00,356.00 towards DCRG, PLI, GPF, etc.,
- b) that a sum of Rs.900.00 is granted as family pension besides D.A.;
- c) that the deceased official had owned two houses and the said houses are partly occupied and fetching rent;;
- d) that the two brothers and one sister of the applicant are employed.

(e) When the O.A. was listed for final hearing on 31.7.1992 the Counsel was absent and the O.A. was decided on merits exparte. The Hon'ble Mr. C.J.Roy (member-Jud.) heard^e the respondents and dismissed the O.A. on the ground that the applicant had not shown any material to say that the circle selection committee had rejected the case of the applicant for compassionate appointment in an arbitrary manner. ~~XX~~ The learned member also held that the family owns two houses, received a sum of about Rs.1,00,000/- towards ECRG etc. and receiving a sum of Rs.1539/- per month as pension the applicant had not made out any case for compassionate appointment.

(f) It is respectfully submitted that the Counsel for the applicant and the applicant were not having prior knowledge of the listing of the case on the said date and because of ill health the counsel was not present when the case was called. The applicant filed Review Application No.108 of 1992 seeking for Review of the Judgment dt.31.7.91 in O.A.No.383/91. It is stated that the elder brothers of the applicant severed links with the family of the applicant's father during his life time and were living separately; the mother of the applicant is also not receiving any assistance from her employed sons; the pension sanctioned after the death of the applicants' father would be reduced to half from January 1993. The Review was admitted and posted for hearing.

(g) The Hon'ble member by his order dt. 11.11.1992 was pleased to review his decision dated 31.7.1992 in O.A.No.383/91 and allowed the R.A.No.108 of 1992.

The learned member was pleased to observe at para 13 as follows:-

"In the result, the case of the applicant deserves for compassionate appointment in view of the fact that the family of the deceased Government servant is in indigent circumstances and the contention of the respondents that the family of the deceased is getting monthly pension and other income, cannot be accepted."

The decision^{of} the learned member in the R.A.108/92 has become final.

(h) Consequent to the above decision of the learned single member the case of the applicant for appointment on compassionate grounds was reconsidered and rejected by the circle selection committee on the very same grounds which were relied upon by the respondents in the earlier O.A. and the same were rejected by this Hon'ble Tribunal in the orders dt. 11.11.1992 in R.A.No.108/92. The decision of the circle Selection Committee is communicated to the applicant by the second respondent vide Lr.No.B1/Appt./Relax/A.Mallesha dt. 26.2.1993 impugned herein (Annexure-D). In view of the arbitrary decisions of the respondents, the applicant is put to irreparable loss and hardship and mental agony. The family of the applicant is in a state of shock. ~~XXX~~ Had the respondents given the applicant an opportunity of hearing at the initial stage itself this issue would not have prolonged this ~~fact~~ ^{fact}. *Jan 12*

5. GROUND FOR RELIEF WITH LEGAL PROVISIONS:-

- a) The decision of the circle Selection Committee as communicated to the applicant by the second respondent is highly arbitrary, illegal and unconstitutional.

- b) The impugned decision is contrary to the findings of this Hon'ble Tribunal in R.A. No.108/92 in O.A.383/91 dt. 11.11.1992 and is in violation of the said orders of Hon'ble Tribunal.
- c) The respondents having suffered the judgment cannot reject the claim of the applicant on the very same set of grounds.
- d) The respondents ought to ^{have} provided compassionate appointment to the applicant.

6. Details of Remedies Exhausted:-

The applicant state that there are no alternate remedy except to invoke the Jurisdiction of this Hon'ble Tribunal.

7. Matter not pending with any other Court:-

The applicant declares that he is not filed any application, Writ Petition or Suit regarding the same subject matter and no application, Writ Petition or suit is pending before any other court or Tribunal regarding

8. MAIN RELIEF:-

It is therefore prayed that this Hon'ble Tribunal in the interest of justice be pleased to call for the records relating to and connected with ~~XXXXX~~ Lr.No.B1/Appt./Relax/A.Mallesha, dt. 26.2.1993 of the second respondent and quash or set aside the decision of the circle selection committee rejecting the claim of the applicant for appointment on compassionate grounds and consequently direct the respondents to provide the applicant employment forthwith and also direct the respondents to pay ^{exemplary costs} ~~compensation~~ for the loss and suffering caused to the applicant and pass such other order or orders as may be deemed fit and proper in the circumstances of the case.

9. INTERIM RELIEF:- It is prayed that this Hon'ble Tribunal in the interest of justice be pleased to expedite and fix an early date for hearing and pass such other order or orders as may be deemed fit and proper in the circumstances of the case.

10. Particulars of the Postal Order in respect of application fee:-

- i) Number of Indian Postal Order : 805 908344
ii) Name of the Issuing Post Office: App Counsel for A.P.
iii) Date of Postal Order : 10-7-93
iv) Post Office at which payable : 50-24

11. Details of Index:-

An index in duplicate containing the details of documents to be quoted upon is enclosed.

VERIFICATION

I, A. Raghu Kumar, S/o. Late A. Mallesha, aged about 26 years, R/o. Hyderabad do hereby verify that the contents are true to my personal knowledge and belief and on the advice rendered by the counsel in legal aspects and and I am not suppressed any material facts.

A. Raghu Kumar
(Signature of Applicant)

(Counsel for the Applicant)

Hyderabad.
Date: 09.09.1993.

To
The Registrar,
Central Administrative Tribunal,
Hyderabad Bench, Hyderabad.

Yes
Counsel for Applicant