



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A. 75/94.

Dt.of Decision : 29-8-94.

P. Ashi Reddy

.. Applicant.

Vs

1. The General Manager,
SC Rly, Rail Nilayam,
Secunderabad.
2. The Divl.Railway Manager,
Hyderabad (MG)Division,
SC Rly, Secunderabad.

.. Respondents.

Counsel for the Applicant : Mr. C.Venkata Krishna

Counsel for the Respondents : Mr.C.V.Malla Reddy, SC for Rlys.

CORAM:

THE HON'BLE SHRI A.B. GORTHI : MEMBER (ADMN.)

P. Ashi

O.A.No.75/94.

Date of Judgement : 29-8-79.

J u d g e m e n t

X As per Hon'ble Shri A.B.Gorthi, Member(A) X

The claim of the Applicant is for appointment on compassionate grounds. The father of the Applicant was medically de-categorised.

3. post proceeded on voluntary retirement w.e.f. 25.3.88. As

on that date, the employee was 53 years old and had rendered more than 30 years of service. The Applicant is the eldest son and is a graduate in commerce. His request for compassionate appointment having been turned down, he has filed the present O.A. The main contention raised in the O.A. is that as per Railway Board's instructions, dependants of employees who are medically de-categorised are entitled to seek appointment on compassionate grounds. Relevant portion of the Railway Board's letter dt. 19.9.84 is reproduced below:-

priority. The Ministry has now decided that the order of shall be revised as under:- letter of 7.4.1983,

- (i) Dependants of employees who die or are permanently crippled in the course of duty.
- (ii) Dependants of employees who die in harness as a result of railway or other accidents when off duty.
- (iii) Dependants of employees whom
 - (a) die in service or are totally incapacitated while in service irrespective of the period of service left to reach the age of superannuation or of earning retirement benefits in full, or
 - (b) are medically de-categorised with less than 30 years of qualifying service for pensionary benefits.
- (iv) Dependants of employees who are medically de-categorised with 30 years or more of qualifying service for pensionary benefits.

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2. Heard learned counsel for both the parties.

3. One of the oft quoted judgements of the Hon'ble Supreme Court on the question of compassionate appointment is that of Sushma Gosain & Ors. Vs. Union of India & Ors. AIR 1989 SC 1976 wherein the Apex Court observed that such appointment should be provided immediately to redeem the family in distress and that even if there is no suitable post, super-numerary post etc.

On the authority of the said judgement, it is argued that in the matter of compassionate appointment a very liberal view should be taken and that giving appointment should be as a rule and rejection only as an exception.

4. The constitutional validity of appointment on compassionate grounds came up for consideration before the Hon'ble Supreme Court in Auditor General of India & Ors. Vs. G. Anant Rajeswara Rao, 1994 SCC (L&S) 500. Having examined the decision of the Division Bench of Andhra Pradesh High Court declaring appointment on compassionate grounds as violative Article 16(2) of the Constitution, the Apex Court observed as under: /

"5. xxx Therefore, the High Court is right in holding that the appointment on grounds of descent clearly violates Article 16(2) of the Constitution. But, however it is made clear that if the appointments are confined to the son/daughter or the widow of the deceased government employee who died in harness and who needs immediate appointment on grounds of immediate need of assistance in the event of there being no other earning member in the family to supplement the loss of income from the bread-winner to relieve the economic distress of the members of the family it is unexceptionable. But in other cases it cannot be a rule to take advantage of the Memorandum to appoint the persons to these posts on the ground of compassion. Accordingly, we allow the appeal in part and hold that the appointment in para 1 of the Memorandum is upheld and that appointment on compassionate ground to a son, daughter or widow to assist the family to relieve economic distress by sudden demise in harness of government employee is valid. It is not

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on the ground of descent simpliciter, but exceptional circumstance for the ground mentioned. It should be circumscribed with suitable modification by an appropriate amendment to the Memorandum limiting to relieve the members of the deceased employee who died in harness from economic distress. In other respects Article 16(2) is clearly attracted."

5. In view of the above categorical pronouncement of the Hon'ble Supreme Court, there can be now no doubt that

~~exceptional grounds can validly be made~~
only in respect of the son, daughter or widow of the deceased government employee who died in harness, provided of course the authorities are satisfied that the family is in immediate need of assistance to tide over penurious circumstances in which it landed due to the demise of the bread-winner. Any appointment outside the exceptions carved out by the Supreme Court would clearly attract the provisions of Article 16(2) of the Constitution.

~~Shri Venkateshna~~ learned counsel for the Applicant has referred to the decision of the Supreme Court in Umesh Kumar Nagpal Vs. State of Haryana & Ors. JT 1994(3) SC 525 for the purpose of showing that when the appointment sought for is only to Class III or Class IV posts, there cannot be any objection even if such appointment is sought in respect of the son of an employee who is medically invalidated or retired on medical de-categorisation. A careful examination of the judgement in Umesh Kumar Nagpal's case would clearly indicate that the Hon'ble Supreme Court reiterated what has been stated in the case of Auditor-General of India & Ors. Vs. G. Ananta Rajeswara Rao. The following passage would be pertinent:-

"2. xxx As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Government nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule

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which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased granting compassionate employment. The whole object of this provision is to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has 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."

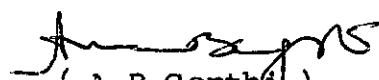
7. In the instant case before me, it is seen that the Applicant's father retired with all the pensionary benefits due to him. There is nothing on record to indicate that the family is in such indigent circumstances as would warrant immediate assistance. In any case, the father of the Applicant having retired on being medically de-categorised, there can be no valid justification for giving appointment to the Applicant. In fact, giving the Applicant appointment on compassionate grounds would, as observed by the Supreme Court, be violative of Article 16(2) of the Constitution. In this context, a reference may be made to the decision of the Supreme Court in L.I.C. of India Vs. Mrs. Asha Ramachandra Ambekar & Another, 1994(2) SLR 1, wherein the Apex Court had the occasion to comment adversely on the fact that in many cases appointment on compassionate grounds was directed by judicial authorities. Elaborating their point of view, their lordships observed that High Courts and Administrative Tribunals cannot confer benediction impelled by sympathetic consideration but should administer law as they find it, however, inconvenient it may be.

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8. Since the law governing appointment on compassionate grounds is well settled, there can be now no doubt that on the medical de-categorisation of an employee, his son or daughter cannot seek appointment on compassionate grounds. This is so even where the departmental instructions such as the Railway Board circulars provided for giving appointment on compassionate grounds to the son or daughter of an employee who is medically de-categorised.

9. In the result, the O.A. is dismissed but there shall be no order as to costs.


(A.B.Gorthi)
Member (A)

Dated: 29 August, 1994.

br.


Deputy Registrar (J) CC

To

1. The General Manager, S.C.Rly, Railnilayam, Secunderabad.
2. The Divisional Railway Manager, Hyderabad (MG) Division, S.C.Rly, Secunderabad.
3. One copy to Mr.C.Venkatakrisna, Advocate, CAT.Hyd
4. One copy to Mr.C.V.Malla Reddy, SC for Rlys, CAT.Hyd.
5. One copy to Library, CAT.Hyd.
6. One copy to D.R.(J)CAT.Hyd.
7. Copy to All Benches and Reporters as per standard list of CAT.Hyd
8. One spare copy.

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P. B. S. R. J. 21/10/94

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE V. NEELADRI RAO
VICE-CHAIRMAN

AND

A. B. Gorthi
THE HON'BLE MR. K. RANGARAJAN : M(ADEN)

DATE: 29-8 - 1994

ORDER/JUDGMENT

M.A.No./R.A/C.A.No.

in

O.A.No.

75/94

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(T.A.No.

(W.P.NO

Admitted and Interim directions
Issued.

Allowed.

Disposed of with directions.

Dismissed.

Dismissed as withdrawn

Dismissed for Default.

Ordered/Rejected

No order as to costs.

pvm

