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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

J A I P U R.

C.A. No. 508/93

Date of decision: 26.5.94

LAL CHAND

: Applicant.

VERSUS

UNION OF INDIA & ANP. : Respondents.

Mr. B.N. Mathur : Counsel for the applicant.

Mr. M. Rafiq : Counsel for the respondents.

CORAM:

Hon'ble Mr. Justice D.L. Mehta, Vice-Chairman

PER HON'BLE MR. JUSTICE D.L. MEHTA, VICE-CHAIRMAN:

Heard the learned counsel for the parties.

2. Applicant's father expired in the year 1982. The applicant was brought up by his mother. Applicant applied on 3.7.1993 for giving appointment to him on compassionate grounds under the rules. The respondents rejected the application vide Annexure A-1, dated 9.7.93. The respondents had stated in Annexure A-1 that he has applied after 5 years of the death of his father and the Railway Board does not consider to relax the condition; ^{the application} should be submitted within a period of 5 years. The circular issued by the Railway Board provides that normally the appointment on compassionate grounds should be made within a period of 5 years. A period of 5 years from the date of occurrence of event is prescribed as a period of eligibility of entitlement of appointment on compassionate grounds - may be relaxed upto 10 years with the approval of the General Manager. Mr. B.N. Mathur submits that the words 'eligibility of entitlement' and the 'event' as used in this circular are very relevant. As far as the word 'event' is concerned, it has nothing to do with the death of the Government employee but it has to be considered as a date on which the applicant attained the majority and became eligible for appointment.

3. nd As far as the arguments of Mr. Mathur are concerned, I am inclined to accept that the word 'event' should be

interpreted and should be correlated with the event of majority and the word 'entitlement' should also be correlated with the attaining of majority. In fact, this circular seems to be against the Judgements of the Hon'ble Supreme Court given from time to time, particularly in the case of Auditor General Vs. Union of India and Umesh Kumar Nagpal Vs. State of Haryana & Ors and some other judgements. In the case of Umesh Kumar Nagpal (JT 1994(3) SC 535, their Lordships held:

"As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit....However, to this general rule... there are some exceptions carved out in the interests of justice and ...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....The whole object of granting compassionate employment is thus to enable the family 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. The posts in Class III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependant of the deceased employee in such posts has a rational nexus with the object sought to be achieved, viz. relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs of the family engendered by the erstwhile employment which are suddenly upturned.

Unmindful of this legal position, some Governments and public authorities have been offering compassionate employment sometimes as a matter of course irrespective of the financial condition of the family of the deceased and sometimes even in posts above Classes III and IV. That is legally impermissible.

It is for these reasons that we have not been in a position to appreciate judgments of some of the High Courts which have justified and even directed compassionate employment either as a matter of course or in posts above Classes III and IV. We are also dismayed to find that the decision of this Court in *Sushma Gossain & Others Vs. Union of India*, (1989) 4 SLR 327, has been misinterpreted to the point of distortion. The decision does not justify compassionate employment either as a matter of course or in employment in posts above Classes III and IV. In the present case, the High Court has rightly pointed out that the State Government's instructions in question did not justify compassionate employment in Class II posts. However, it appears from the judgment that the State Government had made at least one exception and provided compassionate employment in Class II post on the spurious ground that the person concerned had technical qualifications such as MBBS., BE, B.Tech. etc. Such exception, as pointed out above, is illegal, since it is contrary to the object of making exception to the general rule. The only ground which can justify compassionate employment is the penurious condition of the deceased's family. Neither the qualifications of his dependant nor the post which he held is relevant... If the dependant of the deceased employee finds it below his dignity to accept the post offered, he is free not to do so. The post is not offerent to cater to his status but to see the family through the economic calamity.

For these very reasons, the compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over.

It is needless to emphasise that the provisions for compassionate employment have necessarily to be made by the rules or by the executive instructions issued by the Government or the public authority concerned. The employment cannot be offered by an individual functionary on an ad hoc basis."

It will not be out of place here to mention that there are two factors which need consideration of the court. Firstly, whether a circular issued by the Government on its administrative side should be implemented, secondly, whether any circular so made has to be declared as ultra-vires, on account of being violative of Articles 14 and 16 of the Constitution of India. Mr. Mathur submits that no point has been raised about the legality of the

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circular and the Government cannot also argue about the legality of the circular or the vires of the order. It is true that the Government is not taking into consideration the various judgments given by the Hon'ble Supreme Court which is the law of the land and they are not revising the circular and there may be a case of pick and choose in the matter of compassionate appointments. However, the court cannot be a silent spectator and cannot give order in favour of the applicant, particularly when it feels that the circular needs reconsideration by the Government in the light of the Judgments of the Hon'ble Supreme Court.

4. Compassionate appointment is not a right. At the most, it can be said though I do not ^{subscribe} hold the view which I am expressing that it is an appointment given to a class of persons under Article 16. The question whether such appointments can be considered as a class or not or is kept open for the time being.

5. Compassionate appointment means an appointment given to the needy family immediately when the bread-earner dies and there is no one to maintain the family and the family may be indigent. The conditions precedent are that (i) it must be immediate, (ii) it cannot be given as a routine to the legal heirs of the Government servants who die during service and (iii) it can only be given, at the most, to the persons of the family who apply immediately after the sad demise of their bread-earner and true to the satisfaction of the appointing authority that the family has no means of maintenance and there is every likelihood that the provisions of Article 21 can be invoked relating to right to live. Thus, it cannot be in a casual manner.

6. Mr. Mathur submitted that the 'event' has to be considered when the son became major and entitled for appointment. He also submitted that entitlement should also be considered from the date of attaining the majority.

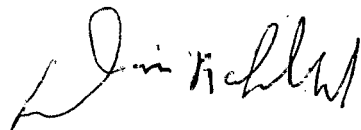
7. In the instant case, the mother was there. Son was

minor, may be of 8 to 10 years as he has stated in his application submitted before this Tribunal that he is of 23 years of age in 1993. Mr. Hafiq submits that he has one elder brother and also employed with the Railways.

8. It may be true that the customs do not allow the lady to join the Government service. The circular applies to the widows. In a society, if a lady goes to wash utensils at the residences of private persons, she can also apply for appointment on compassionate grounds. In the instant case, the appointment was offered to the wife of the deceased, however, she declined the offer. Thus, it is a case where question of giving a compassionate appointment does not arise.

9. In the result, I am of the view that no directions can be given to the respondents that the applicant be given appointment on compassionate grounds. I direct the respondents to consider the case taking into consideration the various circulars issued from time to time as also the Judgments of Auditor General Vs. Union of India and Umesh Kumar Nagpal Vs. State of Haryana & Ors etc.

10. The O.A. is disposed of accordingly, with no order as to costs.



(D.L. MEHTA)
Vice-Chairman