

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.610/93

Dt. of order: 20-1-1995 *A.*

Rajendra Chaturvedi

: Applicant

Vs.

Union of India & Ors.

: Respondents

Mr. Mahendra Shah

: Counsel for Applicant

Mr. V.S. Gurjar

: Counsel for respondents

CORAM:

Hon'ble Mr.O.P.Sharma, Member(Adm.)

PER HON'BLE MR.O.P.SHARMA, MEMBER(ADM.).

In this application under Sec.19 of the Administrative Tribunals Act, 1985, Shri Rajendra Chaturvedi has prayed that the respondents may be directed to accord appointment to the applicant on the post of Inspector w.e.f. the date on which he was given appointment on the lower post of L.D.C., with all consequential benefits.

2. The applicant's case is that he is the son of the deceased Shri O.P.Chaturvedi, who while working as Superintendent in the Customs and Central Excise Department expired on 24.11.91. The mother of the applicant requested the Department to grant employment to the applicant on compassionate ground. The applicant's elder brother lives separately and does not provide any financial assistance to the applicant, his mother and his sister who were all dependent on late Shri O.P.Chaturvedi. The applicant has passed B.Sc. and is eligible for appointment on the post of Inspector in the Department. Initially the request for applicant's appointment on compassionate grounds was rejected but eventually he was given appointment on the post of LDC on compassionate grounds. According to the applicant, he has been illegally deprived of his due right of appointment on the post of Inspector which is the suitable post for his appointment on compassionate grounds. No reasons have been given by the respondents for not appointing the applicant on the post of Inspector. Double standards have been applied by the Department in as much as one Shri Rajesh Kumar Yadav has been given appointment on compassionate grounds on the post of Inspector and certain other officials

have also been given appointment on the same ground in higher posts. The order giving appointment on the post of Inspector to Shri Rajesh Kumar Yadav is at Annex.A7 dated 30.8.90. On account of the discriminatory treatment meted out to the applicant in not offering him the post to which he was entitled, the applicant submitted a representation Annex.A8 dated 10.2.93. The mother of the applicant also submitted a representation in this regard which is at Annex.A9. The action of the respondents in not offering him appointment on the post of Inspector is arbitrary and discriminatory and in violation of Articles 14 and 16 of the Constitution.

3. The respondents in the reply have stated that on a reconsideration of the case of the applicant, he was offered appointment on the post of LDC which was accepted by him and in pursuance of which he joined duties on 6.4.93 at Udaipur. The elder son of late Shri O.P.Chaturvedi is also employed in J.K.Factory at Jhalawar and the applicant was also working as LDC in Rata Open University at the time of Shri O.P.Chaturvedi's death. A job on compassionate grounds cannot be offered as a matter of course irrespective of the financial conditions of the family. The respondents have relied upon the judgment of the Hon'ble Supreme Court in Umesh Kumar Nagpal Vs. State of Haryana, Judgments Today 1994 (3) SC 525 in which the Hon'ble Supreme Court have made this observation. Further, the Hon'ble Supreme Court have held in this judgment that the death of an employee in harness does not entitle his dependents to the job in the government and the financial condition of the family must be taken into account in this regard. Further, according to the Hon'ble Supreme Court, if the dependent 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 offered in order to cater to his status but to see the family through the economic calamity.

4. Further, according to the respondents, at the time of death of the father of the applicant, the family including the applicant had received an amount of Rs.1.92 lacs from the Department and total Family Pension admissible was about Rs.2000/- per month. In

the facts and circumstances of the case, it is not open to the applicant to seek appointment to a higher post on compassionate grounds. Once initial appointment is accepted by a person on compassionate grounds on a particular post, he should thereafter strive in his career for future advancement to a higher post on the basis of his individual merit, like any other employee. The allegations of discrimination against the applicant vis a vis Shri Rajesh Kumar Yadav and others have been denied by the respondents.

5. The applicant has also filed a rejoinder alongwith which he has filed Annex.A13 dated 31.10.90 showing that the applicant was working as a Daily Wager against the post of LDC in Kota Open University. The applicant has also filed Annex.A12 which is a copy of the application filed by Shri Rajesh Kumar Yadav, seeking employment on compassionate ground in which other details concerning his family are given. This Annexure has been filed to show that the circumstances of the applicant were similar to those of Shri Rajesh Kumar Yadav and therefore, he is also entitled to compassionate appointment on the post of Inspector.

6. During the arguments the learned counsel for the applicant stated that two questions needed to be answered by the respondents in this case. One was whether double standards can be applied by them in offering appointment on compassionate grounds. The context in which this question was framed was that while in view of similar circumstances Shri Rajesh Kumar Yadav had been offered the post of Inspector, the applicant has been offered the post of LDC, when both the applicant and Rajesh Kumar Yadav were graduates. The second question that needed to be answered was whether an appointment to be offered on compassionate grounds should be on a post which was suitable having regard to the qualifications etc. of the person to whom the post was offered. Various instructions issued by the government from time to time gave an authority to the government to make appointment on compassionate grounds and there was no bar in these instructions to offering such appointment in keeping with the qualifications of the person to whom the post is offered.

7. According to the learned counsel for the applicant, the averment that the applicant was placed in similar situation and circumstances as prevailed in the case of Shri Rajesh Kumar Yadav has remained unrebuted by the respondents. Hence, this was a case of hostile discrimination against the applicant.

8. The learned counsel for the respondents stated that the applicant had not given details of all the circumstances of the case of Shri Rajesh Kumar Yadav and others with whom he had sought to compare himself for seeking appointment to the post of Inspector or a post higher than that of LDC. It was having regard to the financial circumstances of the family that the post of LDC had been offered to the applicant which had been accepted by him. There was no question of any discrimination against the applicant *visa vis* Shri Rajesh Kumar Yadav or any other persons because circumstances of each case including the financial conditions of the families concerned are different. In so far as the applicant's case is concerned, the financial condition of the entire family, which has been mentioned in detail in the reply, was taken into account and thereafter appointment on the post of LDC was offered to the applicant. The learned counsel for the respondents again drew attention to the observations of the Hon'ble Supreme Court in the case of Umesh Kumar Nagpal and reiterated that the applicant had no right to demand appointment to a post of his choice or which he thought was commensurate with his qualifications.

9. In rebuttal the learned counsel for the applicant stated that onus was on the respondents to show the financial circumstances of Rajesh Kumar Yadav and the applicant differ and that they had failed to discharge this onus. Further, according to him the educational qualification has to be a criteria for appointment on compassionate grounds and the educational qualification has ~~any~~ been nexus with the post offered. The applicant had applied for the post of Inspector or UDC but had offered the post of LDC which was not in keeping with his educational qualification which was graduation.

10. The learned counsel for the parties have been heard, records have been gone through and the judgment cited by the learned counsel for the respondents has been perused. First of all the case of the applicant for appointment to the higher post of Inspector may be examined independently without linking it with that of Shri Rajesh Kumar Yadav and others. The reply shows that the applicant's brother is in private employment in a reputed concern and the applicant himself was also employed on pay of Rs.950/- in Kota Open University at the time of his father's death as seen from Annex A13 attached to the rejoinder. The family received an amount of Rs.1.92 lacs at the time of the applicant's father's death and the amount of Family Pension fixed is about Rs.2000/- about which there is no dispute. These circumstances show that in fact the family was not at all in financial distress due to which any member of the family may have been eligible for appointment on compassionate grounds. In spite of this situation however the respondents appointed the applicant to the post of LDC. It is nothing but an act of generosity on their part. The applicant's educational qualifications are B.Sc. passed. The mere fact that the applicant was a graduate does not mean that he should be offered on the post of Inspector. The qualification for appointment to I.A.S or any other Central Group-A post is also graduation and from this it cannot follow that the applicant should have been offered the post of an I.A.S officer or any other Group-A post in a Central Service. It is, in this context that the judgment of the Hon'ble Supreme Court in the case of Umesh Kumar Nagpal becomes relevant. Paragraphs 2 and 5 of the judgment which have a direct bearing on this case are reproduced below:

Para 2:

... 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 Classes 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. .... 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..."

para 5

"...If the dependent 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 offered to cater to his status but to see the family through the economic calamity."

11. Viewed in the light of the judgment of the Hon'ble Supreme Court in Umesh Kumar Nagpal's case there is absolutely no case for grant of appointment to the applicant on a post higher than that which was offered to him by the department and which was accepted by him.

12. Now the question whether there was any discrimination against the applicant in not offering appointment on the post of Inspector which was offered to Shri Rajesh Kumar Yadav or in not offering another higher post which was offered to certain others may be examined.

13. As rightly stated by the learned counsel for the respondents circumstances of each case have to be seen. The difference in circumstances in the cases of Rajesh Kumar Yadav and the applicant is obvious from Annex A12 attached to the rejoinder filed by the applicant. This Annexure is a copy of the application made by Shri Rajesh Kumar Yadav while seeking appointment on compassionate grounds. In this application the Family Pension admissible to the family has been mentioned at Rs.450/- per month. Even with dearness relief the Family Pension would be a little over Rs.1000/-. The Gratuity payable to the deceased is mentioned as Rs.10,560. The value of total assets with the family has been mentioned at Rs.33,874/-. This may be contrasted with the financial position of the family of the applicant. The total amount of dues received on death of late Shri O.P.Chaturvedi was Rs.1.92 lacs and the Family Pension alone was Rs.2000/- per month. The detailed circumstances of other persons who were offered appointments on ..7.

compassionate grounds, as mentioned by the applicant, are not known but it would be essential for the applicant to show that they were all similarly placed as the applicant. The applicant cannot shift his burden ~~on~~ to the respondents by merely stating that he and all others who had been offered higher post ~~were~~ were similarly placed. Therefore, in so far as the case of Rajesh Kumar Yadav is concerned, it <sup>falls</sup> does not fall in the same category as that of the applicant, because, the financial conditions of the two families differed vastly, the applicant's family conditions being far superior to those of Shri Rajesh Kumar Yadav. Therefore, the applicant has not been able to make out a case of hostile discrimination against himself.

14. An appointment on compassionate grounds is made by bypassing the normal recruitment rules and is offered with a view to relieving the family of the deceased government servant of the immediate financial distress caused by the death of the deceased government servant. It is not a normal mode of appointment as is evident from the fact that it is considered appointment on compassionate grounds. This sort of appointment cannot be claimed by <sup>a</sup> person as of a right. He can also not claim that the post to be offered him should be in keeping with his educational qualifications, as this claim cannot have any meaning in the context in which it is made. It was thoughtful of the respondents to offer the applicant a post which involved desk work because the applicant was a graduate. It was open to him not to accept this post if he felt that it was not in keeping with his educational qualification or his dignity. The applicant has failed to make out a case of hostile discrimination against himself in not being offered a higher post. The observations of the Hon'ble Supreme Court reproduced above squarely apply to the facts of this case and therefore, the applicant is not entitled to anything more than what he has already got.

15. In the circumstances, the application is dismissed with no order as to costs.

(O.P.Sharma)  
Member(A).