

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIFUR BENCH, JAIPUR

O.A.No.375/2000

Date of order: 20/4/2001

Smt Suchitra Bhogat, W/o Late Sh.Kamal Singh Phogat,
R/o Plot No.30, Pratap Nagar, Jaipur.

...Applicant.

Vs.

1. Union of India through Home Secretary, Mini.of Home Affairs, Deptt of Adminnistrative Remoroms, New Delhi.
2. Sh.Virendra Singh, Col.Adm., Commandent for Station Cdr.HQ61 (Indep) Sub-Area, Station Cell, C/o 56 APG.

...Respondents.

Mr.Smt Sharda Phathak - Counsel for applicant

Mr.Sanjay Pareek - Counsel for respondents.

CORAM:

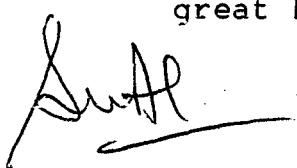
Hon'ble Mr.S.K.Agarwal, Judicial Member

Hon'ble Mr.N.P.Nawani, Administrative Member.

PER HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER.

In this O.A under Sec.19 of the Administrative Tribunals Act, 1985, the applicant makes a prayer to quash and set aside orders Anxx.A4 dated 17.5.2000 and Anxx.A6 dated 3.6.2000 to the extent that the applicant is not fit for service due to overage and to direct the respondents to consider the applicant for appointment on compassionate ground in lieu of her husband late Sh.Kamal Singh Phogat.

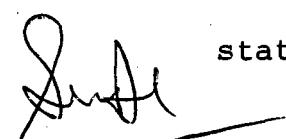
2. In brief facts of the case as stated by the applicant are that husband of the applicant Sh.Kamal Singh was working in Military Exchange, till his death on 26.4.2000. It is stated that Shri Kamal Singh was suffering from Throat Cancer. He was admitted at Jaipur Hospital, Jaipur but died on 26.4.2000 leaving behind his wife, old mother, son Preetam Phogat and daughter Deepa. It is stated that the family of the deceased on account of death of Kamal Singh is suffering from great hardship and the applicant filed an application for her



appointment on compassionate ground in lieu of her husband but her prayer was rejected for the reason that she is overage by the impugned order dated 17.5.2000. She again filed an application on 30.5.2000 but the same was replied vide order dated 3.6.2000 in which it has been mentioned that as per Govt of India OM dated 7.3.74, the applicant is overage by 4 years. It is stated that the denial of appointment of the applicant on compassionate ground is hardship on the part of the applicant and age limit should not be a bar for the widow for this purpose. It is stated that there is no age limit for the widow in State Employee dependent Service Rules, 1996 and other States Rules and Central Service Rules and if there is any such rule, the same is unconstitutional and in violation of Articles 14, 16 and 21 of the Constitution of India. Therefore the applicant filed the O.A for the relief as above.

3. Reply was filed. In the reply it is stated that Shri Kamal Singh Phogat was employed on 15.1.72 but after June 90 he has become an irregular and most of the time he remained absent from duty for which disciplinary proceedings were initiated against him. He was awarded penalty of withholding 3 increments in August 92. Thereafter he again absented from duty, as per details given in the reply. It is admitted that the husband of the applicant died on 26.4.2000. It is stated that the applicant has already crossed the minimum age limit as provided in the Service Rules, hence without granting relaxation to her, she cannot be offered appointment on compassionate ground and further stated that Articles 14, 16 and 21 of the Constitution are not attracted in this case. Therefore, it is stated that the applicant has no case and the O.A is liable to be dismissed.

4. Rejinder has also been filed reiterating the facts as stated in the O.A.



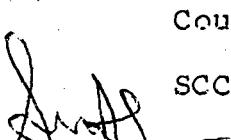
5. Heard the learned counsel for the parties and also perused the whole record.

6. Admittedly, the claim of the applicant was denied by the respondents' department on the basis of instructions issued by the Govt. of India, Mini. of Home Affairs, OM No.2(101)/72-Estt(D) dated 7.3.74 as amended from time to time. The learned counsel for the respondents has also referred letter dated 30.7.99 pertaining to the instructions for relaxation of age for consideration on compassionate appointment, which is reproduced below:

- "i) 25 years for son/daughter(s) of general category.
- ii) 30 years for son/daughter belonging to SC/ST category
- iii) 28 years for son/daughter belonging to other backward Classes(OBC).
- iv) 35 years for widow of General Category
- v) 38 years for widow belonging to OBC
- vi) 40 years for widow belonging to SC/ST category.

The selected cases beyond the above prescribed age limit require sanction of DGBC or relaxation of upper age limit. In this connection, duly attested copy of SC/ST/OBC certificates issued by the competent authority will be enclosed with Appx.A, a separate recommendation signed by MGAJC/Commandant (for Central Depots only) with the initial date of application (part A of Appx.A) will be attached with the Board proceedings while forwarding the same to Army HQ wherein age relaxation is required."

7. We have also noticed OM N:o.14014/6/86-Estt.(D) dated 30.6.1987 issued by Govt of India, Deptt.of Personnel and Training and the same has been referred by Hon'ble the Supreme Court in the case of Dhalla Ram Vs. Union of India & Ors, 1998 SCC (L&S) 112. The extract of the OM regarding relaxation of



age reproduced below:

"6. Relaxation

Compassionate appointments are made in relaxation of the following:

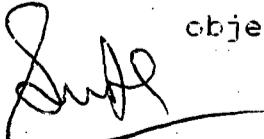
- a) Recruitment procedure, i.e. without the agency of the Staff Selection Commission or Employment Exchange.
- b) Age-limit wherever necessary. The relaxation of lower age limit should not be below 14 years of age.
- c) Educational qualifications to the extent stated in para 4 above.
- d) Clearance from Surplus Cell of this Department/ Directorate General of Employment and Training."

8. On the basis of the instructions issued by Govt of India in providing appointment on compassionate ground, it is abundantly clear that in appropriate cases, upper age limit can be relaxed by the competent authority.

9. Admittedly, the case of the applicant was not put up by the department for relaxation of her maximum age limit before the competent authority. The whole object of granting compassionate appointment is to enable the family to tide over the sudden crisis, as it has been held in a leading case, Umesh Kumar Nagpal Vs. State of Haryana & Ors, JT 1994(3) SC 525.

10. In Jagdish Frasad Vs. State of Bihar & Anr, JT 1995(9) SC 131, the Apex Court held that the very object of appointment of a dependent of the deceased employee who die in harness is to relieve unexpected immediate hardship and distress caused to the family by sudden demise of the earning member of the family,

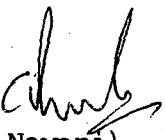
11. With reference to the above object, it was the duty of respondent No.2 to examine the case of the applicant objectively and dispassionately with a view to see whether the

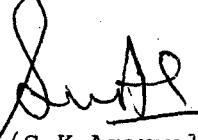


deceased govt employee's family needs immediate help and if so, then the age should not come in the way of granting employment to the widow of the deceased on compassionate ground and if the matter regarding relaxation of age comes in the way then the case should have been forwarded to the concerned authority for granting relaxation of age. Admittedly, the deceased govt employee died leaving behind his widow, his old mother, one minor son and one daughter of marriageable age and there is no other bread earner in the family. It is not the case of the respondents' department that indigent circumstances do not exist in the family of the deceased govt employee. Therefore, it was expected from the respondents' department to putup the case of the applicant before the competent authority for relaxation of upper age limit but respondent No.2 did not do so and out rightly rejected the claim of the applicant on the ground that she has become overage. The applicant, who is a widow of the deceased govt employee is stated to be of 39 years of age and looking to the circumstances as mentioned above, we are of the opinion that the case of the applicant deserves for consideration of relaxation of upper-age limit, as provided in the rules and thereafter the case of the applicant deserves consideration for employment on compassionate ground.

12. We, therefore, dispose of the O.A with the direction to the respondents to consider the case of the applicant for appointment on compassionate ground, within 4 months from the date of receipt of a copy of this order, after considering the relaxation of upper age limit of the applicant for employment on compassionate ground.

13. No order as to costs.


(N.P.Nawani)
Member (A).


(S.K.Agarwal)
Member (J).