

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH JODHPUR.

OA No.471/2000

Date of order: 23/4/2001

Dharmendra Sharma S/o, Shri B.S. Sharma, aged about
26 years, resident of Near Hazoori Darwaja, Alwar (Raj.)

.....APPLICANT

V E R S U S

1. Union of India, through Commissioner,
Kendriya Vidyalaya Sangathan(HQS), New Delhi.
2. Assistant Commissioner,
Kendriya Vidyalaya Sangathan(HQS), New Delhi.
3. The Assistant Commissioner,
Kendriya Vidyalaya Sangathan, Regional Office-Jaipur.
4. Kendriya Vidyalaya No.1, Near Moti Doongari,
Alwar through its Principal

....RESPONDENTS.

Mr. P.K. Sharma, counsel for the applicant.

Mr. V.S. Gurjar, counsel for the respondents.

ORDER

(as per Hon'ble A.P. Nagrath)

Father of the applicant, while working as a Laboratory Assistant in Kendriya Vidyalaya No.1, Alwar died in harness on 17.9.99. The applicant, being the eldest son of deceased, applied for appointment on compassionate grounds. His request has been rejected as intimated to his mother Smt. Chameli Devi by the letter dated 28.8.2000 by Principal Kendriya Vidyalaya No.1. This application has been filed by the applicant with a prayer to quash and set aside the letter dated 28.8.2000

and to direct the respondents to consider his case for appointment on compassionate grounds in group-D post or any suitable posts as per his educational qualification.

2. The applicant submits that survivors of the deceased family are his widow, two sons including the applicant and two unmarried daughters. Four daughters of deceased are already married. The applicant claims to have submitted all the relevant documents required for considering his case for appointment on compassionate grounds. There are 53 group-D vacancies in Kendriya Vidyalaya and he should have been offered appointment as per rules providing a ceiling of 5% of the vacancies to be offered for appointment on compassionate grounds. His contention is that rejection of request is arbitrary and that the impugned order does not disclose any reason for turning down his request.

3. Respondents, in their written reply, have stated that the request of the applicant was given due consideration by the Competent Authority and keeping in view the facts, circumstances and material available on record, the claim of the applicant for appointment on compassionate grounds was declined on valid reasons. It has been stated that the whole object of granting the compassionate employment is to enable the family to tide over the sudden crisis arising out of the death of the bread-earner of the family and it is not to be treated as a source of employment. Contention of the respondent is that the mother of the applicant has been paid an amount of Rs. 5,34,518/- as settlement dues and that the widow is also getting family pension @ Rs.3050/- per month as on 19.9.89 + D.A. as per rules prevailing from time to time. The competent authority has taken these facts in view while deciding the case of the applicant. The respondents opposed

the ground taken by the applicant that there are vacancies available within prescribed limit of 5% in group-D for considering appointment on compassionate grounds. They have referred to a policy decision dated 10.12.99 by which it has been decided to privatise certain services of the schools. This letter is Annexed as R-1. Plea of the respondents is that in view of this policy decision, there ~~is~~ no vacancy available for offering appointment on compassionate grounds. On this basis, the respondents state that their action is perfectly legal and valid.

4. The applicant in the rejoinder to the reply of the respondents has assailed the contention that his case for appointment was not considered because change ^A in policy. He has drawn attention to letter dated 18.2.2000 Annexure-A/6 and letter dated 27.4.2000(A/10) from the department to emphasise that these letters are dated after the change in policy of the respondents which was communicated through letter dated 10.12.99. As per the letter dated 27.4.2000, it has been confirmed by education officer that vacancies within the prescribed 5% limit were available for considering the case of the applicant. He has thus, refuted the contention of the department that vacancies for the purpose were not available for considering the case of the applicant.

5. Heard, the learned counsel on the either side, and perused the entire written statements alongwith their Annexures. Learned counsel for the applicant placed reliance on the case of India Bank Vs. K. Usha AIR 1998 SCC 866 and Balbir Kaur Vs. Steel Authority of India AIR 2000 SCC 1596, in support of his contention that the payment of settlement dues or receipt of family pension by the mother of the applicant cannot come in the way of his case being considered for appointment on compassionate

grounds. His contention was that the scheme of appointment of compassionate grounds is a benevolent welfare scheme and the rules and instructions have to be interpreted liberally. In this case, he contended, that the department has denied, appointment even when vacancies were available and it has been so certified by the departmental officers themselves.

6. Learned counsel for the respondents, on the other side placed reliance on West Bengal State Electricity Board Vs. Sameer K. Sarker 1999(7) SCC 672 and Maryana State Electricity Board and another Vs. Hakim Singh 1997(8) SCC 85 and Dhala Ram Vs. U.O.I. and Ors. 1997 11 SCC 201. In support of the contention of the respondents that the object of the provisions relating to appointment is to give succour to on compassionate grounds/the family to tide over the sudden financial crisis and that this is an exception to the method of recruitment. The learned counsel stressed that in view of the substantial amount received by the mother of the applicant as settlement dues of her Lt. husband and the amount of family pension being paid to her do not leave any justification for offering appointment to any member of the family as the family has sufficient means to support themselves. The learned counsel referred to the policy change in the department to contend that in view of the office memorandum 10.12.99, the available vacancies are not to be filled up till all schools have been able to privatise the services as detailed in the said office memorandum.

7. In the two cases cited by the learned counsel for the respondents i.e. Maryana State Electricity Board Vs. Hakim Singh and Dhala Ram Vs. U.O.I., the application for appointment on compassionate grounds ~~had been made~~

many years after death of the bread-winner of the family. It was observed by the apex Court that the appointment on compassionate grounds is not a method of recruitment but is a facility to provide for immediate rehabilitation of the family. If family could manage for such a long period after death of the ex-employee, the dependents cannot claim appointment on compassionate grounds so belatedly.

8. It is not the case of the respondents, that in the instant case, the application has been made many years ^{after} the death of the father of the applicant. So, these cases do not support the argument advanced by the learned counsel for the respondents. In the case of West Bengal State Electricity Board Vs. Samir S. Sarkar, the employee died within two years preceding the Scheduled date of his superannuation. Rules of the Department provide that in such a situation, where the employee dies within two years of the retirement, no appointment on compassionate grounds shall be made. This plea of the department was held to be legal by the Hon'ble Supreme Court. This case also has no relevance to the matter before me as this is not the case of the respondents that the appointment has been denied on any such grounds.

9. Learned counsel for the respondents had been directed to submit a copy of the departmental rules governing the appointment on compassionate grounds and for this purpose a period of 10 days had been granted. Till date such rules have not been made available by the respondents. So consequently, the case is being decided based on written statements from either side on record and arguments advanced before me.

10. In every case of death of an employee, the family is entitled to payment of all the settlement dues and

the widow is also entitled to the family pension. It is not the case of the respondents that where the settlement dues are paid and the widow gets family pension. The rules do not permit any appointment on compassionate grounds of any member of such a family. It has not been stated before me as to what is the amount of settlement dues which is considered substantial so as to deny appointment on compassionate grounds.

11. It has been held by the Hon'ble Supreme Court in the case of Dalbir Kaur Vs. Steel Authority of India, that introduction of the family benefit scheme cannot be a ground to refuse benefit of compassionate appointment. The family needs the money lump sum and availability of this amount is the only insulating factor for such a griet stricken. In view of this, I hold that denial of appointment on compassionate grounds for the reasons that the family has received certain lump sum and settlement dues and that mother of the applicant is getting the family pension is not a justifiable ground in itself to reject the request of the applicant for appointment on compassionate grounds.

12. The other ground strongly pressed before me by the learned counsel for the respondents is that the respondents have now changed their policy which has been communicated vide office memorandum dated 10.12.1999. The instructions stipulated inter alia provide that the watch and Ward duties and cleaning of school buildings toblate and class-room and etc. may be privateise under this scheme of privatisation, it has been ordered that till such time all Kendriya Vidyalaya Schools have privateised these services, no fresh recruitment against a group-D post in any Kendriya Vidyalaya would be made. The matter which comes up for consideration whether

this could be a reasonable and legal ground for denying appointment on compassionate grounds. The respondents have denied availability of vacancies only on this ground that activities are being privatised, whereas the records reveal that 53 group D vacancies are available and plea of the respondents cannot be accepted as to provide a legal basis. Vide Government of India's notification dated 6.12.1976, the Central Government has prohibited employment of contract labour on from 1st March, 1977 for sweeping, cleaning, dusting and watching of buildings in or occupied by establishments in respect of which the appropriate Government is the Central Government. In view of this specific prohibition under Section 10 of the Contract Labour Act, the stand of the respondents that they are going to privatise the activities of sweeping and cleaning of the buildings on Kendriya Vidyalaya as also the duties of watch and ward cannot be considered as the legal ground as such a work cannot be given on contract. In this background, the plea of the respondents that they are not able to offer appointment on compassionate grounds to the applicant, in view of their decision of privatising the activities is liable to be rejected as it contravenes express legal provisions of the Contract Labour (Abolition & Regulation) Act, 1971 and is hereby rejected. Consequently, the prayer of the applicant deserves to be allowed.

13. The OA is, therefore, allowed and the respondents are directed to reconsider the request of the applicant for appointment on compassionate ground against 5% of the 53 group-D vacancies already available in the department. It is made clear that receipt of settlement dues & family

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pension shall not be taken as ground to deny this
appointment. In the circumstances, no order as to costs.

A.P. Nagrath
(A.P. Nagrath)
Admn. Member