

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

Marginal SLR
In
27/2

14/1/01

Seen Thanks

H.V.C

28/2

O.A. No. 131/2002
T.A. No.

199

DATE OF DECISION _____

Ashish Sharma

Petitioner

Mr. P.N.Jatti

Advocate for the Petitioner (s)

Versus

UOI and two others.

Respondent

Mr. N.C. Goyal

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. Justice G.L.Gupta, Vice Chairman.

The Hon'ble Mr. H.O.Gupta, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
- ✓ 2. To be referred to the Reporter or not? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

(H.O.Gupta)
Administrative Member.

(G.L.Gupta)
Vice Chairman.

CENIRAL ADMINISTRATIVE TRIBUNAL

JAIPUR BENCH: JAIPUR

O.A. No. 131/2002.

Date of the decision: 28.02.03

Ashish Sharma, S/o Shri Madho Prasad Sharma, by cast Sharma, aged about 22 years resident of 1429, Bagruwalon Ka Rasta, I Crossing, Chandpole Bazar, JAIPUR I

:Applicant.

-versus-

1. Union of India, through the
Secretary to the Government of India,
Department of Posts,
Dak Bhawan, Sansad Marg, New Delhi.

2. The Chief Post Master General,
Rajasthan Circle,
Jaipur.-7

3. Senior Superintendent,
Railway Mail Service,
Jaipur Division,
JAIPUR.

:Respondents.

Mr. P.N.JATTI

: Counsel for the applicant.

Mr. Satish Surana for
for Mr. N.C. Goyal

:Counsel for the respondents.

CORAM:

The Hon'ble Mr. Justice G.L.Gupta, Vice Chairman.

The Hon'ble Mr. H.O. Gupta, Administrative Member.



ORDER

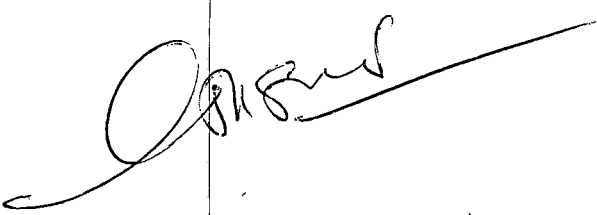
Per Mr. Justice G.L.Gupta:

The applicant is the son of late Shri Madho Prasad Sharma, who was working as Jamedar in the Office of the Railway Mail Service, Jaipur and died on 30.6.94, while in service. The applicant made an application to the respondents for providing him employment on compassionate grounds. His application was rejected vide communication dated 7.3.2001(Annex. A.1) in the O.A.

2. The respondents have come out with the case that the Circle Selection Committee considered the case of the applicant, as per the instructions contained in the Department of Posts and Telegraphs OM dated 9.10.98, but did not find him in indigent circumstances and therefore rejected his application for compassionate appointment. It is further stated that the object of giving compassionate appointment is to enable the family of the deceased to tide over the sudden crisis and now after the crisis is over the applicant is not entitled to appointment on compassionate grounds. It is also stated that the appointment on compassionate grounds can be given within one year from the date of death of the Government servant and that too within the ceiling of 5% vacancies to be filled by direct recruitment, but no vacancy is available on which the applicant can be given appointment.

3. In the rejoinder, the applicant while reiterating the facts stated in the O.A. cited the case of Smt. Sushma Gosain vs. Union of India [AIR 1989 SC 1976] for a direction to the respondents to create supernumerary post to accommodate the applicant.

4. In the reply to the rejoinder, the respondents have



stated that the applicant does not have a legal right to get appointment on compassionate grounds.

5. We have heard the learned counsel for the parties and perused the documents placed on record.

6. Mr. Jatti, learned counsel for the applicant, contended that the respondents have rejected the application of the applicant on the ground that terminal benefits of more than Rs.91,000/- were given to the family and the family is getting family pension. According to him, these could not be the grounds for rejection of the application of the applicant claiming compassionate appointment. He has relied on the decision in the case of Nirmala Devi vs. Union of India and others [O.A. No. 229 of 2001 decided on 19.11.2001 -reported at page 86 of the Swamys News March 2002]. His further contention was that if there is no vacancy available, the Court should direct the respondents to create supernumerary posts. In support of this contention he has cited the case of Mathura Pathak vs. Union of India and others [O.A. No. 140/95 -decided on 15.3.95 by the Patna Bench of this Tribunal - printed at page 286 of the Swamys Case Law Digest - 1997 edition].

7. On the other hand, the learned counsel for the respondents contended that the very object of providing compassionate appointment is to enable the family of the deceased employee to tide over the immediate financial crisis and there cannot be any justification to give a direction to the respondents to provide appointment to the applicant on compassionate grounds nine years after the death of Shri Madho Prasad. It was contended that the entire order Annex. A.1 should be read and not para 2 alone. According to him, when there is no vacancy available, no

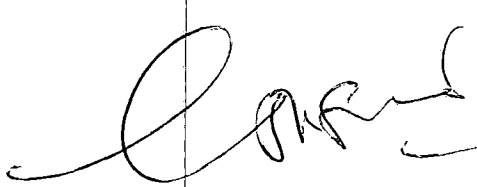


appointment can be given, and the Court also cannot be justified in giving directions to create a supernumerary post.

8. We have given the matter our thoughtful consideration. A reading of Annex. A.1 shows that the applicant's claim has been rejected on various grounds and not which are stated at para 2 of the letter. It is stated that the family is getting family pension to the tune of Rs.1838 + Dearness Relief on family pension and that the terminal benefit of Rs.91,111/- were paid to the family. It is also stated that under the scheme of compassionate employment only 5% vacancies can be filled up and there is no vacancy available.

9. As to the case of Nirmala Devi (Supra) it is seen that it was decided on the basis of decision of the Supreme Court in the case of Smt. Balbir Kaur and another vs. Steel Authority of India Ltd and others [2000 SCC (L&S) 767].

We have gone through the decision of the Apex Court in the case of Balbir Kaur (supra). In that case, the question decided by their Lordships was, as to what was the effect of the Family Benefit Scheme introduced as per the Tripartite agreement in 1989, on the existing provisions of NJSC Agreement of 1983. Interpreting the provisions of the Scheme, their Lordships held that benefit could be taken under ^{both} the provisions. It is obvious that, that matter was decided on the peculiar provisions of Family Benefit Scheme and the Agreement of 1983. With respects, the ruling does not lay down the law, that while considering the indigent circumstances for compassionate appointment the Family Pension received by the family should not be taken into consideration.



In any case, as already stated the request of the applicant has been rejected not only on the ground of family pension or terminal benefits but on other grounds also.

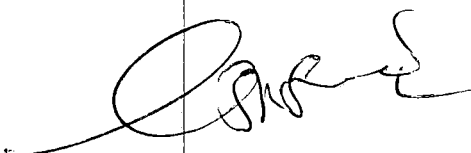
10. Even on assuming that the family pension and terminal benefits ought not to have been taken into consideration while deciding the indigency of the applicant it had to be accepted that the applicant cannot claim appointment on compassionate grounds about 9 years after the death of his father, since the crisis is already over.

11. It may be that the applicant may be minor at the time of death of Shri Madho Prasad, but that does not give him a right to claim appointment on compassionate grounds on attaining the majority. There cannot be any reservation of vacancy till the heir of the deceased becomes major after a number of years. See Sanjay Kumar vs. State of Bihar and others [2000 SCC (L&S) 895] wherein their Lordships have observed as follows:

"There cannot be reservation of a vacancy till such time as the petitioner becomes a major after a number of years, unless there are specific provisions. The very basis of compassionate appointment is to see that the family gets immediate relief. "

It is relevant to point out that in that case also the petitioner sought appointment on the ground that he had attained majority after 8 years of the death of the deceased employee.

So also in the case of Umesh Kumar Nagpal vs. State of Haryana and others [1994 SCC (L&S) 930]. it was observed that mere death of an employee in harness does not entitle his family to such source of livelihood. i.e. to get appointment on compassionate



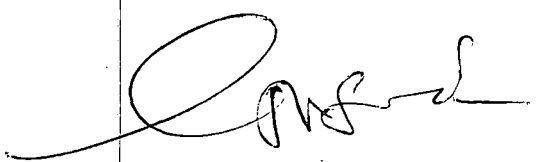
grounds. It was further observed that unmindful of this legal position some Governments and public authorities have been offering compassionate appointment some times as a matter of course irrespective of the financial condition of the family of the deceased, which is legally impermissible.

12. The whole object of compassionate employment is to enable the family to tide over the sudden crisis i.e. to help the family which is financially destitute to get over the emergency. After the crisis is over, there cannot be any justification to direct the respondents to give employment to a member of the family of the deceased.

13. In the reply the respondents have averred that appointment on compassionate grounds can be given against 5% vacancies and that too within one year from the date of death of the employee. It is stated that there is no vacancy available and 8 candidates approved in 1996-97 are still waiting for compassionate appointment. There is no denial of these facts in the rejoinder.

Since there is no vacancy, the respondents cannot be directed to provide employment on compassionate grounds.

14. As to the contention that a direction may be given to the respondents to create supernumerary post, no such direction can be given by this Court in view of the Supreme Court's decision in the case of Himachal Road Transport Corporation vs. Shri Dinesh Kumar [JT 1996 (5) 319] wherein it was held that it is not open to the Tribunal either to direct the appointment of any person to a



post or direct the concerned authorities to create a supernumerary post and then appoint a person to such a post. Their Lordships deprecated the directions given by the Administrative Tribunal in that case.


In view of the clear decision of the Supreme Court in the case of Dinesh Kumar (supra), the ratio in the case of Mathura Pathak (supra) cannot be followed.

15. In the case of Union of India vs. Joginder Sharma [2002 (2) SC SLJ 359] it has been held that the Court cannot direct appointment on compassionate grounds dehors the provisions of the Scheme in force and if there is a provision of ceiling of 5%, the Tribunal cannot compel the department to relax the ceiling to appoint a person on compassionate grounds.

16. In view of the facts and legal position stated above, the applicant herein is not entitled to claim appointment on compassionate grounds. The application is liable to be dismissed.

17. Consequently we find no merit in this application and dismiss it.

18. No order as to costs.


(H.O.Gupta)

Administrative Member.


(G.L.Gupta)

Vice Chairman.

jsv.