

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

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Date of Decision: 22-1-04

OA 472/2002 with MAs 464/2002 & 6/2004

Dinesh Sharma s/o Shri N.K.Gautam r/o Ward No.29, House No.453,
Opp.Poultry Farm, Dadwara, Bhimganj Mandi, Kota.

... Applicant

Versus

1. Union of India through Secretary, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi.
2. Hon'ble Member (P), Postal Board, Dak Bhawan, New Delhi.
3. Chief Post Master General, Rajasthan Circle, Jaipur.
4. Sr.Suptt., Railway Mail Service, Opp.Radio Station, M.I.Road, Jaipur.

... Respondents

CORAM:

HON'BLE MR.A.K.BHANDARI, ADMINISTRATIVE MEMBER

For the Applicant

... Mr.P.N.Jatti

For the Respondents

... Mr.N.C.Goyal

ORDER

This OA has been filed u/s 19 of the Administrative Tribunals Act, 1985 to seek appointment on compassionate grounds. The prayer clause reads as under :

1.

"That the impugned order dated 29.3.2001 be quashed and set aside and further the respondents be directed to give appointment on compassionate grounds to Mr.Dinesh Sharma, the applicant."

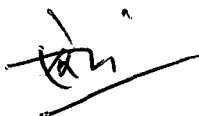
2. The brief facts of the case are that Shri N.K.Gautam, employed as PA in the Department of Posts, died of Cancer on 16.4.99. His wife applied for compassionate appointment of their son, Shri Dinesh Sharma, due to indigent circumstances of the family. All relevant documents were submitted with the application. This request was however turned down by the department vide their letter dated 29.3.2001 (Ann.A/1). Hence this OA.

3. In paras 4 & 5 of the OA, regarding facts of the case and grounds with legal provisions, it has been alleged that the respondent department has not examined the case correctly and diligently. It is stated that father of the applicant suffered from the deadly disease of Cancer which is painful to the patient and exhausting financially to the family of the patient. The family of the deceased government servant is large



consisting of widow and four sons, three of whom are unmarried and unemployed, and 80 years old mother of the deceased. Fourth son, Ashok, is self employed but is living separately with his own family consisting of three members and, therefore, he is not in a position to help the remaining members of the family. Another son, Rakesh, is also living separately. It is further stated that in the impugned order (Ann.A/1) the condition of the family has not been found indigent enough because ~~one~~ ^{one} ~~two~~ ^{one} son has been considered as earning member, widow is getting pension of Rs.2625/- + DR per month, terminal benefits to the tune of Rs.325232/- have been given to her and other income of Rs.20000/- per annum has been available to it. But it is averred that loans of Rs.Two lakhs had to be taken for the treatment of the deceased government servant's illness of Cancer in the repayment of which the pensionary benefits were largely exhausted and that the conclusion about additional income of Rs.20000/- per annum is wrong. It is further stated that the family does not have their own house and are having to live in a rented one. It is also stated that even though the dependent sons are major, two of them are pursuing studies which are expensive. To substantiate this fact, photo-copies of receipts of school/college fee etc. have been placed on record at Ann.A/8. It is brought out that currently the fees is being paid from borrowed money and that more money would be required for their marriages. An additional ground has been made of the old age of the deceased government servant's mother and the money required for her recurrent health care expenses. On the basis of these, the decision of the competent authority in disallowing compassionate appointment to the applicant has been held as unfortunate and unreasonable.

4. The respondents have filed an exhaustive reply. In the preliminary submission it has been stated that the case of the applicant was sympathetically considered by the Circle Relaxation Committee (CRC, for short) and all rules and guidelines were followed. It is averred that the object of the scheme is to provide immediate relief to the family of the deceased but due to paucity of vacancies, due to variety of reasons including raising of the age of retirement, not all cases can be decided favourably. Circular orders of the Department of Personnel and the Department of Post & Telegraph on the subject of compassionate appointment have been annexed to the reply and pain takingly analysed in it. In the preliminary submission itself it has been stated that at the time of consideration of the instant case there were only two vacancies available for appointment on compassionate grounds. This case was considered alongwith other cases but two other cases were found most indigent and were approved by the CRC and the remaining cases, including the case of the applicant, had to be rejected. Decision of the Committee




was communicated to the applicant without any delay. The case of the applicant was rejected not only on ground of terminal benefits and additional income of Rs.20000/-, although this stands certified in the Income Certificate issued by the Tehsildar, Ladpura, Distt.Kota, produced by the applicant himself alongwith other documents. Copy of this has been annexed as Ann.R/4. The Committee could not loose sight of earning members of the family and that one son Rakesh is a practicing lawyer and other Ashok is working in Hindustan Zinc Smelter. These facts are borne out by Ann.R/5, which is duly signed by the wife of the deceased government servant and was submitted by her to the respondents as part of her application. It is also stated that no document has been produced in proof of heavy expenditure on treatment except one medical reimbursement bill amounting to Rs.9016/-. If the applicant had submitted other medical bills on or before the death, the same would have been sanctioned as per rules. About the procedural delay in the processing of representation, addressed to Member (P), Department of Posts, it is stated that it is an after thought.

5. The respondents have also raised objection about delay in filing of the OA under relevant provisions of the Administrative Tribunals Act. In this regard a reply to the MA filed by the learned counsel for the applicant for condonation of delay has also been filed by the respondents. In this background, learned counsel for the respondents has concluded that the applicant is not entitled for the relief as prayed for by him and the OA deserves to be dismissed.

6. In course of hearing, the contending parties repeated the written averments. The objection of the learned counsel for the respondents for rejection of the OA on the ground of law pertaining to limitation is carefully considered, but the same is rejected on the ground that application for condonation of delay has been submitted through MA 464/2002 and this being a case of a bereaved family and a sympathetic view has to be taken in such matters unless there are glaring facts on the basis of which such a view cannot be taken. As such, MA 464/2002 stands disposed of as allowed.

7. While arguing the case, the learned counsel for the applicant made a request for taking one additional fact and document on record to strengthen his case, which is permitted with the concurrence of the learned counsel for the respondents. As such, MA 6/2004 also stands disposed of as allowed. Through this MA photo-copy of the Circular No.G.I., Dept.of Per. & Trg., OM No.14014/19/2002-Estt.(D), dated 5.5.2003, on the subject of "Time limit for Compassionate Appointment"



was submitted. In this MA, the learned counsel for the applicant invited attention to page-5 of the reply, where following has been stated;

"there were two vacancies for the appointment on compassionate grounds. The case of the applicant was considered alongwith the other cases. Two cases were found most indigent have been approved by the CRC and remaining cases including the case of the applicant have been rejected by the committee. The decision of the committee has been communicated to the applicant through the Senior Superintendent, Railway Mail Service, Jp.Dn. Jaipur, vide letter No.B2/Rectt/Relax/ N.K. Gautam dated 29.3.2002."

8. He then prayed that the respondents be directed to apply the relaxation contained in this OM to the applicant and decide the case of compassionate appointment in subsequent years, in terms of para 2 & 3 of the OM which read as under :

"2. It has, therefore, been decided that if Compassionate Appointment to genuine and deserving cases, as per the guidelines contained in the above OMs is not possible in the first year, due to non-availability of regular vacancy, the prescribed Committee may review such cases to evaluate the financial conditions of the family to arrive at a decision as to whether a particular case warrants extension by one more year, for consideration for Compassionate Appointment by the Committee, subject to availability of a clear vacancy within the prescribed 5% quota. If on scrutiny by the Committee, a case is considered to be deserving, the name of such a person can be continued for consideration for one more year.

3. The maximum time a person's name can be kept under consideration for offering Compassionate Appointment will be three years, subject to the condition that the prescribed Committee has reviewed and certified the penurious condition of the applicant at the end of the first and the second year. After three years, if Compassionate Appointment is not possible to be offered to the Applicant his case will be finally closed, and will not be considered again."


9. In course of arguments, however, the learned counsel for the respondents has made verbal submissions regarding this dispensation and has raised objections, firstly that the case of the applicant pertains to death of deceased government servant in 1999 and his application for compassionate appointment dated 31.5.99 and that the OM dated 5.5.2003 cannot be applied to it retrospectively; secondly, as per this OM, the extended time limit for making compassionate appointment applies only to those cases which have been considered indigent and deserving for compassionate appointment by the Committee but the appointment could not be given due to paucity of vacancies. However, in the instant matter the applicant has not been found indigent deserving compassionate appointment.

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10. Before conclusion of the arguments, the learned counsel for the applicant once again made request for sympathetic consideration of the case on grounds of financial difficulties due to which higher education of two sons pursuing B.Sc. and Engineering studies respectively would be hampered and that within the parameter of rules this Tribunal is in a position to make a recommendation for reconsideration of the case by the CRC.

11. After careful consideration of the written pleadings and verbal arguments it is felt that objectively speaking the applicant does not have a very sound case. There is no doubt that it is a large family but it is clear from the pleadings that respondent department has processed the case correctly while applying all government rules and guidelines available on the subject. Although the learned counsel for the applicant while concluding his arguments has requested for reconsideration of the matter but this is not the prayer of the applicant in the OA and, therefore, the same cannot be considered, in view of the pleadings to the contrary. The fact that two sons of the deceased government servants are employed and the remaining three are also major and well educated, it is expected that they should look after the elders and discharge their responsibilities towards the family. There are many decisions on this subject, and one is reminded of judgement of Jodhpur Bench in OA 109/2003, Om Prakash v. UOI, and other of Coordinate Bench at Jabalpur in OA 6950/93, Shivcharan v. UOI, in which consistent view has been taken that adult offsprings of the deceased government servants, sons or daughters, cannot be considered dependent family members. In view of the limited number of vacancies available to the department only the most deserving cases have to be considered and given employment through this exceptional method of appointment. The very object of the scheme is to enable the bereaved family to tide over the immediate financial crisis and there cannot be any justification to give a direction to respondents to reconsider the case again.

12. In the result, the OA is dismissed with no order as to costs. MAS 464/2002 and 6/2004 also stand disposed of.


(A.K. BHANDARI)
MEMBER (A)