

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

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Date of Decision: 17-2-04

OA 116/2003

1. Smt.Kusum Sharma w/o Late Shri Jagdish Prasad Sharma r/o 2-236, Housing Board Colony, Dholpur, Rajasthan.
2. Shri Pankaj Sharma s/o Late Shri Jagdish Prasad Sharma r/o 2-236, Housing Board Colony, Dholpur, Rajasthan.

... Applicants

Versus

1. Union of India through Secretary, Ministry of Communication, Department of Post, Dak Bhawan, Sansad Marg, New Delhi.
2. Chief Post Master General, Rajasthan Circle, Near Govt. Press, Jaipur.
3. Superintendent, Post Office Dholpur Division, Dholpur.

... Respondents

CORAM:

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

For the Applicant

... Mr.Saugath Roy

For the Respondents

... Mr.N.C.Goyal

ORDER

PER HON'BLE MR.A.K.BHANDARI

In this OA, applicant No.1 (Smt.Kusum Sharma) while challenging the contents of the impugned order dated 10.2.2003 by CPMG R/C Jaipur, by which her application for compassionate appointment of her son Pankaj Sharma (Applicant No.2) was rejected, has prayed for the following relief:

- i) By an appropriate order or direction, the order impugned dated 10th February 2003 may kindly be quashed and set aside and the respondents may be directed to give appointment to the Applicant No.2 on the suitable post as per his qualification under the compassionate rules from the date the application for compassionate appointment was submitted on 9th October 2001 with all consequential benefits.
- ii) Any prejudicial order to the interest of the applicant, if passed during the pendency of the application, the same may kindly be taken on record and after examining the same be quashed and set aside."

2. Facts of the case are that husband of applicant No.1, Shri Jagdish Prasad Sharma, posted as Office Assistant in the respondent department at Dholpur, died in harness on 22.9.2001. Due to the indigent circumstances, his wife (Smt.Kusum Sharma) submitted an application dated 9.10.2001 for compassionate appointment of her son (Applicant No.2) aged 20 years, then studying in BA Part-I, under the Govt. of India's scheme for the same. At

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the time of application, applicant No.2 was unmarried but thereafter on 22.11.2002 he got married but was still unemployed. Her younger son, Padam Sharma, also a Graduate, is also unemployed. When nothing was heard from respondent department, she submitted further application on 3.4.2002 but of no avail.

3. In the OA it is pointed out that the family received terminal benefits to the tune of Rs.240098/- and family pension of Rs.2400/- p.m. is received by the widow but the Circle Selection Committee (CSC) has wrongly rejected her request merely on the ground of receiving terminal benefits and family pension (Ann.A/7). The relevant rules under which compassionate appointments are made (5% of vacancies under direct recruitment quota in Group-C & D) have been referred to but it is alleged that the same have not been justly applied by the Selection Committee while rejecting the case. It is stated that the very foundation on which compassionate appointment has been denied is legally unsustainable. As the family have no other source of income, their condition is very indigent and as such decision of the CSC is wrong. In the para concerning grounds, discrimination and arbitrariness has been alleged. It is stated that the scheme of compassionate appointment is unrelated with the terminal benefits paid to the dependents and CSC should not have based its decision on this consideration. Copies of relevant OM/instructions of DOPT, Department of Post & Telecom are annexed. Reference is also made to the financial burden of illiterate mother involved in educating two grown up sons. This decision is violative of the spirit and rules of compassionate appointment which is to provide social and economic protection to the bereaved family, which has been denied in this case. Hence this OA.

4. In the reply, the respondent department's deep concern for the dependents of deceased employees has been mentioned. Relevant details about the meeting of CSC dated 21.1.2003, which considered all the pending applications while applying all the rules sincerely have been explained. Referring to the rules on the subject, copies of which have been annexed as Ann.R/1 to R/7, it is stated that as per instructions compassionate appointment is intended to render immediate assistance to needy family of government servant who dies in harness leaving his family in financial crisis. But the scheme was never intended to ensure Govt. employment to a member of every such family. As per rules, compassionate appointment can be provided only to the extent of 5% vacancies that arise for direct recruitment in Group-C & D category in the year and that question of consideration and accommodation on compassionate grounds would arise only if a vacancy for that purpose is available. In other words, in absence of

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vacancy no useful purpose would be served by consideration and approving applicant's case. The rules provide that the CSC while considering such request should first determine the number of vacancies available for the purpose and then only make recommendation. The Committee had sincerely followed all these guidelines when it met on 21.1.2003. The number of vacancies available were 34. Thus, two vacancies, i.e. 5% of the total number of vacancies, of Postal Assistant/Sorting Assistant cadre were available. There were 42 applications for consideration which were examined on common parameters of family pension, terminal benefits, immovable property, dependents (unmarried sons/daughters, minor children) etc. and on comparison the Committee found the cases of two applicants more deserving than the present applicant. There was no way in which a third case could be recommended because no vacancy for him was available and such an action would have been in violation of rules. The respondents also filed a comparative chart (Ann.MA R/1) in response to a challenge by the applicant that her case was most deserving but rejected by the CSC. Perusal of it clearly reveals that other two cases were more indigent than the present applicant.

5. In the rejoinder it is pleaded that the respondents have not explained how they arrived at total vacancies of 34 posts out of which only 2 were available for compassionate appointment. He also wanted to know what was the criteria fixed for computing or calculating 'family living in indigent circumstances' and if there is any method then how allotment of marks is being done or assessment is made.

6. Detailed arguments of both the parties were heard. While reiterating what has been stated in the OA and rejoinder, the learned counsel for the applicant challenged the information contained in Ann.MA R/1 by drawing attention to Ann.A/3 in which it is clearly stated that the applicant has no house to live in and that this fact was known to the respondent department because application at Ann.A/3 was submitted way back on 3.4.2002, well before the CSC met. That even now the family is living in a rented house for which Rs.600/- is paid as rent per month. He also drew attention to recent case of Rajasthan High Court in Suresh Kumar Sharma v. Union of India & Ors., D.B.Civil Writ Petition No.2147/02, decided on 31.1.2003, in which the respondent department was directed to reconsider petitioner's case because it had been turned down on the ground that widow received Rs.484000/- as retiral benefits on death of her husband and also possessed 3½ bighas of land and was therefore not indigent. It was held that retiral benefits received by heirs of deceased cannot be made ground in rejecting application for compassionate appointment.

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7. Learned counsel for the respondents travelled through all the rules and regulations governing the procedure and policy of compassionate appointment. He also explained the philosophy behind the dispensation of compassionate appointment and explained that the aim of the scheme is to provide immediate relief to bereaved family and that in view of very limited number of available vacancies these appointments are to be given only in the most needy and indigent cases. About own house of the applicant, taken into consideration by the CSC, he emphasised that this was as per information on the record available with the department, however, even if this is not taken into consideration, the comparative chart still shows that the circumstances of the selected two cases namely; Anup Saxena & Miss Chanda Kumari are more indigent. Both these individuals received far less family pension and their terminal benefits are much less than the applicant. Dependents of the deceased in both the cases are more than the applicant and whereas applicant's family does not have a daughter in it, both the recommended cases have a daughter each in them. On the subject of immovable property, even if the facts contained in Ann.A/3 are considered and it is held that applicant has no house of her own to live in, the conclusion does not change that the selected families are more indigent. About applicant's pleadings demanding proof of only two vacant posts available for compassionate appointment, the learned counsel for the respondents explained that this fact is placed on record under oath and affidavit which should be enough proof of its genuineness. He explained in detail how in the respondent department there is a definite procedure of the CSC meeting in the month of January of every year, in which all pending applications received upto the end of December of previous year are considered and most deserving cases only in that much of number in which vacancies are available are recommended because it serves nobody's purpose if more cases are selected and a few such cases go without compassionate appointment. Drawing particular attention to a circular he explained that as per latest rules selection should be strictly for the number of vacancies available.

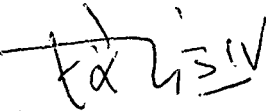
8. In support of his pleadings, learned counsel for the respondents referred to a large number of decisions of Supreme Court viz. Himachal Road Transport Corporation v. Dinesh Kumar - JT 1996 (5)SC 319, Hindustan Aeronautics Limited v. Smt.Radhika Thirumalai - JT 1996 (9) SC 197, and Union of India v. Joginder Sharma - 2002 (8) SC 65.

9. After hearing the contesting arguments it is found that the respondents have indeed followed the policy and procedure for compassionate appointment in letter and spirit. All pending applications

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were put through examination on common parameters and admittedly the two selected cases are more deserving than the present applicant. I find no reason for not agreeing to respondent department's plea about only 2 vacancies (5% of total of 34 were available for compassionate appointment). The facts of this case are distinguishable from the case of Suresh Kumar (supra) decided by the Rajasthan High Court against the concerned department rejecting the compassionate appointment on the basis of retiral benefits and family pension, inasmuch as the respondents in this case have satisfactorily explained the other considerations which weighed heavy with them in not recommending the applicant for compassionate appointment. In the prayer, appointment on the post suitable for applicant No.2, as per his qualification has been sought, but as per rules it can be given for only 'C' or 'D' category post. Also, appointment is given only from the date of order based upon the recommendation of the CSC and not from the date of application, as prayed in the prayer clause.

10. In these circumstances, the OA is found devoid of merit and is dismissed with no order as to costs.



(A.K.BHANDARI)

MEMBER (A)