

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

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Date of Decision: 2/12/03

OA 118/2003

Kuldeep Singh son of Late Shri Abhay Singh r/o Village & Post Dabari Dhir Singh, District Jhunjhunu.

... Applicant

Versus

1. Union of India through Secretary, Department of Posts, Ministry of Communication, Dak Bhawan, New Delhi.
2. Chief Post Master General, Rajasthan Circle, Jaipur.
3. Supdt. of Post Offices, Jhunjhunu Postal Division, Jhunjhunu.

... Respondents

CORAM:

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

For the Applicant

... Mr.C.B.Sharma

For the Respondents

... Mr.N.C.Goyal

O R D E R

PER HON'BLE MR.A.K.BHANDARI

The case concerns non-consideration of applicant for compassionate appointment in the Post & Telegraph Department. Applicant's father, Shri Abhay Singh, died on 21.3.92 while working on the post of Postman in Jhunjhunu Postal Division. At that time, the applicant, Kuldeep Singh, was only 11 years old. When he attained the age of 22 years, his mother requested the department to appoint him, vide Ann.A/3. Relevant details of age, educational qualifications and financial state of the family etc. were submitted to respondent No.3 and the same were forwarded by him for consideration for appointment as Postal Assistant/Sorting Assistant under the scheme of Government of India for compassionate appointment of the dependants of deceased government servants to respondent No.2. This application was, however, rejected vide letter dated 26.11.2002 (Ann.A/1) and this OA has been filed to challenge this decision.

2. The case of the applicant is that at the time of his father's death the bereaved family was in deep financial difficulty, there being five members in the family including widow Smt.Sumitra Devi, her two daughters and one son besides the applicant, all of them minors. The family was not very well to do and the terminal benefits consisted only of Rs.11760/- DCRG and Rs.33456/- of Central Government Insurance Fund because father of the applicant had served only 11 years and died suddenly. His mother got a meagre pension of Rs.1924/- per month

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including allowances and at the time of the application that also has got reduced by 50% in 1999. Although they have joint ownership of some agriculture land but she gets only 1/3rd share of the proceeds and as such is facing grave financial difficulties. It is further submitted that in the meantime the mother of the applicant has paid off number of loans which were taken by her husband during his life time and has also married one of the daughters. The family continues to live in a rented house. In these circumstances, her responsibility to manage and maintain the remaining members of the family continues.

3. In spite of these circumstances, the respondents have rejected the above application vide letter dated 26.11.2002 (Ann.A/1) on the ground that the family does not appear to be indigent because of the pensionary benefits and the proceeds from the immovable property mentioned above. It is stated in the application and during arguments that while considering appointment under the scheme for compassionate appointment, the case should not be rejected merely on the ground that the family of the government servant has received benefits under the various welfare schemes, and for this para 16(C) of the OM dated 9.10.98 has been quoted in para 4(6) of the application. It is further stated that the family somehow survived during the intervening period between the death of the bread winner and the date of application in the hope that the applicant will be provided appointment on compassionate ground but this hope has been shattered when the rejection of the request was received. In this light the decision of the respondents in not giving appointment is erroneous, unjustified, unreasonable and arbitrary.

4. In reply, the respondents have stated that the widow of the deceased did not apply for compassionate appointment soon after the death of ex-employee as her son, the applicant, was only 11 years old at that time. The application has actually been made nearly 10 years after the death of the employee. The Superintendent of Post Offices, Junjnunu, forwarded the application to the Chief Post Master General, Rajasthan Circle, Jaipur, for consideration of the case under relaxation of recruitment rules on compassionate grounds and the same was also considered as a relaxation case. The Circle Selection Committee considered the case sympathetically as per existing rules and instructions and clarifications issued during years 1998, 1999 and 2000. It is pleaded that the scheme is to grant appointment on compassionate grounds to members of family of government servant dying in harness or retired on medical grounds thereby leaving the family in penury and without any means of livelihood to relieve the family from financial destitution and to provide immediate assistance to help it to tide over

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the emergent situation. In these circumstances, an application delayed by more than 9 years could not be considered as a fresh application. In the meantime, due to paucity of posts resulting from extension of age limit of retirement, only the most deserving cases could be approved. However, in this the department is constrained by the paucity of posts due to which the consideration has to be limited only to most deserving cases within the ceiling of 5% of the vacancies falling under direct recruitment quota within a year. In the reply as well as during arguments the learned counsel for the respondents stated that the Circle Selection Committee while carrying out the objective assessment of the financial condition of the family considered the family pension including DR, other terminal benefits and the income from agricultural land per year and while doing so it also considered the liabilities of rented house, education of children, further needs of marriage of children etc. But it came to the conclusion that in view of the financial condition, as discussed above, and non-availability of sufficient vacancies, the request of the applicant could not be considered under compassionate appointment quota and was, therefore, rejected.

5. During the course of arguments, the learned counsel for the applicant drew attention to specific rule and case law already quoted in the OA that as per guidelines on the subject an application for compassionate appointment should not be rejected merely on the ground that the family of the government servant has received benefits under the various welfare schemes and that a balanced and objective assessment of the financial condition should be made taking into account its liabilities also, which has not been correctly done in this case.

6. Regarding the respondents' plea about lack of available vacancies, the learned counsel for the applicant drew attention to some internal correspondence of the department which brings out that during the period of the application there were large number of vacancies in the department. That in the scheme for compassionate appointment, contained in Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training), OM dated 9.10.98, (Ann.R/1), in para 7(f), under the title; 'determination/availability of vacancies', it is stated, "if sufficient vacancies are not available in any particular office to accommodate the persons in the waiting list for compassionate appointment, it is open to the administrative Ministry/Department/Office to take up the matter with other Ministries/Departments/Offices of the Government of India to provide at an early date appointment on compassionate grounds". The learned counsel for the applicant also referred to the decision of the Rajasthan High Court in Writ Petition

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No.2147/2002, Suresh Kumar Sharma v. Union of India, decided on 31.1.2003, in which in a similar case application of a similarly placed person was rejected by the Tribunal but the same was decided in favour of the applicant by the High Court.

7. The learned counsel for the respondents, on the other hand, vehemently contended that this decision of the High Court is not relevant because of a large number of decisions of Hon'ble the Supreme Court to the contrary on the same issue. According to him, the respondents considered the case by relaxing the normal recruitment rules inasmuch as they considered a belated application but after taking a balanced view of the assets and liabilities they came to the conclusion that the indigent circumstances of the family of the applicant did not justify compassionate appointment. He also reiterated the argument that the facility of compassionate appointment can be granted only in the rarest of cases only in the most deserving circumstances because the number of posts available for this exceptional method of recruitment are very limited. He also drew attention to a large number of decisions of Hon'ble Supreme Court and earlier decisions of this Tribunal, a very recent one of which was pronounced in OA 131/2000, Ashish Sharma v. Union of India, decided on 28.2.2003. In this case also the request for compassionate appointment was made much later than the date of death of the ex-employee, but it was considered by the selection committee and rejected on ground of family not being indigent enough in view of pensionary and terminal benefits and that there are very limited number of vacancies available for appointment on compassionate grounds. That in this case while arriving at the decision of rejection, the latest case law including decisions of the Apex Court were considered at length, also including Smt. Balbir Kaur and others v. Steel Authority of India Limited, 2000 SCC (L&S) 7671, reference to which has been made by the learned counsel for the applicant.

8. It was further argued that in the instant case, the applicant was a minor at the time of death of his father, government servant, but that does not give him right to claim appointment on compassionate ground on attaining majority as there cannot be any reservation of vacancies till the heirs of the deceased become major after a number of years. This has been amply clarified in Sanjay Kumar v. State of Bihar and others, 2000 SCC (L&S) 895, in which the application was made 8 years after the death of the ex-employee and their Lordship observed that; "there cannot be reservation of a vacancy till such time as petitioner becomes major after a number of years unless there are specific provisions. The very basis of compassionate appointment is to see that family gets immediate

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relief".

9. After having considered the submissions made by the learned counsel for the parties and after carefully going through the rules and case law on the subject, it is clear that such appointment can be given only after very careful consideration of all facts, and only to the most deserving cases. The rules and guidelines are very clear and there are many decisions of the Apex Court, a very important of which is Umesh Kumar Nagpal v. State of Haryana, 1994 SCC (L&S) 930, which establishes that death of an employee in harness does not entitle his family to appointment on compassionate ground and that unmindful of this legal position some government and public authorities have been offering compassionate appointment at times as a matter of course irrespective of financial condition of the family, which is legally impermissible. While considering compassionate appointment it should be borne in mind that the facility is made available strictly within the rules to enable the family to tide over the sudden crisis on account of the bread winner's death and to help it to get over the emergency. After such crisis is over, there cannot be any justification for giving such appointment. In the case in question, such crisis was over when the application was submitted more than nine years after the death of the ex-employee.

10. When there is no vacancy, the respondents cannot be directed to provide appointment on compassionate ground. Regarding contention of the learned counsel for the applicant that there were large number of vacancies in the department at the time of application (1999-2000), but this argument is based on correspondence of the department which is unconnected with this case, and cannot be made use of here. Besides, it is not open to the Tribunal 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 if post for appointment on compassionate ground is not available. In the case of Union of India v. Jogendra Sharma, 2002 SC SLJ 359, it has been held that the court cannot direct appointment on compassionate ground to denorse 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.

11. At some stage of arguments the learned counsel for the applicant drew attention to a decision of Madhya Pradesh High Court (Division Bench) in Writ Petition No.5760/2000, T.Swamy Das v. Union of India, decided on 10.1.2002, in which it was decided that appointment on compassionate ground cannot be denied on account of policy framed

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subsequently. However, the facts and pleadings of that case do not justify comparing its circumstances with the case under decision.

12. In view of the facts and legal position stated above, more particularly the fact that family members of the deceased employee have managed to survive for long period of time and had made application for compassionate appointment for the first time after a lapse of nine years, the OA is liable to be dismissed. It is, therefore, dismissed with no order as to costs.



(A.K.BHANDARI)

ADMINISTRATIVE MEMBER