

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

DATE OF ORDER: 30/9/04

ORIGINAL APPLICATION NO. 192/2003

Smt. Ranjana Gagrani wife of Late Shri B.K. Gagrani aged about 42 years, resident of 3-J-27, Mahaveer Nagar Extn. Kota (Rajasthan).

....Applicant

VERSUS

1. Union of India through the Director General, National Sample Survey Organisation (Field Operation Division), Ministry of Statistics & Programme Implementation, East Block No. 6, Level 6-7, R.K. Puram, New Delhi.
2. Director (Admn.), National Sample Survey Organisation (Field Operation Division), Ministry of Statistics & Programme Implementation, East Block No. 6, Level 6-7, R.K. Puram, New Delhi.

....Respondents.

Mr. Virendra Lodha, Counsel for the applicant.

Mr. Gaurav Jain, Counsel for the respondents.

Mr. A.K. Bhandari, Member (Administrative)

ORDER

PER HON'BLE MR. A.K. BHANDARI

This OA u/s 19 has been filed to seek following reliefs:-

(i) by an appropriate order or direction, the Hon'ble Tribunal may kindly call for the entire record and after examining the same be pleased to declare the impugned communication dated 24.7.2002 (Annexure A/1) read with impugned communication dated 5.9.2002 (Annexure A/2) null and void and be quashed and set aside.

(ii) by further appropriate order or direction the respondents be directed to reconsider the case of the applicant for suitable appointment on compassionate grounds commensurating with her qualification forthwith and thereupon to issue appointment order in her favour with all consequential benefits thereto;

(iii) by further appropriate order or direction the respondents be directed to issue appointment orders in favour of the applicant immediately looking to the facts that the family is under distresses, the applicant being a widow has no other source of livelihood and also for the reason that she has two children who are pursuing their studies and if the appointment on compassionate

ground is not given, the family shall be distressed as such appropriate orders be issued in this regard.

(iv) any other order or direction which the Hon'ble Tribunal may deem fit and proper, the same may kindly be passed in favour of the applicant.

(v) Cost of the OA may kindly be awarded in favour of the applicant."

2. The brief facts of the case are that the husband of the applicant, who was working on the post of Assistant Superintendent in the respondents department passed away on 20.4.2001 after serving the Department for 22 years in a substantive capacity. Within one month of this event his wife, the applicant, submitted an application for her own compassionate appointment (Annexure A/3). In the application, she clearly mentioned her educational qualification and the weak financial condition of the family in which she ~~had~~ to manage two minor sons and she was utterly surprised when letter dated 24.7.2002 (Annexure A/1) was received in which without disclosing any reasons for not considering the request of the applicant, a stereo type reply in a printed proforma was given. Immediately on receipt of such a communication, the applicant submitted a detailed representation dated 12.8.2002 (Annexure A/4) for reconsideration of her case for compassionate appointment. Even this has not been considered favourably as is evident from letter dated 5.9.2002 (Annexure A/2). In this letter, it is stated that the Screening Committee considered the case in all aspects sympathetically but has rejected the same.

3. In the grounds, illegality, arbitrariness and lack of sensitivity have been raised because they have failed to take note of the financial condition and the responsibilities of the applicant and have not applied the rules governing the compassionate appointment correctly. That impugned orders are drafted in a stereo type manner, they lack transparency and do not bring out the reasons for rejection of the valid claim of the applicant. That this order also does not bring out clearly the circumstances in which the Screening

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under the various welfare scheme and family pension and ownership of immoveable property, the applicant's case could not be justified for compassionate appointment. The above facts have been elaborated in the parawise reply and it is stressed that the impugned orders are elaborate and clearly state the circumstances due to which case of the applicant was rejected. Evidently, all the factors such as number of dependants, liability of children's education, position of earning member in the family, availability of immoveable property/assets and benefits received by the family under various welfare schemes of the Government were considered. Regarding position of vacancy, it is stated that there was no vacancy based upon 5% quota rule but the Screening Committee considered the case of the applicant alongwith other cases and found that the applicant's case was not a case of financial destitution in comparision to other cases. That in accordance with rule laid down in OM dated 9.10.1998, father of the applicant, living with her, cannot be treated as dependant upon the widow. Regarding other grounds taken by the applicant, various case law on the subject of circumstances in which compassionate appointment should be allowed/rejected have been cited, and emphasised that appointment on compassionate grounds can be made only if vacancy is available for the purpose and that objective assesment of the financial condition, liabilities, position of other sources of income should be done and that compassionate appointment should be given in the rarest of the rare cases only because this mode of appointment precludes the normal procedure and cannot be followed without due care and caution.

5. The applicant has filed rejoinder in which pleadings of OA have been repeated and it is emphasised that due to pensionary benefits alone applicant's case cannot be considered less indigent. That the respondents have taken contrary view of ownership of immoveable property and has not considered that she is required to make down payment of Rs.3,43,583/- to become owner of a Housing Board House in Kota.

6. Parties were heard. The learned counsel for the applicant has reiterated the pleadings and submitted that

Committee has rejected the claim of the applicant in comparison to other applications who have been found fit for compassionate appointment. It is also emphasised that retiral benefits cannot be made the ground for rejection, as has been held repeatedly in court decisions.

4. The respondents have submitted a detailed reply agreeing with the brief facts of the case given by the applicant, It is stated that the application was forwarded to the Director, Jaipur Zone and after preliminary scrutiny and formalities for seeking additional informations, the case was forwarded to the Headquarter Office, New Delhi, on 24.8.2001. The application was considered by the Screening Committee ^{which} met on 16.10.2001. The Screening Committee considered 20 cases in all and recommended four cases deserving consideration for compassionate appointment for their penurious condition. At that point of time, there was no vacancy available under 5% quota and these four cases had to be forwarded to the competent authority for relaxation in 5% quota rule. That the applicant as per her own application received Rs.4,91,051/- as terminal benefits and Rs.3,538/- plus 45% Dearness Allowance per month as family pension, was not consider indigent enough and was, therefore, rejected by the Screening Committee. This fact was communicated to her vide letter dated 24.7.2002. However, not satisfied by this decision, the applicant made a representation on the basis of which the matter was reconsidered, but during reconsideration also it was rejected. This was communicated to the applicant vide letter dated 5.9.2002 (Annexure A/2). In the reply it is stated that the applicant in her initial application (Ann.A/3) concealed information about ownership of a Housing Board property, installment payment of which is mentioned as an added liability in her application dated 12.8.2002 (Ann.A/4). During reconsideration of the case, the respondents considered this additional information and observed that the widow owned some immoveable property also and the case was not considered favourably. While quoting rules, it is stated that compassionate appointment is justified only in extreme penurious condition and in view of the facts of pensionary benefits

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under the various welfare scheme and family pension and ownership of immovable property, the applicant's case could not be justified for compassionate appointment. The above facts have been elaborated in the parawise reply and it is stressed that the impugned orders are elaborate and clearly state the circumstances due to which case of the applicant was rejected. Evidently, all the factors such as number of dependants, liability of children's education, position of earning member in the family, availability of immoveable property/assets and benefits received by the family under various welfare schemes of the Government were considered. Regarding position of vacancy, it is stated that there was no vacancy based upon 5% quota rule but the Screening Committee considered the case of the applicant alongwith other cases and found that the applicant's case was not a case of financial destitution in comparision to other cases. That in accordance with rule laid down in OM dated 9.10.1998, father of the applicant, living with her, cannot be treated as dependant upon the widow. Regarding other grounds taken by the applicant, various case law on the subject of circumstances in which compassionate appointment should be allowed/rejected have been cited, and emphasised that appointment on compassionate grounds can be made only if vacancy is available for the purpose and that objective assesment of the financial condition, liabilities, position of other sources of income should be done and that compassionate appointment should be given in the rarest of the rare cases only because this mode of appointment precludes the normal procedure and cannot be followed without due care and caution.

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adequate application of rules has not been done in this case, the impugned orders have been passed in a stereotyped manner without stating the specific facts about the applicant and, therefore, cannot be considered 'Good' in law. He also raised some additional points, but counsel for the respondents objected to their introduction at this stage, because they were neither put up to respondents through applications, nor raised in the OA, nor in rejoinder.

7. On the other hand, the learned counsel for the respondents insisted that the fact of liability towards Housing Board Loan was not mentioned in the first application submitted by the applicant which came to the notice of the respondents through her own representation dated 12.8.2002 (Annexure A/4). This transaction with Housing Board proves that applicant is not in penurious condition. He also explained that the Department has limited number of vacancies and the case of the applicant was found less indigent in comparison to other cases and, therefore, not considered even on the basis of subsequent application.

8. After giving careful consideration of all facts and position of rules, it is found that the OA has little ground to stand. No doubt, the applicant is young and is educationally qualified for a Group 'C'/Group 'D' post and could have augmented the family resources but it is noticed that the amount of family pension she receives is almost equal to the pay of a Group 'D' employee. Besides she had received pensionary benefits to the tune of Rs.4,91,051/-, which by no account is a small amount. It also came to the notice of the respondents later on that she is in queue for a Housing Board House and she is paying for it. Her liabilities consist of two minor school going sons only as legally her father who lives with her cannot be considered as defendant upon her as per rules. I have no doubt about the averment of the respondents, which is under oath that four cases considered by the Screening Committee were found more indigent than the applicant. Objection of the counsel for the respondent during argument that applicant cannot ask for comparison of all considered cases as reasonable because as per CAT Rules, fresh grounds cannot be taken

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by parties at each stage. Therefore, there is no need to see the record of Screening Committee. It is undisputed that compassionate appointment which is a deviation from the normal rules of appointment should be given in the rarest cases where full justification for giving immediate relief to the dependant of the deceased family exists. But in view of the substantial pensionary benefits received by the applicant and her limited liability, the respondents found other cases more deserving. In view of the position of rules under which the recommended cases have to be given appointment within one year of recommendation, I cannot consider applicant's request for consideration of her case for future vacancies, more so when the Screening Committee has not found the case of the applicant as indigent enough. It is also clear that the applicant's application has not been rejected solely on consideration of pensionary benefits.

9. In view of what has been stated above, the OA is dismissed. No costs.

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(A.K. BHANDARI)

MEMBER (A)

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