

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 30th day of November, 2005

ORIGINAL APPLICATION No 550/2005.

CORAM:

HON'BLE MR.M.L.CHAUHAN, MEMBER (JUDICIAL)

1. Shushila Devi
w/o late Shri Ram Lal Khatik,
aged about 53 years,
r/o Plot No.324, Tata Nagar,
Gali No.5, Shastri Nagar,
Jaipur.
2. Navratan Khinchi
s/o late Shri Ram Lal Khatik,
aged about 31 years,
r/o Plot No.324, Tata Nagar,
Gali No.5, Shastri Nagar,
Jaipur.

.. Applicants

(By Advocate: Ms Shashi Sharma, proxy counsel to Mr.
Rajendra Soni)

Versus

1. Union of India through
the Director General,
Geological Survey of India,
27, J.L.N. Road,
Kolkata-16.
2. Geological Survey of India
(Western Zone) through
its Director,
Head Office,
15-16, Jhalana Doongari,
Jaipur.

.. Respondents

O R D E R (ORAL)

Applicant No.1 is wife and applicant No.2 is son of late Shri Ram Lal Khatik, who while working as Driver Grade-I with the respondents died on 18.11.1998. It is case of the applicants that the family was totally dependent on the earning of the deceased and therefore, an application was submitted to the respondents for giving appointment to Shri Roshan Lal Khatik on compassionate appointment. The case of Shri Roshan Lal Khatik was placed before the Compassionate Appointment Committee (for short, CAC). The CAC after taking into consideration the relevant factors, such as size of the family, essential needs of the family as well as financial condition of the family including the pensionary benefits and also taking into consideration the instructions issued by the Department of Personnel and Training, came to the conclusion that Shri Roshan Lal Khatik s/o late Shri Ram Lal Khatik is not recommended for appointment on compassionate grounds. The aforesaid finding of the CAC was communicated to applicant No.1 vide letter dated 11.4.2001 (Ann.A4). At this stage, it may be stated that the applicants have not challenged the aforesaid finding arrived at by the CAC regarding financial condition of the family. After rejection of the case of Shri Roshan Lal Khatik, the applicant No.1 further represented to the Deputy Director, Geological

Survey of India, Jaipur thereby stating that her son Roshan Lal Khatik is living separately and is not in a position to support the family, as such appointment on compassionate grounds may be given to applicant No.2 i.e. Shri Navratan Khinchi. The applicants have also placed on record copy of the said representation as Ann.A5. Since nothing was heard from the respondents, this was followed by notice for demand of justice dated 14.7.2005. It is case of the applicants that on receipt of the notice for demand of justice, the matter was referred by the Law Officer to the Deputy Director General, Geological Survey of India for initiating necessary action vide letter dated 3.8.2005 (Ann.A1). The grievance of the applicants is that despite such recommendations made by the Law Officer on behalf of the Dy. Director General (Personnel), no decision has been taken by the respondents regarding granting compassionate appointment. Thus, the applicants in this OA have prayed that respondent No.2 be ordered to be appointed on the post of Driver or any other post on compassionate ground.

2. I have heard the learned counsel for the applicant at admission stage and gone through the material placed on record.

3. Before I deal with the factual aspects of the matter, it is necessary to consider the object and

case law on the point of appointment on compassionate grounds. It may be stated that the object of compassionate appointment is to enable the penurious family of the deceased employee to tide over sudden financial crisis and not to provide employment. This is because as a rule appointments in public service should be made strictly on the basis of open invitation of applications and no other mode of appointment nor any other consideration is permissible. However, to this general rule, which is to be followed strictly in all cases of public appointment, there are certain exceptions carried out in the interest of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee died in harness and leaving his family in penury and without any means of livelihood. In such cases out of humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependents of the deceased employee, who may be eligible for such employment. So, the whole object of granting compassionate appointment is to enable the family to tide over the sudden crisis. Laying down the above principles in Umesh Kumar Nagpal vs. State of Haryana, (1994) 4 SCC, Jagdish Prasad vs. State of Bihar, (1996) 1 SCC 301

and S.Mohan vs. Government of T.N. (1998) 9 SCC 485, the Supreme Court has cautioned that the object is not to give a member of such family a post not less than the post held by the deceased.

4. Mere death of an employee is not sufficient to entitle the dependent of the family for compassionate appointment. The Government or the public authority concerned has to examine the financial condition of the family and it is only when it is satisfied that but for the provision of employment the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The Supreme Court has cautioned that it must be remembered that as against the destitute family of the deceased there are millions of other family, which are equally, if not more destitute. It is, therefore, pointed out by the Supreme Court in Umesh Kumar Nagpal (supra), Jagdish Prasad and Director of Education (Secondary) vs. Pushpendra Kumar, (1998) 5 SCC 192 that an exception to the general rule that all appointments in public service shall be made strictly on the basis of open selection on merits, is made in favour of the family of the deceased employee in consideration of the services rendered by him and the legitimate expectations and changes in the status and affairs of the family engendered by erstwhile employment which are suddenly upturned. The Supreme Court also

indicated that the compassionate appointment cannot be granted after a lapse of reasonable period, if that be so, it must be specified in the rules and the object being to enable the family to tide over the financial crisis which it faces because of the sudden death of the sole bread-earner, the compassionate appointment cannot be claimed and offered after long lapse of time more so, when the crisis is over, it is because, the consideration of such employment is not the vested right which can be exercised at any time in future.

5. Viewing the matter from the aforesaid principles as laid down by the Apex Court, I am of the view that the present case is required to be dismissed for more than one reason. At the outset, it may be stated that admittedly the father of the applicant No.2 died on 18.11.98 whereas the present application has been filed after a lapse of about 7 years. The applicants in para 3 of the application has made the following averments:-

“Limitation :- The applicant further declares that the application is within the limitation period prescribed 21 of the Central Administrative Tribunal Act, 1985.”

The learned counsel for the applicant could not satisfy this tribunal how this application is within limitation. As can be seen from the facts as stated above, the applicant No.1 at the first instance espoused the case of her son namely Shri Roshan Lal Khatik for compassionate appointment and the CAC after


taking into consideration the relevant factors did not recommend the case of Shri Roshan Lal for grant of compassionate appointment. This order was conveyed to applicant No.1 vide order dated 11.4.2001 (Ann.A4). Admittedly, applicant No.1 has not challenged the validity of the said order. The result of this is that the applicant No.1 accepted the finding as given by the CAC regarding financial condition of the family and not recommending her son Shri Roshan Lal for giving compassionate appointment. In other words by rejection of the application of Shri Roshan Lal for grant of appointment on compassionate grounds, the CAC has found that financial condition of the family of the deceased employee is not such that but for the provision of employment the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. It is also clear from the facts as stated above that thereafter applicant No.1 took up the case of another son namely applicant No.2 for grant of appointment on compassionate grounds that her son Shri Roshan Lal is living separately. This all happened in the year 2001. The applicants have not explained as to why they have ^{not} approached this Tribunal within the statutory period prescribed under Section 21 of the Administrative Tribunals Act, 1985. On the contrary, the applicants have made averment in this OA that this application is within limitation. Thus, I am of the view that this application cannot be

entertained in view of the law laid down by the Apex Court in the case of Ramesh Chand Sharma Vs. Udham Singh Kamal, 2000 SCC (L&S) 53 whereby the Apex Court has held that where the application has been filed after the period prescribed under Section 21 of the Administrative Tribunals Act and no application for condonation of delay has been filed, such OA can neither be admitted nor entertained.

6. As state above, even on merits, the applicant has not made out any case for grant of any relief, But for the vague averment in the OA that the applicants were totally dependent on the earning of late Shri Ram Lal Khatik and elder son Shri Roshan Lal Khatik was living separately prior to the death of the deceased, no averment/material has been placed on record to show that the financial condition of the family was such that but for the provision of employment the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The applicants have not placed on record any material to suggest what is the retiral benefit which the family of the deceased Govt. servant has received under various welfare schemes. Further, what is the liability of the family and all other relevant factors such as presence of earning member, size of the family, age of children and essential needs of the family etc. as these factors are necessary and

relevant in order to arrive at the objective assessment regarding financial condition of the family while considering the request for appointment on compassionate grounds. Further, the very fact that the family has able to manage somehow during these year would show that the family has some dependable means for substance. Thus the applicants have no case even on merit. Simply because one functionary of the respondents has forwarded the notice received from the learned advocate on behalf of the applicants to the Dy. Director General cannot afford cause of action to entertain this OA and grant relief in favour of applicant No.2, more particularly, when the same is without substance and merit.

7. In view of what has been stated above, the applicants have not made out any case for grant of relief. Accordingly, the OA is dismissed at admission stage with no order as to costs.


(M.L. CHAUHAN)
Member (J)

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