

THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR
ORDER SHEET

APPLICATION NO.: _____

Applicant (S)

Respondent (S)

Advocate for Applicant (S)

Advocate for Respondent (S)

| NOTES OF THE REGISTRY | ORDERS OF THE TRIBUNAL |
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| | <p>14.05.2009</p> <p>OA No. 415/2007</p> <p>Mr. P.N. Jatti, Counsel for applicant. Mr. B.N. Sandu, Counsel for respondents.</p> <p>Heard learned counsel for the parties.</p> <p>Order Reserved.</p> <p style="text-align: right;">(B.L. KHATRI) MEMBER (A)</p> <p>AHQ</p> <p style="text-align: center;"><u>21-5-09</u></p> <p style="text-align: center;">The order is pronounced in the open court today,</p> <p style="text-align: right;"><u>21-5-09</u></p> |

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

Jaipur, this the 21st May, 2009

ORIGINAL APPLICATION NO. 415/2007

CORAM:

HON'BLE MR. B.L. KHATRI, ADMINISTRATIVE MEMBER

Surendra Kumar Sharma son of Late Shri Hari Shankar Sharma by caste Sharma, aged about 29 years, resident of Village and Post Chiksana, District Bharatpur (Rajasthan).

.....APPLICANT

(By Advocate: Mr. P.N. Jatti)

VERSUS

1. Union of India through the Secretary to the Government of India, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi.
2. Chief Post Master General, Rajasthan Circle, Jaipur.
3. Superintendent Post Offices, Bharatpur Division, Bharatpur.

.....RESPONDENTS

(By Advocate : Mr. B.N. Sandu)

ORDER

PER HON'BLE MR. B. L. KHATRI

This OA has been filed u/s 19 of the Administrative Tribunal's Act, 1985 against the order dated 12.02.2007 (Annexure A/1) whereby the applicant had been denied appointment on compassionate grounds.

2. Learned counsel for the applicant submitted that the observation of the CRC was wrong as the adoption papers had been submitted by the applicant as Annexure A/5. Subsequently, the CRC had not properly looked into the indigent condition of the applicant, source of income and assets, liabilities. He further submitted that it appears that the case of the applicant has not been considered by granting relaxation of age.

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3. Notice of this application was given to the respondents who have opposed the same. In the reply, the respondents have submitted that the deceased employee, Shri Hari Shankar Sharma, was unmarried and he had no family. The applicant is the nephew of the deceased employee and a nephew does not come within the definition of the family and per the Ration Card, the applicant was not shown as dependant. In Para No. 4.4 of the reply, the respondents have submitted that the deceased employee, Shri Hari Shankar Sharma was expired on 17.12.2005 and he was unmarried and having no family. As per Annexure R/2, deceased employees had two nephews named Shri Surendra Kumar Sharma aged 27 years and 7 months and Shri Sudhir Kumar Sharma aged 33 years 4 months, who does not come under dependant family members of the deceased employee as per DOPT OM NO. 14014/6/94-Estt.(D) dated 9.10.1998 (Annexure R/1). The applicant was above 25 years of age as such his case cannot be considered for compassionate appointment in view of the order dated 18.07.2003 of CAT Jodhpur Bench in the case of Om Prakash vs. Union of India [OA No. 10/003] whereby it was held that the person above 25 years of age either may be son or daughter cannot be considered to be dependant family member. Lastly, it was submitted that the family had received the terminal benefit to the tune of Rs.48000/- and has 0.54 hectare landed property.

4. I have heard the learned counsel for the parties and also perused the record of the case. Brief facts of the case are that Late Hari Shankar Sharma was working as GDSMC/MD Chiksana before he expired on 17.12.2005 before the date of superannuation i.e. 09.09.2006. All the retiral benefits amounting to Rs.48000/- had been paid to the nominee, Shri Surendra Kumar Sharma. From the perusal of record, I find that the respondents have not considered the adoption deed, which was registered on 15.3.1979 regarding the fact that the applicant is the adopted son of Late Shri Hari Shankar Sharma. From the perusal of the Scheme for compassionate appointment dated 09.10.1998 (Annexure R/1), it is evident that son includes adopted son also as per the definition of the dependant family members.

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Therefore, in my opinion, the issue for grant of compassionate appointment requires reconsideration on this point.

5. It is evident from the perusal of reply that the case of the applicant was also not considered by the respondents on the ground that the applicant was of 27 years and 7 months of age. This issue of age relaxation also requires re-consideration in view of the decision of the Hon'ble Supreme court in the case of **CSIR & Ors. Vs. Ramesh Chandra Agarwal & Another** [JT 2009 (1) sc 562] wherein In Para No. 38, the Hon'ble Supreme Court has held as under:-

"38. The High Court, in our opinion, furthermore committed a serious error insofar as it failed to take into consideration that the respondents did not have any legal right for regularization having regard to the decision of the Constitution Bench of this Court in Umadevi. Furthermore, it is one thing to say that a public authority may exercise its discretionary jurisdiction to grant relaxation in a particular case but it is another thing to say that the superior court shall direct it to exercise its discretionary jurisdiction of relaxation in a particular manner. Relaxation can be granted only when there exists a provision therefor. If the provision to grant relaxation is circumscribed by conditions, those conditions must be fulfilled before an order in that regard can be passed.

However, in this case, paragraph 9 of the scheme although does not contain any limitation in the matter of exercise of power, it was for the authority concerned to lay down a principle as to in which case the power of relaxation should be exercised and in which case it would not be. If sufficient number of candidates were available, who had worked for more than 15 years, keeping in view the requirements of the appellant itself the Director could take a further policy decision that no relaxation shall be granted to an applicant who did not fulfill that criterion. Ordinarily, the Court, it is trite, would not interfere with such discretionary power in exercise of its jurisdiction of judicial review.

In Kendriya Vidyalaya Sangathan and Others v. Sajal Kumar Roy and others [JT 2006 (9) SC 292: 2006 (8) SCC 671] this Court held:

"11... The appointing authorities are required to apply their mind while exercising their discretionary jurisdiction to relax the age limits. Discretion of the authorities is required to be exercised only for deserving candidates and upon recommendations of

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the Appointing Committee/Selection Committee. The requirements to comply with the rules, it is trite, were required to be complied with fairly and reasonably. They were bound by the rules. The discretionary jurisdiction could be exercised for relaxation of age provided for in the rules and within the four corners thereof. As Respondents do not come within the purview of the exception contained in Article 45 of the Education Code, in our opinion, the Tribunal and consequently, the High court committed a manifest error in issuing the aforementioned directions."

In Union of India and others v. R.N. Hegde and others [1998 (8) SCC 731], this Court held:

"6. By the impugned judgment, the Tribunal has given direction for regularization of the respondents by giving the relaxation in the upper age limit by treating the minimum period of 40 days for the calendar year 1989 and no period for the calendar year 1990 for such of the Casual Staff Artists who were recruited prior to 1988 and were not assigned work in the calendar years 1988 and 1989 in pursuance of the note dated 26.5.1989 (sic). The said direction of the Tribunal is not in consonance with the scheme as notified vide OM dated 9.6.1992 and it cannot be upheld. The matter of regularization of the respondents, including the question whether they should be given relaxation in the matter of age, has to be considered only in accordance with the provisions contained in the scheme as notified vide OM dated 9.6.1992."

Similar view has been taken by this court in **Director, Doordarshak Kendra, Trivandrum and Others v. S. Kuttan Pillai and Others [1998 (8) SCC 736]**.

6. The respondents have also not considered the case of the applicant for appointment on compassionate ground for the reasons that the family had received terminal benefits to the tune of Rs.48000/- and family owned 0.54 hectare of land. After perusal of record, I am of the opinion that this aspect of penurious condition of the defendant could be properly examined. The respondents are directed to take note of source of income, assets and liabilities of the applicant or the deceased employee, Shri Hari Shankar Sharma and the retiral benefits received by the applicant while assessing the

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financial condition. Therefore, this aspect is also required to be considered by the appropriate authority at the relevant time.

7. In view of what has been stated above, the respondents are directed to reconsider the case of the applicant on all the issues as mentioned in this order within a period of three months from the date of receipt of a copy of this order subject to the condition of availability of vacancy, OM of DOPT dated 09.10.1998, other instructions/circulars on the subject.
8. With these observations, the OA is disposed of with no order as to costs.


(B.L. KHATRI)
MEMBER (A)

AHQ