

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

18

ORDERS OF THE BENCH

Date of Order: 08.11.2011

O.A. No. 177/2010

Mr. P.N. Jatti, counsel for applicant.
Mr. Mukesh Agarwal, counsel for respondents.

At the request of learned counsel for the applicant, put up the matter on 15.11.2011 for hearing.

Anil Kumar
(Anil Kumar)
MEMBER (A)

Kumawat

15-11-2011

Mr. P.N. Jatti, Counsel for applicant.
Mr. Mukesh Agarwal, Counsel for respondents

Heard. The OA is disposed of by
a separate order.

Anil Kumar
(Anil Kumar)
M(A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 15th day of November, 2011

ORIGINAL APPLICATION No. 177/2010

CORAM :

HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER

Surendra Kumar Sharma son of Late Shri Hari Shnkar Shankar aged about 30 years, resident of Village and Post Chiksana, District Bharatpur.

... Applicant

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

Versus

1. Union of India through the Secretary to the Government of India, Department of Post, 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. Mukesh Agarwal)

ORDER (ORAL)

The applicant has filed this OA thereby praying for the following reliefs:-

"(i) That by a suitable writ/order or the direction the impugned order dated 30.09.2009 vide annexure A/1 be quashed and set aside.

(ii) That by a suitable writ/order or the directions the respondents be directed to allow the compassionate appointment to pull on the family.

(iii) Any other relief which the Hon'ble bench deems fit."

2. Brief facts of the case are that the deceased Shri Hari Shankar Sharma was the employee of the Department of Posts. He expired on 28.12.2005. Before the death, Late Shri Hari Shankar Sharma had been working as GDSMC/MD Chiksana (Bharatpur) Post Office. The applicant had filed OA

Anil Kumar

No. 415/2007 after his candidature for appointment on compassionate grounds was rejected by the respondents and the same was disposed of to consider the case again.

The respondents have considered the case in pursuance of the order of the CAT, Jaipur Bench vide order dated 21.05.2009 and passed a fresh order dated 30.09.2009 (Annexure A/1).

2. Aggrieved by this order, the applicant has filed this OA. Learned counsel for the applicant has stated in OA that the respondents have admitted that the applicant is an adopted son of Late Shri Hari Shankar Sharma vide order dated 30.09.2009 (Annexure A/1) and if any Government servant dies in harness then adopted son is entitled for appointment on compassionate grounds. The applicant has no source of income and ^{he is} ~~his~~ living in very indigent circumstances. He has also submitted a certificate issued by the Sarpanch to this effect (Annexure A/6). The applicant submitted that his case has been wrongly rejected by the respondents vide their order dated 30.09.2009 and, therefore, it may be quashed and the respondents may be directed to ^{give} him appointment on compassionate grounds.

3. The respondents have filed their reply. In their reply, they have stated that an amount of Rs.60,284/- was paid to the applicant as terminal benefits. The deceased employee was unmarried and he was living with the family of his brother. The respondents have considered the case of the applicant as per the directions of the CAT, Jaipur Bench vide

Anil Kumar

its order dated 21.05.2009 but Circle Relaxation Committee (CRC) did not find the case of the applicant as indigent and rejected the same vide order dated 30.09.2009 (Annexure A/1). The CRC has objectively reconsidered the case of the applicant as per relevant scheme for compassionate appointment, rules and guidelines, but not found his case as indigent and rejected the same. Thus the decision of the competent authority communicated vide order dated 30.09.2009 (Annexure A/1) is legal and in consonance with the scheme for compassionate appointment and other relevant rules/instructions. So far as the applicant is concerned, he is having his own house and doing job on the medical shop, which is clear from the statement of Shri Sudhir Kumar Sharma, brother of the applicant (Annexure R/4) and statement of Shri Jagdish Prasad Gupta (Annexure R/6) and having annual income of Rs.24,000/- as per the certificate issued by the Tehsildar, Bharatpur (Annexure R/5). Thus the condition of the family is not indigent. Moreover the age of the applicant was 27 years and 7 months at the time of death of the deceased employee. Thus he was not depended upon the deceased employee. Hence saying the deceased has left a heavy liability on the shoulders of the applicant is totally wrong. Therefore, the respondents have stated that this OA has no merit and it should be dismissed.

4. Heard learned counsel for the parties and perused the documents on record. Learned counsel for the applicant stated that the applicant is an adopted son of Late Shri Hari

Devil Kumar

Shankar Sharma and he is living in indigent condition, he no having any source of income and, therefore, as per the Scheme, he is entitled for appointment on compassionate grounds. On the other hand, learned counsel for the respondents argued that the applicant is not the adopted son of Late Shri Hari Shankar Sharma and he has not produced adoption deed in this context. He referred to a judgment of the Hon'ble Supreme Court in the case of **State of Chhattisgarh & Others vs. Dhirjo Kumar Sengar**, 2009 (13) SCC 600 wherin Hon'ble Supreme Court has held that onus of proof – applicant claiming to be adopted son of deceased employee – onus on applicant to prove valid adoption in view of Section 106 of Evidence Act. Where deed of adoption is not registered, presumption under Section 16 of Hindu Adoptions and Maintenance Act, 1956 would not arise – although for proving valid adoption, a registered deed is not necessary but proof of ~~dafta~~ ^{dafta} ~~hman~~ ceremony or compliance with other statutory conditions is necessary.

5. In this case, there is no registered adoption deed and, therefore, the applicant cannot be treated to be the adopted son of the deceased Late Hari Shankar Sharma. He further argued that even for the sake of arguments it is admitted that the applicant is an adopted son of the deceased employee, even then he is not entitled for appointment on compassionate grounds. The order dated 30.09.2009 clearly states that deceased employee did not left any liability of ^{children} education of minor or marriage of daughter. The applicant is

having his own house and doing job on the medical shop. He is earning Rs.24,000/- per month as per the certificate issued by the Tehsildar, Bharatpur and in addition to that, the applicant has received maximum terminal benefit to the tune of Rs.60,284/-, which was to be received by the deceased employee on the normal date of his retirement i.e. 09.09.2006 and, therefore, the committee did not find the case of the applicant as indigent and rejected his case.

The deceased employee ~~had~~ ^{died} 8 months before his retirement and, therefore, on the basis of the above facts, the applicant is not entitled for appointment on compassionate grounds. Moreover, the deceased employee expired on 28.12.2005 and now after 6 years of death of the deceased employee, the applicant cannot claim appointment on compassionate grounds as a matter of right.

6. Having heard the rival submissions of the parties and perusal of the documents on record, it is clear that Late Shri Hari Shankar Sharma has left no family except the applicant who is claiming to be an adopted son of the deceased employee. Though the applicant has not been able to prove conclusively that he is the adopted son but even after considering that the applicant is the adopted son of the deceased employee, he is not entitled for appointment on compassionate grounds because his case was not found to be indigent. Tehsildar, Bharatpur has issued a certificate that the applicant is earning Rs.24,000/- per year while working on a medical shop (Annexure R/5). The

Anil Kumar

respondents have clearly stated that the applicant is having his own house and doing job on the medical shop.

7. The Hon'ble Supreme Court in the case of **Umesh Kumar Nagpal vs. State of Haryana**, JT 1994 (3) SC 525, in Para No. 6 has held as under:-

"6.the compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it facts at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over."

8. The Hon'ble Supreme Court in the case of **Haryana Electricity Board vs. Naresh Tanwar**, JT 1996 (2) SC 542, in paras nos. 9 & 10 has held as under:-

"9. It has been indicted in the decision of Umesh Kumar Nagpal (supra) that compassionate appointment cannot be granted after a long lapse of reasonable period and the very purpose of compassionate appointment, as an exception to the general rule of open recruitment, is intended to meet the immediate financial problem being suffered by the members of the family of the deceased employee. In the other decision of this Court in Jagdish Prasad's case, it has been also indicated that the very object of appointment of dependent of deceased employee who died in harness is to relieve immediate hardship and distress caused to the family by sudden demise of the earning member of the family and such consideration cannot be kept binding for years."

"10. It appears to us that the principle of compassionate appointment as indicated in the aforesaid decisions of this Court, is not only reasonable but consistent with the principle of employment in government and public sector. The impugned decision of the High Court therefore can not be sustained."

Anil Kumar

9. The Hon'ble Supreme Court in another case in the case of **M/s Eastern Coalfields Ltd. s. Anil Badyakar & Others**, JT 2009(6) SC 624, in Para No. 19 has held as under:-

"19. The principles indicated above would give a clear indication that the compassionate appointment is not a vested right which can be exercised at any time in future. The compassionate employment cannot be claimed and offered after a lapse of time and after the crisis is over."

10. The ratio laid down by the Hon'ble Supreme Court in the cases of **Umesh Kumar Nagpal vs. State of Haryana, Haryana Electricity Board vs. Naresh Tanwar** and **M/s Eastern Coalfields Ltd. s. Anil Badyakar & Others** are squarely applicable in the present case. In my considered opinion, the applicant cannot claim appointment on compassionate grounds as a matter of right after 6 years of the death of the deceased employee. Accordingly, I find no reason to interfere with the decision of the respondents. Consequently, the OA is dismissed being devoid of merit with no order as to costs.

Anil Kumar
(Anil Kumar)
Member (A)

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