

Central Administrative Tribunal, Principal Bench

17

O.A. No. 2935/2003

New Delhi this the 27th day of JANUARY 2005.

Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)

1. Vimla Devi
W/o Late Shri Vinod Kumar
R/o House No. 302, Baghkhade Khan,
Delhi.

2. Sanjeev Kumar
S/o Late Shri Vinod Kumar
R/o House No. 302, Baghkhade Khan
Delhi.

...Applicants

By Advocate: Shri M.K. Bhardwaj.

Versus

Union of India and Others

Through

1. The Secretary
Government of India,
Ministry of Urban Affairs and Employment,
New Delhi.

2. The Manager,
Government of India Press,
Minto Road,
New Delhi.

....Respondents

By Advocate: Mrs. Avinash Kaur.

ORDER (ORAL)

The applicants have filed this OA for a direction to the respondents to appoint applicant No.2 on compassionate ground.

2. Briefly the facts, as disclosed in the OA are, that Shri Vinod Kuar, husband of the

Malika Khan

applicant No.1 and father of the applicant No.2, was working as Compositor in the respondents – Government of India Press. He died in harness on 12.12.1988 leaving behind the applicant No.1, wife and two children and an old mother. Shri Vinod Kumar was suffering from a heart disease and was admitted in the hospital for treatment. He was the only earning member in the family and after his sudden demise, the financial condition of the family worsened. Substantial amount of the service benefits received from his office was spent in defraying the expenses incurred on the treatment and repaying the loan taken for this purpose. In 2003, the applicant No.1 fell ill and she was medically examined and was diagnosed as suffering from rheumatic heart disease. She, therefore, made a representation to the respondents requesting them to give compassionate appointment to her son, applicant No.2 in her place. The family was in distress. The applicant No.2, therefore, approached the respondents for his compassionate appointment. The respondents favourably considered this request and conveyed their decision, but did not mention the time frame for the appointment. The applicants have sent representations in this regard. Non-the-less, the respondents have not appointed the applicant No.2 as yet. Hence this OA.

3. The respondents in the counter-reply to the OA pleaded that the Compassionate Appointment Committee of the department had considered the case of applicant No.2 for compassionate appointment sympathetically and found that it was a fit case for compassionate appointment. But about 140 similar applicants were in the waiting list. The applicant No.1 was accordingly informed vide letter dated 19.7.2000, that her seniority in the waiting list was at S.No.145-B. This Tribunal by order dated 4.2.1992 has directed the respondents to prepare a viable scheme on all India basis to give relief in

vacant as of now

cases of compassionate appointment to deserving persons. Accordingly, a scheme was formulated. The case of the applicant No.1 was considered and it was found deserving. She was wait listed at S.No.145-B in the category of Group 'D'. She will be offered appointment in accordance with the waiting position, when her turn materializes, for which no time frame should be specified since the actual appointment would depend upon the occurrence of the vacancies in the compassionate appointment quota. The DOP&T in Office Memoranda dated 9.10.1998 and 3.12.1999 as modified by OM dated 5.5.2003 had stipulated, that maximum time a person's name can be kept under consideration for offering compassionate appointment would be three years' subject to the condition that the Committee had reviewed and certified the priority condition of the applicant at the end of the first and second year, after three years, if compassionate appointment is not possible to be offered, the applicant's name would be finally closed and will not be considered again.

4. If the applicant No.2 is considered instead of applicant No.1, his waiting list in the category would be 106-A and his turn for compassionate appointment would not mature within 3 years. It is, therefore, requested that the present OA may be dismissed.

5. In the rejoinder, the applicants have reiterated their own case and have controverted the allegation of the respondents.

6. We have heard the learned counsel for the parties.

7. It is now well settled that appointment on compassionate ground is "not a source of recruitment but merely an exception to the requirement regarding appointments being made on open invitation of the applications on merits (see also Punjab National Bank and Others Vs. Ashwini Kumar Taneja, 204 (7) SCC 265). The purpose of providing

rejoined *rejoined*

appointment on compassionate ground is to mitigate the hardship due to the death of the bread earner in the family. The Hon'ble Supreme Court in Punjab National Bank and Others (Supra) after considering its earlier judgment on the subject observed as under:-

“ 5. As was observed in State of Haryana V. Rani Devi it need not be pointed out that the claim of the person concerned for appointment on compassionate ground is based on the premises that he was dependent on the deceased employee. Strictly, this claim cannot be upheld on the touchstone of Article 14 or 16 of the Constitution of India. However, such claim is considered as reasonable and permissible on the basis of sudden crisis occurring in the family of such employee who has served the State and dies while in service. That is why it is necessary for the authorities to frame rules, regulations or to issue such administrative orders which can stand the test of Articles 14 and 16. Appointment on compassionate ground cannot be claimed as a matter of right. Die-in-harness Scheme cannot be made applicable to all types of posts irrespective of the nature of service rendered by the deceased employee. In Rani Devi case it was held that the Scheme regarding appointment on compassionate ground if extended to all types of causal or ad hoc employees including those who worked as apprentices cannot be justified on constitutional grounds. In LIC of India Vs. Asha Ramchhandra Ambedkar it was pointed out that High Courts and Administrative Tribunals cannot confer benediction impelled by sympathetic considerations to make appointments on compassionate grounds when the regulations framed in respect thereof do not cover and contemplate such appointments. It was noted in Umesh Kumar Nagpal Vs. State of Haryana that as a rule public service appointment should be made strictly on the basis of open invitation of applications and merit. The appointment on compassionate grounds is not another source of recruitment but merely an exception to the aforesaid requirement taking into consideration the fact of the death of the employee while in service leaving his family without any means of livelihood. In such cases the object is to enable the family to get over sudden financial crisis. But such appointments on compassionate ground have to be made in accordance with the rules, regulations or administrative instructions taking into consideration the financial condition of the family of the deceased.

6. In Sushma Gosain Vs. Union of India it was observed that in all claims of appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread-earner in the family. Such appointments should, therefore, be provided immediately to redeem the family in distress. The fact that the

united and

ward was a minor at the time of death of his father is no ground, unless the Scheme itself envisages specifically otherwise. to state that as and when such minor becomes a major he can be appointed without any time consciousness or limit. The above view was reiterated in *Phoolwati v. Union of India and Union of India v. Bhagwan Singh*. In *Director of Education (Secondary) v. Pushpendra Kumar* it was observed that in matter of compassionate appointment there cannot be insistence for a particular post. Out of purely humanitarian consideration and having regard to the fact that unless some source of livelihood is provided the family would not be able to make both ends meet, provisions are made for giving appointment to one of the dependants of the deceased who may be eligible for appointment. Care has, however, to be taken that provision for ground of compassionate employment which is in the nature of an exception to the general provisions does not unduly interfere with the right of those other persons who are eligible for appointment to seek appointment against the post which would have been available, but for the provision enabling appointment being made on compassionate grounds of the dependant of the deceased employee. As it is in the nature of exception to the general provisions, it cannot substitute the provision to which it is an exception and thereby nullify the main provision by taking away completely the right conferred by the main provision.

7. In *State of U.P. v. Paras Nath* it was held that the purpose of providing employment to the dependant of a Government servant dying in harness in preference to any anybody else is to mitigate hardship caused to the family of the deceased on account of his unexpected death while in service. To alleviate the distress of the family, such appointments are permissible on compassionate grounds provided there are rules providing for such appointments. None of these considerations can operate when the application is made after a long period of time. In that case also the delay was 17 years.

8. These aspects were highlighted in *State of Manipur v. Mohd. Rajaodin*, *State of Haryana v. Ankur Gupta*, *Haryana SEB v. Naresh Tanwar* and *Haryana SEB v. Hakim Singh*.

9. One other thing which needs to be considered is whether the retiral benefits are to be taken into consideration while dealing with prayer for compassionate appointment. The High Court was of the view that the same was not to be taken into consideration. The view is contrary to what has been held recently in *GM (D&PB) v. Kunti Tiwary*. It was categorically held that the amounts have to be taken into consideration".

Amendable

8. The Department of Personnel and Training vide OM No.14014/6/94-Estt. (D) dated 9.10.1998 had issued revised consolidated instructions on Scheme for compassionate appointment. Inter alia, the Scheme has provided that "an application for compassionate appointment, should, however, not be rejected merely on the ground that the family of the Government servant has received the benefits under the various welfare schemes. While considering a request for appointment on compassionate grounds, a balanced and objective assessment of the financial condition of the family is to be made taking into account its assets and liabilities (including the benefits received under the various welfare schemes mentioned above) and all other relevant factors, such as, the presence of an earning member, size of the family, ages of the children and the essential needs of the family etc."

9. The principles of law governing the appointment on compassionate grounds may be summed up as follows:-

- (i) The appointment on compassionate ground cannot be claimed as a matter of right. It is not a mode appointment to civil services but is an exception to the general mode of recruitment under Recruitment Rules.
- (ii) Only dependents of an employee dying in harness leaving his family in penury and without any means of livelihood can be appointed on compassionate grounds.
- (iii) Appointment on compassionate grounds should be made in Group 'C' and 'D' (formerly Class III and IV) which are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds and no other post, i.e., in the Group 'A' or Group 'B' category.

.....

(iv) The object of granting compassionate appointment is to enable the family to tide over the sudden crisis and to relieve the family of the deceased from financial destitution and to help it get over the emergency due to sudden demise of the only bread earner.

(v) The financial condition of the family has to be borne in mind and the service benefits like GPF, Gratuity, the Insurance money and other benefits received under various welfare schemes by the dependant family members is to be kept in mind and request for appointment on compassionate ground shall be considered on balance and objective assessment of the financial condition of the family taking into account its assets and liabilities including the benefits received under the service rules and various welfare schemes and all other relevant factors, such as, presence of an earning member, size of the family, ages of the children and the essential needs of the family etc. The purpose of appointment on compassionate grounds is to mitigate the hardship to the dependant family members due to the death of the bread earner who are in penury and without means of livelihood, the request for appointment on compassionate grounds should be considered expeditiously.

(vi) The request for appointment on compassionate grounds is to be considered within the parameters of the Scheme framed by the employer for such appointment including the restriction as to the number or percentage of the vacancies available for this purpose.

(vii) Appointment on compassionate ground cannot be insisted upon on a particular post.

(viii) The retiral benefits received by the family of the deceased employee is to be taken into consideration while dealing with the prayer for compassionate appointment particularly when the die-in-harness scheme provided for it.

(24)

10. The present case may now be tested on the above noted principles.

11. The Compassionate Appointment Committee of the respondents on screening of the application of the applicant No.1, found ~~out~~ to be deserving case for appointment on compassionate ground of the applicant No.1 in a Group 'D' post in the office of the respondents. Applicant No.1's name was put in a queue of the persons who were waiting for similar appointment. It is stated that she was at S.No.145-B in the list. According to the respondents, no vacancy in Group 'D' was available for accommodating the applicant and others who were in the waiting list within 3 years and in accordance with the DOP&T's guide-lines in this regard contained in an OM dated 9.10.1998, 3.12.1999 read with OM dated 15.5.2003, if an applicant could not be appointed under die-in-harness scheme within three years, her case is to be deemed as closed. The respondents have further stated that in case the request of the applicant No.2 is considered for his appointment on compassionate ground in the category of LDCs he would be in the seniority list at No.106A and in view of such a long waiting list, his turn will not mature within next three years. It is, therefore, submitted that the application may be rejected.

12. The counsel for the applicant has ~~also~~ placed strong reliance on the judgment of **Smt. Sushma Gosain and Others Vs. U.O.I. & Others, 1989 (11) ATC 878** where the Hon'ble Supreme Court had observed that "in all claims for appointment on compassionate ground there should not be any delay in appointment and it would be improper to keep such cases pending for years when the very purpose of such appointment was to mitigate the hardship due to the death of the bread earner of the family". It was further observed that "if there was no suitable post for appointment, supernumerary post should be created to accommodate the applicant." The applicant next

..... and so on

relied upon the order of this Tribunal dated 13.3.1996 in OA 2475/1995 (Smt. Basanti Devi and Another Vs. U.O.I. & Another) where the Tribunal disposed of similar OA filed for compassionate appointment with a direction to the respondents to consider the case of the applicant in accordance with the rules. The judgment in Smt. Sushma Gosain and Others (Supra) case was considered in the case of **Punjab National Bank and Others** (Supra). It does not appear that the respondents of the said case had pleaded that there were a large number of similar situated persons waiting for their turn for appointment on compassionate ground and the ^{turn} ~~term~~ of the applicant of the said case would not mature within 3 years so has to be closed in terms of the instructions of the DOP&T. It seems the Hon'ble Supreme Court was dealing with an isolated case where creation of supernumerary post would have solved the problem faced by the applicant. But in the present case more than 145 persons were waiting for their turn to be appointed on compassionate ground. Even in the case of applicant No.2 he was at S.No.106-A of the waiting list. It will be incongruous to ask the respondents to create such a large of supernumerary posts in the cadre of Group 'D' or in the cadre of Group 'C' for accommodating these applicants. All persons who are similarly situated will also have to be given the benefit of the ^{said} ~~same~~ order.

13. Keeping the principles of law laid down by the Hon'ble Supreme Court in **Punjab National Bank and Others** (Supra) and the principles of law summed up based on case law, we find that in view of the long waiting list, it will not be appropriate to direct the respondents to consider the case of the applicant No.2 for appointment on compassionate ground immediately. It is noteworthy that according to the allegation of

more now available

the respondents, all the cases in the waiting list deserves such appointment. Therefore, no out of turn appointment could be given to the present applicant, i.e., applicant No.2.

14. The contention of the respondents that in view of the instructions of the DOP&T in the matter of appointment under die-in-harness scheme the name of the applicant could have been kept alive in the waiting list for a period of three years. Considering that the number of vacancies available with the respondents is limited and the list of deserving persons is long and giving effect to these instructions would cause great hardship to many of the persons who are in the waiting list, The respondent have themselves alleged in the counter-reply that as per the instructions of the DOP&T they were screening the cases every year. If it is so, it will be a great relief to the families who are in real hardship and distress if the cases of all those applicants who have not been provided compassionate appointment within 3 years are screened for three years more and those who could not be considered in financial distress any more, may be eliminated from the list.

15. In the totality of the facts and circumstances of the case, we do not find that any relief can be granted to the applicants other than what has been observed above. The OA stands disposed off. The respondents should reconsider the case of the applicant No.2 also along with similarly situated persons for three years more, every year screening their cases for eliminating those who did not need appointment on compassionate ground.

16. The OA stands disposed off with the above directions but without any order as to costs.

M.A. Khan
(M.A. Khan)
Vice Chairman (J)

Rakesh