
(2019) 02 CAT CK 0119

In the Central Administrative Tribunal

Case No : Original Application No. 1962 Of 2018

Sushila Yadav (Compassionate Appointment)

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 14-02-2019

Acts Referred:

Indian Penal Code, 1860 — Section 34, 323, 406, 498A, 506

Citation : (2019) 02 CAT CK 0119

Hon'ble Judges : Pradeep Kumar, J

Bench : Single Bench

Advocate : Sh. M.K.Bhardwaj, Sh. Rajneesh Prasad

Final Decision : Allowed

Judgement

1. The instant OA has been filed by one Smt. Sushila Yadav wife of late Sh. Sandeep Kumar, who was working as peon in India Meteorological Department and died in harness on 27.04.2012 after completing about eight years of service. The deceased was left behind by his wife (the instant applicant) and a minor son about three years of age. The applicant requested the respondents on 28.05.2012 for appointment on compassionate grounds for self.

There were some similar other requests also at that time. When the compassionate grounds appointment letter was issued in respect of some other candidate namely Smt. Munni Devi on 15.06.2017, whereas the same was not issued in respect of applicant, she had felt aggrieved.

2. Applicant tried to find out the reasons for the same. It came to light that her mother-in-law had made a complaint to the respondents that the applicant has since remarried and this was the reason for not issuing the compassionate grounds appointment letter in her favour, as her case was otherwise found suitable. The applicant had felt aggrieved and filed the instant OA seeking the following relief:

"(1) To declare the action of the respondents in not appointing the applicant on

compassionate grounds as illegal, arbitrary and unjustified and issue appropriate directions for appointing the applicant on compassionate grounds from the date similarly placed persons have been appointed.

(ii) To direct the respondents to offer appointment to the applicant on compassionate grounds as per the recommendations of the Committee constituted for assessing the entitlement of dependents for appointment on compassionate grounds.

(iii) To allow the OA with cost.

(iv) To pass such other and further orders which their lordships of this Hon"ble Tribunal deem fit and proper in the existing facts and circumstances of the case."

3. The applicant was born on 30.09.1984 and she had passed BA examination. Her son Ayush was born on 10.05.2009. It is thus seen that the applicant is a young widow with a minor son to support.

4. After the death of applicant's husband, she had certain disputes with the family of her late husband and specially her father-in-law Sh. Birender Singh, her brother-in-law Sh. Pardeep Kumar and Smt. Mankesh wife of Sh. Pardeep Kumar. The applicant alleged that certain dowry related demands were made upon the applicant and she was physically assaulted also and forced to leave her matrimonial home on 21.02.2013.

Feeling threatened, she lodged a complaint with the women cell under Superintendent of Police, Narnaul, vide her application dated 27.05.2013. When no action followed, she had moved the Civil Court also vide FIR No.210 dated 29.07.2013, accusing Sh. Pradeep Kumar and his wife Smt. Mankesh. Two criminal cases were lodged as under:

(i) Criminal complaint filed under RT-135/2013 with date of institution being 21.12.2013/16.08.2016. Case was titled Smt. Sushila Devi, widow of Sandeep Kumar s/o Birender @ Billu resident of village Dhanunda, presently daughter of Hazari Lal s/o Sultan Singh, r/o village Kalwadi, Tehsil & District Mahendergarh vs. Pardeep Kumar s/o Birender Singh @ Billu 2. Mankesh wife of Pardeep Kumar, resident of village Dhanunda, Tehsil Ateli & District Mahendergarh. Case was filed under Sections 323, 406, 498A & 506 read with Section 34 IPC.

In this case, judgment was pronounced by the Court of Sub Divisional Judicial Magistrate, Kanina on 14.09.2017.

(ii) Criminal complaint filed under RT-57/2013 with date of institution being 25.10.2013/16.08.2016. Case was titled State vs. Smt. Kanta Devi, wife of Birender @ Billu 2. Birender Singh @ Billu 3. Mankesh wife of Pardeep. All three accused were residents of village Dhanunda, Tehsil Ateli & District Mahendergarh and case was filed under Sections 323, 406, 498A & 506 read with Section 34 IPC.

In this case also, judgment was pronounced by the Court of Sub Divisional

Judicial Magistrate, Kanina on 14.09.2017.

5. In both above cases, the judgment was pronounced on 14.09.2017. The criminal cases were discharged with almost similar judgment in both the cases acquitting all the accused.

However, the allegation of remarriage was made at that time also. In this regard, certain observations of the learned Judge are reproduced below:

"15. ... Said Surender s/o Partap Singh Sarpanch has appeared as DW1. His cross examination is relevant and hence is being discussed here. In his cross-examination he deposed that the marriage was solemnized on 10.05.2015 but he did not go in the marriage or in the engagement function nor there was any lady namely Sushila wife of Avinash having her voter identity card of said village. Thus it is clear that the allegation of the accused regarding remarriage of the complainant are false and they do not have any proof regarding remarriage of the complainant. The (sic) are only taking said stand to create pressure upon complainant and to stop her from obtaining ex-gratia posting in place of he (sic.) deceased husband."

6. The applicant pleads that the allegations that she has re-married is false and the same is reflected in the observations by the Civil Court as above. She being a young widow and who has to support a young son, she is feeling great difficulty. And this is despite her case having been found fit for compassionate grounds appointment but the same is not being issued due to the false allegation of her remarriage is causing her great distress.

Accordingly, she had made representation to the respondents on 11.04.2018 that she has not remarried and her appointment letter should be issued.

7. In support thereof applicant brought out that she is the daughter of one Sh. Hazari Lal r/o vill. Kalwadi, Tehsil & District Mahendergarh, Haryana. The Sarpanch of village Kalwadi had given a certificate dated 25.07.2017 attesting that the applicant has not remarried. This certificate had thereafter been authenticated by the Nambardar of village Kalwadi as well as Tehsildar and SDM of Kanina. This has also been submitted to the respondents. Accordingly, the respondents should now issue her appointment letter on compassionate grounds.

8. The application was opposed by the respondents. The respondents have made following averments in their counter reply.

"On the basis of approved parameters in the department, the applicant Smt. Sushila Yadav was selected by the Review Committee for appointment on compassionate ground in the department.

That, however, during verification process of the applicant for compassionate appointment in the department, respondents received a complaint from her Mother-in-law Smt. Kanta Devi that Smt. Sushila Yadav got remarried with one Shri Avinash. However, the Applicant Smt. Sushila Yadav denied the said

allegation."

9. Thereafter, the respondents requested the Police Station, Kosli, Rewari as well as another Police Station Kanina, Mahendragarh vide their letter dated 31.03.2017 to advise about the marital status of the applicant. Since the reply was not received, two reminders were also sent. It is brought out that Kosli Police Station replied vide their letter dated 05.08.2017. On this basis, the respondents made following averment in their counter:

"Applicant Smt. Sushila Yadav is reported to have got remarried with Sh. Avinash Son of Vir Singh resident of Village Kanharwas, Police Station - Kosli, District - Rewari, Haryana.

It is pertinent to mention that said Avinash is resident of village Kanharwas which comes under Kosli police station."

10. A similar report was also sent by Police Station Kanina on 04.08.2017. The respondents, however, also made an averment in their counter that they had received a letter dated 25.07.2017 from Sarpanch, village Kalwadi, which was countersigned by Nambardar, village Kalwadi, Tehsildar Kanina and SDM Kanina Distt. Mahendergarh wherein it was stated that the applicant Smt. Sushila Yadav has not remarried.

11. Under such a situation of confusion, the respondents decided to confirm the exact marital status of Smt. Sushila Yadav from the Chief Secretary, Haryana. For this purpose they had issued a letter dated 23.11.2017 and when a reply was not received, a reminder was also issued on 22.03.2018. However, the reply is still awaited.

In view of this, the competent authority had decided to put on hold the offer of appointment to the applicant as marital status of applicant is in question.

12. The applicant pleaded that the entire scheme of compassionate ground appointment, is to provide immediate succour to the family in need. The instant case is of a young widow seeking such an appointment who has to support a young son.

The relevant instructions on compassionate ground appointment also have a provision that a widow appointed on compassionate ground will be allowed to continue in service even after remarriage. This part of the averment by applicant was not opposed by the respondents. However, it was argued that the compassionate conditions remain valid only if the family has no means to support. However, in the event of remarriage, this basic condition is no more true and as such in case applicant had actually married, as is reported, compassionate ground appointment would not be due.

13. Matter has been heard at length. The applicant's case was represented by Sh. M.K.Bhardwaj, learned counsel and respondents' case was represented by Sh. Rajnish Prasad, learned counsel.

14. The facts of the case are not in doubt to the extent that the applicant is a young widow who has a child to support and her case for compassionate ground appointment has been approved by the respondents but just before the appointment letter could be issued, the mother-in-law of the applicant made a complaint to the respondents that applicant has remarried.

Further, the two Police Stations have advised that the applicant is reported to have remarried whereas the Sarpanch of the village where the father of the applicant lives has certified that she has not remarried. This certificate is countersigned by the Nambardar, Tehsildar as well as the SDM also.

15. It is very clear from the judgment of the Sub Divisional Judicial Magistrate, Kanina on 14.09.2017 that the disputes with the family of applicant's in law's started only after the death of her husband and they are related to the applicant laying claim upon certain share in the property of the in-law's family and the in-law's family resisting the idea of compassionate ground appointment of the applicant in place of her late husband. The observations of learned judge in case No. PT-57/2013 are reproduced here in this regard:

"14. It transpires from the evidence that the real controversy between the family of complainant and family of accused is regarding the claim of complainant on the ex-gratia service in place of her husband and claim for property for her child whereas the accused are trying hard every time to avoid the ex-gratia posting of complainant in place of her husband and relinquishment of property in the name of son of complainant. The allegations of the accused are that the complainant solemnized remarriage and for that purpose they have been trying to create impediments in the police verification of complainant regarding the ex-gratia service of her husband."

The reasons for such a sorry state of family dispute, are not difficult to imagine. However, such societal practices cannot be allowed to come in the way of the compassionate ground appointment to the applicant and especially so when her case has already been found to be eligible for the same. The certificate given by Sarpanch of the village where applicant's father resides, which has been countersigned by other officials including SDM and the observation by Civil Judge (para 5 supra) cannot be lost sight of, notwithstanding report to the contrary by Police Station, which at best is in the realm of "reported to be" rather than "it is confirmed".

In this context, it needs to be noted here that the said Shri Pardeep Kumar, against whom the applicant had lodged a criminal case, is serving Haryana Police (Para 4 supra) and obtaining such a vague report is not very difficult given his background.

In the given circumstances of this case, the allegation of remarriage of applicant at that time by the in-laws, appears to be more of a pressure tactics on the part of her in-laws family, to make her either withdraw the criminal case or to make her forego claim on her share including that of her son in property which

otherwise may have been due to her late husband. This appears to be all the more probable as no proof was submitted even while allegation was made by in-laws. Based on available evidence, the learned judge had made those observations, treating the allegation of remarriage as false. (Para 5 & 15 supra).

16. The provision for compassionate ground appointment is to provide immediate succour to the family and it is obvious that the applicant is in dire need of such a support and especially so after the criminal case she fought against her in-laws. The applicant is continuously pleading that she has not remarried. The respective village Sarpanch has already certified that she has not remarried.

Under such circumstances, respondents have sought confirmation from Chief Secretary, Haryana. However, waiting for the same endlessly, cannot be allowed and especially so, since remarriage of a widow, who is already appointed on compassionate ground, is also permitted by the relevant instructions. Substantial justice demands that the compassionate ground appointment, held in abeyance, is released immediately.

17. In view of the foregoing, the contentions put forth by the applicant are gaining acceptability. OA is allowed. Respondents are directed to issue the appointment letter in respect of the compassionate ground appointment for the applicant within a period of four weeks from the receipt of a certified copy of this order. No order as to costs.