
(1995) 08 SC CK 0112

In the Supreme Court Of India

Case No : Civil Appeal No. 7813 of 1995

Union of India (UOI) and Others

APPELLANT

Vs

Bhagwan Singh

RESPONDENT

Date of Decision : 30-08-1995

Acts Referred:

Citation : (1996) 1 LLJ 1127 : (1995) 6 SCC 476 : (1995) 3 SCR 155 Supp : (1996) 1 SLJ 100

Hon'ble Judges : K. S. Paripoornan, J;J. S. Verma, J

Bench : Division Bench

Advocate : Anand Prakash and A.K. Sharma and Ors, for the Appellant; Sushil Kumar Jain, for the Respondent

Final Decision : Allowed

Judgement

K.S. Paripoornan, J.—Delay condoned. Leave granted

2. The Union of India, respondent in OA No. 204 of 1992 before the Central Administrative Tribunal, Jodhpur and the Railway Authorities, Northern Railway, have filed this appeal against the Order of the Tribunal dated February 22, 1993. The respondent herein as petitioner filed OA No.204 of 1992 praying for quashing the orders denying him employment on compassionate grounds and further prayed that appointment may be given to him. The Tribunal by the impugned Order quashed the orders assailed before it and directed the respondents to reconsider the application of the respondent/applicant for appointment on compassionate grounds and provide him with an appointment, if he is otherwise found suitable within three months. Hence, this appeal by the Union of India and the Railway Authorities, Northern Railway.

3. We heard Dr. Anand Prakash, Senior Advocate who appeared for the appellants and Mr. Sushil Kumar Jain, Advocate for the respondent. The facts of this case lie in a narrow compass. One Ram Singh, a Senior Clerk in the Railways died on September 12, 1972 leaving behind his wife, two major sons and the

respondent who was a minor aged 12 years then. The respondent passed the Higher Secondary Examination in 1983. Stating that he attained majority in 1980/1981, he sought appointment on compassionate grounds which was rejected by orders dated September 21, 1987, June 19, 1990 and June 11, 1991. The Authorities took the view that the application was beyond the period of limitation (five years), that the case of the respondent was not covered by the relevant rules, that at the time of demise of Ram Singh, there were two major sons of the deceased who did not seek employment and that the family was not in financial distress. The Central Administrative Tribunal referred to the last order dated June 11, 1991 wherein it was stated that since there were two brothers of the applicant who were majors at the time of demise of the father, an appointment on compassionate grounds could not be considered and held that the other reasons stated earlier - bar of limitation and that the respondent will not be covered by the rule, have been given a go-bye. It was further held that the rejection of the application of the respondent simply on the ground that two elder brothers of the applicant / respondent, who were majors, were available at the time of the death of the father, was unjustified and, therefore, at the time of the death of the father, was unjustified and, therefore, the application of the respondent should be reconsidered and an appointment on compassionate grounds should be provided, if the respondent is otherwise qualified.

4. Appellant's counsel laid stress on Rule V contained in the communication dated December 12, 1990 and contended that normally all appointments on compassionate grounds should be made within a period of five years from the date of occurrence of the event and, in no case, it should be more than 10 years from the date of the death. Further condition specified in the said communication is that the request for appointment on compassionate grounds should be received by the Railway Administration as and when the applicant becomes a major, say, within a period of one year.

According to the respondent, the above rules will not apply since Ram Singh died in 1972 and the respondent applied before the rules dated December 12, 1990 came into force. Counsel for the respondent contended that it is true that normally all appointments on compassionate grounds should be made within a period of five years from the date of occurrence of the event, but this period can be relaxed in exceptional cases.

5. It is common ground, that normally all appointments on compassionate grounds should be made within a period of five years from the date of occurrence of the event entitling the eligible persons to be appointed. In this case Ram Singh died on September 12, 1972. He left behind his wife, two major sons and the respondent, a minor aged 12 years then. The respondent attained majority in 1980/1981. There is no material on record to show that the respondent applied within 5 years of "the event" or within one year from the date of his attaining majority. As early as September 21, 1987 an application filed by the respondent was dismissed. The subsequent applications filed in that behalf were dismissed

on June 19, 1990 and June 11, 1991. There is material on record to show that the respondent was aged 33 years at the time of making the application and the last application which was allowed by the Tribunal was one filed nearly 20 years after the death of Ram Singh. Patently the application is barred.

6. The facts of this case disclose that on the date when Ram Singh died (September 12, 1972) he had, besides the respondent, who was a minor then, two major sons and a wife. The two major sons and the wife did not seek any appointment on compassionate grounds. As stated by this Court in *Smt. Sushma Gosain and Others Vs. Union of India (UOI) and Others*,

... in all claims for 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 appointment should, therefore, be provided immediately to redeem the family in distress.

(emphasis supplied)

7. the above decision was followed in *Smt. Phoolwati Vs. Union of India and Others*, . The reason for making compassionate appointment, which is exceptional, is to provide immediate financial assistance to the family of a Government servant who dies in harness, when there is no other earning member in the family. Matters which should be considered while giving an appointment in public services on compassionate grounds have been laid down by a Bench of this Court in *Umesh Kumar Nagpal v. State of Haryana* 1995 1 LLJ 798 to the following effect: at para 2, p. 799

As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible.

Neither the Governments or the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependents of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure 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 who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the

family of the deceased, and it is only if 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...

(emphasis supplied)

It is settled law, that even if the Court reaches the conclusion that the applicant has made out a case, all that the High Court or Administrative Tribunal can do, is only to direct the authority concerned to consider the claim of the applicant in accordance with relevant law or rules, if any. (See: State of Haryana Vs. Naresh Kumar Bali,

8. It is evident, that the facts in this case point out, that the plea for compassionate employment is not to enable the family to tide over the sudden crisis or distress which resulted as early as September 1972. At the time Ram Singh died on September 12, 1972 there were two major sons and the mother of the children who were apparently capable of meeting the needs in the family and so they did not apply for any job on compassionate grounds. For nearly 20 years, the family has pulled on, apparently without any difficulty. In this background, we are of the view that the Central Administrative Tribunal acted illegally and wholly without jurisdiction in directing the Authorities to consider the case of the respondent for appointment on compassionate grounds and to provide him with an appointment, if he is found suitable. We set aside the order of the Tribunal dated February 22, 1993. The appeal is allowed. There shall be no order as to costs.