

SUPREME COURT OF INDIA

Union of India

Vs.

Joginder Sharma

C.A.No.6415 of 2002

(Doraiswamy Raju and Shivaraj V. Patil JJ.)

30.09.2002

JUDGMENT

D. Raju, J.

1. Leave granted.

2. The respondent's father, late Umed Singh, working as a Security Guard in the office of NOIDA Export Processing Zone, Ministry of Commerce, died on 20.02.1999, while in service. Claiming to be entitled to compassionate appointment in Group 'C' or Group 'D' vacancies of Post, under the policy in vogue the respondent applied for such appointment, on 3.3.1999. Since the appointments on compassionate grounds could be only against the 5 per cent of the vacancies arising, the request for his appointment could not be complied with, the percentage reserved therefor having been already exhausted and the Department of Personnel and Training also declining to relax the regulation relating to ceiling of 5 per cent, noticed above. The chances of accommodating elsewhere also were found to be remote, after exploring the possibility.

3. Consequently, the respondent approached the Central Administrative Tribunal, Principal Bench, New Delhi, in O.A. No.1636 of 2000 and by an Order dated 5.2.2001, a single Member directed the appellant herein to consider relaxing the limit or ceiling of 5 per cent in the Scheme and consider appointing the respondent against one of the posts available in the office of the Development Commissioner, subject, of course, to his fulfilling the required qualifications, etc., within a period of two months from the date of receipt of a copy of the order. An application, seeking for the review of the same, moved by the appellant also came to be dismissed. Earlier to the application for review, the application filed to set aside the order passed in the main O.A. ex parte came to be also dismissed. Resultantly, the appellant moved the Delhi High Court in W.P. No.5616 of 2001, challenging the order of the Tribunal. The Division Bench of the High Court also declined to interfere and dismissed the Writ Petition by an Order dated 26.09.2001. Hence, the appeal before this Court.

4. Heard the learned counsel for the appellant and the learned counsel for the respondent. The compassionate appointment is intended to enable the family of the deceased employee to

tide over the sudden crisis resulting due to death of the sole breadwinner, who died leaving the family in penury and without sufficient means of livelihood. If under the Scheme in force any such claim for compassionate appointment can be countenanced only as against a specified number of vacancies arising, in this case 5 per cent, which ceiling it is claimed came to be imposed in view of certain observations emanating from this Court in an earlier decision, the Tribunal or the High Court cannot compel the Department concerned to relax the ceiling and appoint a person. Since, this method of appointment is in deviation of the normal recruitment process under the rules, where people are waiting in queue indefinitely, the Policy laid down by the Government regarding such appointment should not be departed from by the Courts/Tribunals by issuing directions for relaxations, merely on account of sympathetic considerations or hardships of the person concerned. This Court as early as in the decision reported in *Life Insurance Corporation of India Vs. Asha Ramchandra Ambekar (Mrs.) & Anr.*¹ held that the Courts cannot direct appointments on compassionate grounds dehors the provisions of the Scheme in force governed by rules/regulations/instructions. If in a given case, the Department of the Government concerned declines, as a matter of policy, not to deviate from the mandate of the provisions underlying the Scheme and refuses to relax the stipulation in respect of ceiling fixed therein, the Courts cannot compel the authorities to exercise its jurisdiction in a particular way and that too by relaxing the essential conditions, when no grievance of violation of substantial rights of parties could be held to have been proved, otherwise.

5. So far as the case on hand is concerned, both the Tribunal as well as the High Court seem to have fallen into great and same error. A mere recommendation or expression of view by an authority at the lower level that if relaxation is accorded, there is scope for appointment does not obligate the Competent Authority to necessarily grant relaxation or that the Courts/Tribunals can compel the Competent Authority to grant relaxation. The reasons assigned by the High Court to reject the challenge made by the appellant, seem to be no reasons in the eye of law apart from they being totally oblivious to the very stipulations in the Scheme and the very object underlying the Scheme of making appointments on compassionate grounds. Where the question of relaxation is in the discretion of an authority in the Government and not even in the realm of any statute or statutory rules but purely administrative and that authority as a matter of policy declines to accord relaxation, there is hardly any scope for the Tribunal/Court to compel the exercise to grant relaxation. The two factual instances, sought to be relied upon, on behalf of the respondent, have been properly explained by the appellant to be not really and in substance a deviation from the general policy not to relax so as to alter the ceiling and create more than the stipulated number of vacancies, to appoint persons on compassionate grounds.

6. For all the reasons stated above, the Order of the Tribunal, as affirmed by the High Court in this case, cannot be sustained. The appeal is allowed and the Orders of the High Court, affirming the directions issued by the Tribunal, are set aside. No costs.

¹(1994) 2 SCC 718