

MUKESH KUMAR
v
UNION OF INDIA AND ORS.

A

SEPTEMBER 5, 2007

[DR. ARIJIT PASAYAT AND D.K. JAIN, JJ.]

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Service Law:

Compassionate appointment—Employee took retirement on medical ground when his son was minor—Son, after attaining the age of majority and minimum qualification, applied for appointment on compassionate grounds—Application rejected by authority—Appeal affirmed by appellate authority—O.A. dismissed by Central Administrative Tribunal—Challenge to—Dismissed by High Court—On appeal, Held: There is no indication as to the material on the basis of which the authorities rejected the application for appointment holding that the family of the applicant was not in financially indigent conditions—Both the Courts below also proceeded on factually erroneous premise in rejecting the petitions—Hence, orders of the Courts below set aside and matter remitted to CAT for adjudication afresh—Directions issued.

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Father of the appellant who was serving in the Posts and Telegram Office took retirement on medical ground; at that time, appellant was a minor. Appellant, after passing the school Board examinations, filed an application seeking appointment on compassionate ground. The application was rejected by the Post Master General on the ground that family of the applicant was not found to be financially in indigent condition. Aggrieved, the appellant filed an appeal before the Director General, Post Office, who had rejected the same. The appellant moved Central Administrative Tribunal by filing an OA, which was rejected by CAT on the ground that there was inordinate delay of 15 years in filing the application. The writ petition filed by the appellant, questioning correctness of the order of the CAT, was dismissed by the High Court. Hence the present appeal.

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Appellant contended that both CAT and the High Court proceeded on a factually incorrect premise; and that immediately after passing the Senior Secondary Examination, he had filed an application seeking appointment on compassionate ground for the post of clerk.

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A Respondent submitted that for compassionate appointment the consideration is urgent financial needs. As the appellant was continuing his studies even after retirement of his father, it has to be presumed that the family was not in indigent condition.

Allowing the appeal, the Court

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HELD: The appellant's application for compassionate appointment was rejected on the ground that the family was not found to be in financially indigent condition. There is no indication as to the material on the basis of which the conclusion was arrived at by the authorities. It is also not clear as to what were the materials placed before the Circle Level Selection Committee to conclude that the family was not in financially indigent condition. To add to it, both CAT and the High Court proceeded on factually erroneous premise, as has been highlighted by the appellant and noted by this Court. The orders of the Central Administrative Tribunal and the High Court are set aside. The matter is remitted to the Central Administrative Tribunal for fresh hearing.

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[714-A, B, C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4058 of 2007.

From the final Judgment and Order dated 18.03.2005 of the High Court of Punjab and Haryana at Chandigarh in Civil Writ Petition No. 20292 of 2004.

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Pradeep Gupta and K.K. Mohan for the Appellant.

Mohit Chaudhary, Rajni Ohri, V.K. Verma, Manish Jain and Puja Sharma for the Respondents.

The Judgment of the Court was delivered by

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DR. ARIJIT PASAYAT, J. 1. Leave granted.

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2. Challenge in this appeal is to the order dated 18.3.2005 passed by the Division Bench of the Punjab and Haryana High Court dismissing the writ petition filed by the appellant. By the said writ petition, the appellant had challenged correctness of the order passed by the Central Administrative Tribunal, Chandigarh Bench (hereinafter referred to as 'CAT') dismissing his Original Application (in short 'OA').

3. Background facts in a nutshell are as follows:

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The appellant's father retired on medical grounds and was receiving

invalid pension. At the relevant point of time, the appellant was minor and was studying in school. He appeared in Punjab School Education Board Senior Secondary (12th class) Examination, which was held in the month of March, 1997. The result of the examination was declared on 19th May, 1998. Thereafter, the appellant filed an application for the post of clerk seeking compassionate appointment. His date of birth is 12th June, 1980. The application was made on 20th July, 1998. The application was rejected by the Post Master General, Punjab Region, Chandigarh by order dated 18.10.1999. The application was rejected only on the ground "family was not found to be financially in indigent condition".

4. An appeal was filed before the Director General, Post Office, New Delhi, wherein it was stated that the father of the appellant was getting Rs.1783/- per month, was bed-ridden for more than 11 years due to paralytic attack and the appellant had no moveable and immovable property anywhere in the country and was not employed anywhere. The appeal was rejected. The appellant moved Central Administrative Tribunal by filing an OA, which was rejected on the ground that there was inordinate delay of 15 years in filing the application. The writ petition questioning correctness of the said order, as noted above, was dismissed by the High Court.

5. Learned counsel for the appellant submitted that both CAT and the High Court proceeded on a factually incorrect premise. CAT proceeded on the basis as if father was rendered unfit medically because of paralytic attack in 1988 and was retired in 1988. Actually and indisputably, the father had retired in 1994. The application made by the appellant was rejected in 1999 and the appeal was dismissed by order dated 17th February, 2000. Therefore, the question of 15 years' delay did not arise. The High Court proceeded on the basis as if the appellant's father had died in 1994 and the claim for compassionate appointment was raised for the first time after about ten years. In fact the father had not died and had retired and the application was not made after about ten years. In fact, immediately after passing the Senior Secondary Examination, the application was made for the post of clerk since the minimum qualification was passing of Senior Secondary Examination, which was held in the year 1997 and the result was declared in May, 1998. The application was made immediately thereafter. In essence, it is submitted that the findings recorded by the CAT and the High Court are unsustainable.

6. In response, the learned counsel for the respondent submitted that for compassionate appointment the consideration is the need to urgent financial

A needs. As the appellant was prosecuting studies after his father's retirement, it has to be presumed that the family was not in indigent condition. It is to be noted that the appellant's application was rejected on the ground that the family was not found to be in financially indigent condition.

B 7. There is no indication as to on the basis of which materials the conclusion was arrived at. It is also not clear as to what were the materials before the Circle Level Selection Committee to conclude that the family was not in financially indigent condition. To add to it, both CAT and the High Court proceeded on factually erroneous premises, as has been highlighted by the appellant and noted supra. Above being the position, the appeal deserves to be allowed, which we direct. The orders of the Central Administrative Tribunal and the High Court are set aside. The matter is remitted to the Central Administrative Tribunal, Chandigarh Bench for fresh hearing. Parties shall be permitted to place materials in support of their respective stand.

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8. The appeal is accordingly allowed with no order as to costs.

D S.K.S.

Appeal allowed.