

—

—

□ □

—

—

—

1

1

—

-
-
-
-
-
-
-
-
-
ORDER:- (per Hon'ble Sri Justice G. Chandraiah)

The State has filed this writ petition challenging the order dated 29.10.2001 passed in O.A.No. 4328 of 2001 by the Andhra Pradesh Administrative Tribunal, Hyderabad (for brevity "the Tribunal).

For the sake of convenience, the parties are referred to as they are arrayed in O.A.No. 4328 of 2001.

The brief facts of the case are that the second applicant is the son of the 1st applicant. The 1st applicant, while working as Superintendent in the office of the 2nd respondent-Pay and Accounts Officer, submitted an application dated 30.10.1995 seeking permission to retire on medical invalidation and also for compassionate appointment to his eldest son i.e. the 2nd applicant in accordance with the orders issued by the Government in G.O.Ms.No. 504, dated 30.07.1980 read with G.O.Ms.No. 309, dated 04.07.1985. The 2nd respondent, on certification by the Medical Board that the 1st applicant was completely and permanently incapacitated for further service on account of "Ischemia Heart Disease and

Hypertension”, issued proceedings dated 24.12.1996 permitting him to go on voluntary retirement on medical invalidation with effect from 24.12.1996 and the age of the 1st applicant as on the date of his retirement was 51 years and 10 months and he had left over service of 6 years and two months. Subsequently, the Government issued Memo dated 24.02.1997 intimating that the proposal to appoint the

2nd applicant cannot be considered on the ground that there were many people who worked in the Government suffering from heart disease and blood pressure. Then, the

1st applicant submitted a representation dated 25.03.1997 requesting the Government to reinstate him into service so as to enable him to look after financial needs of his family as he was the only earning member, but the Government, vide Memo dated 18.06.1997, rejected his request. Further, on the letter dated 24.11.1998 addressed by the 2nd respondent requesting the Medical Board to re-examine the 1st applicant as per the orders of the Government in G.O.Ms.No.214, dated 09.06.1998, the Regional Medical Board, Osmania General Hospital, having re-examined the 1st applicant, issued medical certificate on 30.07.1999 certifying that he is permanently incapacitated for further service in the Department as he has Hypertension with Inferior Wall Isremis (CAD) and has

Degenerative Arthritis of Knees and Cervical Spondylosis.

Subsequently, the Government issued Memo dated 12.05.2000 whereby the State Level Committee confirmed the orders of retirement, but did not recommend for compassionate appointment of the 2nd applicant. Questioning this Memo, the applicants filed O.A. No. 7239 of 2000, and the Tribunal, by order dated 24.11.2000, allowed the O.A. with a direction to the respondents-Government to consider the case of the

2nd applicant for compassionate appointment in terms of G.O.Ms.No. 214, dated 09.06.1998 based on his eligibility and suitability. In pursuance of the order of the Tribunal, the

1st respondent-Government considered the case of the 2nd applicant and rejected for compassionate appointment by proceedings dated 02.03.2001 on the ground that there is inconsistency in the medical certificates issued by the Medical Board. Challenging the proceedings dated 02.03.2001, the applicants filed O.A.No. 4328 of 2001 before the Division Bench of the Tribunal consisting of the Acting Chairman and the Administrative Member, and by order dated 29.10.2001, while the Acting Chairman allowed the O.A. by setting aside the impugned order dated 02.03.2001 issued by the 1st respondent, the Administrative Member dismissed it. As there was difference of opinion between them, the

matter was referred to a Judicial Member, who has concurred with the judgment of the Acting Chairman and accordingly allowed the O.A. Now, the grievance of the State is that the Judicial Member of Tribunal has erred in allowing the O.A. in deviation of the existing policy of the Government. Hence, the present writ petition is filed seeking to quash the impugned order.

The learned Government Pleader for Services-II appearing for the petitioners has submitted that the Tribunal, in deviation of the judgment of the Supreme Court reported in **State of Himachal Pradesh v. Jafli Devi**^[1], and against the policy laid down by the employer regarding compassionate appointment, allowed the O.A. while reviewing the action of the 1st respondent arising out of such policy, as such, the impugned order is liable to be set aside.

We have carefully perused the order under challenge. When the views expressed by both the Acting Chairman and the Administrative Member of the Tribunal in the order passed in O.A.No.4328 of 2001 differed, the matter was referred to the Judicial Member, who, after considering various aspects in the light of the referred Government Orders, has rendered his opinion which is in complete agreement with that of the Acting Chairman. Even though, the 1st applicant did make it clear in his representation dated 11.03.1997 that his wife was

suffering from T.B. and he had no sufficient source of income to maintain his family, the order passed by the Acting Chairman in O.A.No. 4328 of 2001 specifies that the Government did not enlist any material that was before them to establish that the family of the applicants was not in economic distress. In other words, the order dated 02.03.2001 issued by the Government which is impugned in O.A.No. 4328 of 2001 does not indicate anywhere to the effect that anyone of the family members including the children of the 1st applicant are employed even in private service leave off Government Service and their source of income is also not mentioned anywhere. Further, it is not justifiable on the part of the Government to allege that there is inconsistency between the two medical certificates by observing that the second medical report does not reflect that the 1st applicant suffered from heart disease inasmuch as while certificate dated 30.11.1996 discloses that the

1st applicant suffered from "Ischemia Heart Disease and Hypertension", the second medical report dated 30.07.1999 though does not reflect the same, it shows that he suffered from Hypertension with Inferior Wall Ischemia (CAD) and has Degenerative Arthritis of Knees and Cervical Spondylosis". In spite of the fact that there is apparent variation in the second report, the Medical Board has otherwise amply certified in both the medical reports

that the 1st applicant is permanently incapacitated for rendering further service in the Government and this aspect of the matter has not been taken into consideration by the Government while rejecting the case of the 2nd applicant for compassionate appointment. Also, it is to be taken note of that the Tribunal never directed the Government to pass orders with regard to validity of the retirement of the 1st applicant, but taking into account the factual and legal position, it observed that it is open for the Government to consider the case of the 2nd applicant for compassionate appointment to any post depending on the eligibility and suitability of the 2nd applicant and pass appropriate orders, but the Government, without applying its mind, rejected the case of the 2nd applicant. That apart, the rejection of the 2nd applicant's request for compassionate appointment is impermissible in view of Section 45 of the Indian Evidence Act inasmuch as the Government, in the instant case, gave its opinion evidence and based on which, rejected the appointment of the 2nd applicant.

On the above analysis, it can be safely concluded that the Tribunal, as alleged by the State, has nowhere deviated the existing policy of the Government while reviewing the action of the Government. Further, inasmuch as the law is well settled that majority opinion prevails, the opinion rendered by the Judicial Member,

which is in complete agreement with that of the Acting Chairman of the Tribunal, in our considered view, is justifiable and does not warrant interference by this Court.

Hence, the writ petition filed by the State does not merit consideration and the same is accordingly dismissed. No order as to costs.

As a sequel to the dismissal of the writ petition, Miscellaneous Petitions, if any pending, shall stand disposed of as infructuous.

G. CHANDRAIAH, J

05.01.2016

**U.DURGA PRASAD
RAO,J**

bcj

[\[1\]](#) 1997(5) SCC 301