

Central Adminisrative Tribunal
Principal Bench

O.A.No.2698/2002

Hon'ble Shri Shanker Raju, Member(J)

New Delhi, this the 16th day of July, 2003

Bimlesh
w/o late Sh. Naresh
r/o C/o Sh. Aidal Singh
Opposite Dayal Public School
Sanjay Nagar
Meerut (UP).

... Applicant

(By Advocate: Sh. G.D.Bhandari)

Vs.

1. Union of India through
The Secretary
Ministry of Defence
South Block
New Delhi.
2. The Deputy Director General
Military Farms
QMG Branch, West Block-III
R.K.Puram
New Delhi.
3. The Commandant
Central Command
Lucknow (UP).
4. The Additional Director
Military Farms
Mawana Road
Meerut Cantt.,
Meerut (UP). ... Respondents

(By Advocate: Sh. A.K.Bhardwaj, through Sh.
M.K.Bhardwaj)

O R D E R

By Shri Shanker Raju, M(J):

Applicant impugns respondents' order dated 17.4.2002 whereby her request for compassionate appointment as well as for grant of temporary status has been turned down. Quashment of the aforesaid order has been sought.

2.. Applicant, who is a widow of Late Sh. Naresh who was working as Group 'D' employee in Military Farm died in harness on 8.6.2000. The family

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consists of widow and four minor children.  They were not granted any settlement dues on account of short service of the applicant of five years.

3. Applicant has applied for compassionate appointment and has been directed to file an affidavit regarding non-possession of movable and immovable property in the name of the deceased. Accordingly, respondents, keeping in view of the indigent condition of the family, engaged her as Farm Hand on job basis pending further consideration for compassionate appointment.

4. As neither the compassionate appointment was accorded nor her services were regularised, Applicant filed OA 332/2002 before this Court. By an order dated 7.3.2002 directions have been issued to respondents to consider the case of applicant for compassionate appointment and in the meanwhile grant her temporary status within a period of three months.

5. Applicant, in pursuance thereof, submitted an application on 4.4.2002 and the matter was referred to Tehsildar for inquiry and it was certified that applicant did not own any movable or immovable property in the name of the deceased employee.

6. By the impugned order, her claim for compassionate as well as accord of temporary status was turned down, giving rise to the present OA.



7. Shri G.D.Bhandari, learned counsel

appearing on behalf of applicant, contends that as per DoPT's OM of 9.10.1998, regarding guide-lines on compassionate appointment, the same cannot be offered, on casual basis, but should be accorded on regular basis against regular vacancies, that too against 5% quota falling under the quota of direct recruitment.

8. It is further stated that the aforesaid ceiling cannot be circumvented by making appointment of the family members on casual basis. It is, in this background, stated that if the vacancies are not available in the particular office, it is open to take up the matter with other Ministries/Department.

9. Shri Bhandari relying upon the decision of Apex Court in Balbir Kaur v. Steel Authority of India Ltd., 2000(6) SCC 493 contends that mere payment of terminal benefits would not be an impediment for grant of compassionate appointment as the family is indigent, and in severe financial crisis, to tide over the same, she should have been accorded the compassionate appointment.

10. Regarding reasons recorded by the respondents, it is stated that the non-availability of vacancies cannot be a ground to deny her compassionate appointment as ban and reduction in strength cannot be a valid defence. As a vacancy, occurred due to death of the husband of the applicant, is still available, she could have been adjusted on the same.

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11. Moreover, it is stated that the applicant has been working as Farm Hand, on job basis, for the last two years, drawing a presumption that the vacancy is in existence.

12. Lastly, it is contended that the rejection of request for compassionate appointment is without application of mind and violates Articles 14 and 16 of the Constitution of India. It is, in this background, stated that no details of other applicants, who have been accorded the compassionate appointment, have been mentioned to substantiate the aforesaid. The case of the applicant is most deserving, accordingly, rejection is not sustainable in law.

13. On the other hand, Sh. A.K.Bhardwaj, through Sh. M.K.Bhardwaj, learned counsel on behalf of respondents, vehemently opposed the contentions and stated that compassionate appointment cannot be claimed as a right. As no vacancy had occurred in Military Farm since 8.6.2000, and as per the instructions of DoPT waiting list is to be kept only for a year and the case of applicant was referred to the competent authority, and due to non-availability of vacancy within 5% quota falling under direct recruitment quota, compassionate appointment was rightly denied.

14. It is further stated that in Military Farm, in view of the recommendations of Fifth Central Pay Commission, to stream-line manpower and their interest of the state, as the work had already been

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reduced, and the existing staff was declared surplus to make the organisation more cost effective, the number of posts available for compassionate ground have come down considerably. Accordingly, it is not possible to provide compassionate appointment immediately to all the cases in absence of any vacancy available in the quota, and as the latest instructions of the DoPT precludes consideration in other Ministries/Department, on a purely compassionate view, applicant was offered job on casual basis.

15. In so far ass the temporary status is concerned, it is contended that applicant, who was not in engagement on 1.9.1993, DoPT Scheme of 10.9.1993 being declared as one-time measure, she cannot be considered for temporary status or regularisation under the aforesaid Scheme.

16. In the rejoinder, applicant reiterated her pleas taken in the OA.

17. I have carefully considered the rival contentions of the parties and perused the material on record.

18. As per Clause 6 of the DoPT's Scheme of 10.9.1993, compassionate appointment is exempted, from the requirement of either Staff Selection Commission or Employment Exchange, and there is no requirement of clearance from the surplus cell. Ban orders on filling up of posts issued by the Ministry of Finance would not be applicable in case of compassionate appointment.



19. Clause 5 of the Scheme ibid as eligibility condition lays down that the family should be indigent and deserves immediate assistance to tide over financial destitution as well as eligibility of the persons concerned is mandated.

20. Para 7 of the Scheme provides that appointment on compassionate ground should be only on regular basis against regular vacancies. Though the ceiling of 5% is there but it could not be circumvented by making appointment on dependant family members on casual basis or ad hoc basis against regular vacancies.

21. I am also conscious of jurisdiction as to relaxing the ceiling limit of 5% which is at the discretion of the authority concerned as held by the Apex Court in Union of India v. Joginder Sharma, 2002 SCC (L&S) 1111.

22. DoPT's OM dated 22.6.2001 limits in-compassionate appointment availability of vacancies and consideration in other Ministries/Departments has been discontinued. The Committee is to recommend the appointment only in deserving cases and if the vacancy is meant for such appointment is available within a year that too in concerned Ministry/Department or Office within the quota of 5% for direct recruitment.

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23. It is also not disputed that applicant's case, as per the Committee, has been found deserving, and on compassionate basis, she had been offered work on casual basis as Farm Hand, pending consideration of her request.

24. This Court has no jurisdiction to order for creation of supernumerary post for such appointment even in most deserving cases.

25. Respondents' plea, for want of available vacancy, is on the strength that to streamline, manpower in the larger interest of Department, staff of all Military Farm has been reduced to make the organisation more cost effective which consequent upon as no vacancy on reduction of post available for appointment on compassionate ground considerably. However, the existing or non-existing vacancy/post has not been reflected either in the order or in the reply filed by the respondents.

26. I find that on the death of the husband of the applicant, a vacancy had arisen in the Department in Group 'D' posts, and undisputedly the same has been unfilled. It is also notable that the applicant was appointed as Farm Hand on job work basis, and this should not have been done unless a vacancy of Farm Hand in Group 'D' was available. The contention putforth by respondents that there is no vacancy occurred since 8.6.2000, on the face of it, cannot be countenanced as the vacancy on the death of husband of the applicant, occurred on 8.6.2000. However, no right can be claimed by a compassionate

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appointee to a post. However, I find that if a regular vacancy was available at that time, the respondents should not have circumvented it by making appointment of the applicant on casual basis. It is also not disputed that the applicant fulfills the eligibility criteria laid down.

27. The object of compassionate appointment, which is on the basis of study report on welfare measure for the Central Government employees, on employment on compassionate grounds is to relieve the family, who has been left in penury by the Government servant and was dependant on him to get over the financial destitution as well as emergency. Keeping in view of the five years service of the deceased and a meagre sum paid as benefits, and the fact that the family has four minor children and a widow, who were fully dependent on the deceased, in my considered view, the family is indigent and most deserving to be considered for compassionate appointment.

28. However, respondents contend that the applicant was offered engagement on casual basis, and would be considered as and when work is available. Her right of regularisation, on completion of 240/206 days in two consecutive years, is independent under DoPT's OM of 7.6.1988. However, the aforesaid prayer has not been made in the present OA. However, I hope that being a welfare state and a model employer, respondents would adhere to what they have stated in the reply.

29. In so far as the ground of no vacancy in the Military Farm occurring since 8.6.2000 in absence of particular and specific details, the order passed in the present form cannot be sustained.

30. Keeping in view that the present is a peculiar case and most deserving. Having regard to the vacancy, occurred on the death of husband on 8.6.2000, as well as applicant having worked against Group 'D' post, the matter requires reconsideration as a special case.

31. In the result, for the foregoing reasons, OA is partly allowed. Impugned order is quashed and set-aside. Respondents are directed to reconsider the request of the applicant for accord of compassionate appointment in the light of the above observations within a period of three months from the date of receipt of a copy of this order by passing a detailed and speaking order. No costs.

S. Raju
(Shanker Raju)
Member(J)

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