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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 3319/2002
with
OA 3320/2002

New Delhi this the 12 th day of January, 2004

Hon'ble Shri Shanker Raju, Member (J)

OA 3319/2002

1. Virenderr Singh,
S/O late Shri Bhagat Singh,
R/O A-9, Jorbagh Fire Station,
New Delhi.

2. Smt. Prem Devi,
W/O late Shri Bhagat Singh,
R/O A-9, Jorbag Fire Station,
New Delhi.

..Applicants

(By Advocate Shri S.K.Gupta)

VERSUS

1. Govt.of NCT of Delhi,
Through Chief Secretary,
Delhi Secretariat, IG Stadium,
I.P.Estate, New Delhi.

2. Secretary (Services),
Govt.of NCT of Delhi,
Delhi Secretariat, IG Stadium,
I.P.Estate, New Delhi.

3. Chief Fire Officer,
Delhi Fire Service,
Fire Headquarters,
Connaught Circus, New Delhi.

..Respondents

(By Advocate Shri Vijay Pandita)

OA 3320/2002

1. Shri Vipin Saxena,
S/O late Sh.B.R.Saxena,
R/O A-4, Connaught Circus
Fire Station, New Delhi-1

2. Smt.Usha Saxena,
W/O late Sh.B.R.Saxena,
R/O A-4, Connaught Circus
Fire Station, New Delhi-1

..Applicants

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O R D E R

Hon'ble Shri Shanker Raju, Member (J)

As identical questions of facts and law are involved, OA 3319/2002 and OA 3320/2002 are being disposed of by this common order.

2. In OA 3319/2002 the applicant impugns respondents order dated 7.12.2002 rejecting his request for compassionate appointment. Applicant, son of deceased driver with the respondents after undergoing physical measurement and endurance test, was cleared as per the Recruitment Rules for the post of Fire Operator. He was interviewed as well. His case was rejected, on the ground that he could not come within the quota of 5% direct recruitment for compassionate appointment.

3. In OA 3320/2002 also, the case of the applicant son of deceased Sub - Officer who had died in harness after qualifying the physical and endurance test for the post of Fire Operator request for compassionate appointment was rejected vide order dated 7.10.2002 as his case could not come within the ceiling of 5% of vacancies under the direct recruitment quota. The aforesaid orders have given rise to these OAs.

4. Learned counsel of the applicants Shri S.K.Gupta in both the cases contends that although taking into account the consolidated posts and filling as one unit in Delhi Administration, the quota of 5% meant for direct recruitment for compassionate appointment cannot be filled up in such a manner as to deprive the applicants their right for consideration on compassionate appointment in Delhi Fire Service.

5. It is also stated that the applicants have undergone endurance test and are fit for the posts of Fire Operator and not even a single vacancy in the year 2000-01 and 2001-2002 meant for compassionate quota has been exhausted in the Delhi Fire Service. It is also stated that the applicants have been discriminated arbitrarily which is violative of Articles 14 and 16 of the Constitution of India.

6. On the other hand, Shri Vijay Pandita, taking resort to Apex Court judgement in UOI Vs. **Joginder Sharma** (2002(SCC (L&S) 1111) contend that the question of relaxing the ceiling limit of 5% being in the discretion of the authority concerned which is purely administrative and not statutory in nature, Tribunal or Court cannot compel the authority to accord relaxation by referring the Minutes of the meeting dated 12.7.2002 to consider the case of appointment on compassionate

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grounds. It is stated that ex-cadre posts of Fire Operators require some specialized qualifications. Candidates eligible for these posts are few and if they are appointed, the situation may arise where a candidate having a better financial condition would be appointed on compassionate grounds which would be violative of very object of the Scheme.

7. It is further stated that the case of the applicants was considered twice but they were not offered appointment due to ceiling of 5% quota meant for compassionate appointment. In the meeting held on 12.7.2002, a total number of 471 cases were placed before the Committee, out of which 172 cases have been recommended, 121 cases were rejected and 178 fresh cases were reconsidered. The criteria folllowed is to give first priority to those who are living in indigent circumstances and having all children who are less than 12 years of age and no other sourcee of livelihood and thereafter to those who have minor children less than 18 years of age and no other source of employment.

8. I have carefully considered the rival contentions of the parties and perused the material on record. The embargo of one year waiting as laid down in the DOP&T OM issued in 1999 has been modified vide OM dated 5.5.2003 wherein the waiting period has been extended to two years in deserving cases as a review. The aforesaid clarification relates back to the date of

issuance as such the same is applicable in the case of present applicants. I also find from the criteria adopted by the respondents that Govt.of NCT of Delhi which comprises of various departments, has been treated as a single unit for recommending the case for compassionate appointment. This criteria is not being followed by various departments uniformly for consideration of compassionate appointment which inter-alia, includes Delhi Fire Service as well. On consideration for compassionate appointment, it is to ensure that each department should be benefited in so far as the claim for compassionate appointment is concerned within the ceiling of 5% quota.

9. In the result, for the foregoing reasons, I earnestly hope that the department would review the criteria so as to have the representation of all the departments for compassionate appointment. OAs stand disposed of with a direction to the respondents to consider the claim of the applicants for compassionate appointment as per the Govt.of India instructions contained in DOP&T OM dated 5.5.2003.

Let a copy of this order be kept in OA 3320/2002.

S. Raju

(Shanker Raju)
Member (J)

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