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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 2804 of 2002

New Delhi, this the 27<sup>th</sup> day of March, 2003

HON'BLE MR. KULDIP SINGH, MEMBER (JUDL)

Smt. Roshani Devi  
W/o Late Shri Bahadur Singh  
R/o Village Garhi Khasaro, Gurgaon,  
Haryana.

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-APPLICANT

(By Advocate: Shri B.S. Chaudhary)

Versus

1. Secretary,  
Ministry of Urban Development,  
Union of India,  
Nirman Bhavan,  
New Delhi.
2. Secretary,  
Ministry of Social Welfare,  
Government of NCT of Delhi,  
Old Secretariat,  
Delhi.
3. Chief Engineer Zone-2,  
Public Works Department,  
MSO Building 3rd Floor,  
I.P. Estate,  
New Delhi.
4. Superintendent Engineer  
Co-ordination Circle (Civil),  
CPWD Indraprastha Bhavan,  
New Delhi.

-RESPONDENTS

(By Advocate: Shri B.K. Berara)

O R D E R

By Hon'ble Mr. Kuldip Singh, Member (Judl)

Grievance of the applicant is that despite the fact that applicant's name has been listed as an eligible candidate for appointment on compassionate grounds but she has not been given the appointment whereas one another lady who is junior to her in the list had been given appointment.

2. Facts in brief are that the applicant's
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8

husband Late Shri Bahadur Singh was working in CPWD, Division-IV as a Carpenter, who died while in harness. The applicant made an application for grant of appointment on compassionate grounds and she received a letter dated 15.9.97 vide which her candidature was approved for appointment on compassioante grounds. However, after receiving the said letter Annexure-A-2, the applicant kept on waiting for appointment. She also sent reminders but she was informed vide letter dated 12.7.2000 that her name stands at S.No.47 and appointment letter will be issued by the Superintending Engineer (Co-ordination) only when her turn comes but till date she has not been appointed.

3. The applicant further allege bias that one lady Smt. Kamla Devi was given appointment on out of turn basis by jumping the waiting list whose number was lower in the waiting list, so she should also be given the job.

4. Respondents are contesting the OA. The respondents in their reply submitted that the name of the applicant had been approved for grant of appointment on compassionate grounds, but as far the revised policy is concerned, the waiting list has been re-arranged and the name of applicant stands at S.No.62 and the seniority is to be counted from the date of death of Government servant and since the quota for appointment on

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compassionate grounds is 5% and as sufficient number of vacancies have not become available, as such no appointment has been offered to the applicant as her turn has not yet matured.

5. However, as regards appointment of Smt. Kamla Devi is concerned, it is submitted that said Smt. Kamla Devi had made a representation to the Hon'ble Minister for Urban Development for out of turn employment. The approval for out of turn appointment was accorded in view of extreme hardship she was facing due to loss of her husband, the only bread earner and within a span of one year she also lost her son so she was to take care of her family which included herself, twin infant grandsons and a young school going son, so in those circumstances the Hon'ble Minister exercised the discretion and granted her an appointment on out of turn basis.

6. Respondents further pleaded that since only 5% vacancies against direct recruitment quota can be filled up by direct recruitment so appointment will be given to her as soon her turn matures up.

7. I have heard the learned counsel for the parties and given my thoughtful consideration.

8. The main ground taken up by the applicant is that since persons junior to him standing in the waiting list has been given appointment so she is also entitled

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for appointment. Though the reply as given by the respondents even justified the appointment given to Smt. Kamla Devi on out of turn basis but the fact remains that the name of the applicant stands at S.No.62 so there are 61 persons over and above her. The exercise of discretion by the Hon'ble Minister for favouring of appointment to Smt. Kamla Devi do not appear to be proper exercise of discretion probably the staff working with the Hon'ble Minister have not placed proper facts before the Hon'ble Minister which has resulted in improper exercise of discretion on the part of the Hon'ble Minister to grant compassionate appointment to Smt. Kamla Devi. Because once the department has approved the candidature of the applicant for grant of appointment on compassionate grounds then probably all the candidates whose names have been approved stand on equal footing. Thus further exercise of discretion in favour of Smt. Kamla Devi appears to be a result of misleading of facts by the staff of the Hon'ble Minister but merely on that ground this court cannot direct the respondents that the applicant should also be given a job by jumping the queue and ignoring the case of those persons who are senior enough to the applicant in the waiting list and in this case merely by comparing the applicant with Smt. Kamla Devi, this court cannot direct the respondents to give appointment to the applicant then this court should also be falling in the same trap as the Hon'ble Minister has done. The lapse committed by executive cannot be precedent for judicial system to

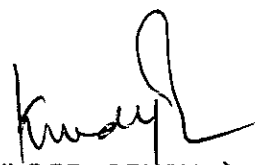
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commit similar lapses.

9. Thus I am of the considered opinion that since there are no vacancies available so the applicant cannot be granted appointment on compassionate grounds as appointment on compassionate grounds can be granted only <sup>2</sup>upto 5% vacancies against direct recruitment quota. Since no such vacancy is available, so no directions can be given to the respondents. However, when applicant's turn matures she should be offered appointment in accordance with rules.

10. In view of the above, there is no merit in the OA and the same is dismissed. No costs.

  
( KULDIP SINGH )  
MEMBER(JUDL)

/Rakesh