

Central Administrative Tribunal
Principal Bench

D.A. No. 2444/2001

New Delhi this the 24th day of May, 2002

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Hon'ble Shri Shanker Raju, Member (J).

Rishipal,
S/o late Shri Sukhbir Singh,
R/o Qr. No. J-6/53, Ordnance Factory,
Murad Nagar (UP)
Presently residing at 7/113,
Trilok Puri,
Delhi-91.

... Applicant.

(By Advocate Shri D.S. Mahendru, proxy for Shri S.K. Anand)

Versus

Union of India through

1. The Secretary,
Ministry of Defence,
South Block,
New Delhi.
2. The General Manager,
Ordnance Factory,
Murad Nagar,
Delhi.

... Respondents.

(By Advocate Shri S.M. Arif)

O R D E R (ORAL)

Hon'ble Shri Shanker Raju, Member (J).

Heard the parties. In view of the decision of the Apex Court in **Himachal Road Transport Corporation Vs. Dinesh Kumar** (JT 1996 (5) SC 319) reiterated in **Hindustan Aeronautics Limited Vs. Smt. A. Radhika Thirumalai** (JT 1996 (9) SC 197), denial of compassionate appointment for want of vacancies by the petitioners therein has been found to be justified and legally tenable.

2. The applicant, who is an elder son of the deceased physically handicapped servant, is supported by his two younger brothers, who are unfortunately handicapped. It is contended that the amount which has been accorded to them as retiral benefits is not sufficient for upkeep of their family and their immediate financial assistance as the family being indigent. It is contended that in the respondents' order dated 6.6.2001, it has been observed that the case of the applicant for accord of compasionate apointment is not covered under the present Scheme, as such it is cancelled and the applicant has no right to get a compassionate appointment. While referring to the reply filed on behalf of the respondents, it is conended that the reasons for denying the compassionate appointment are different from what they have decided, that is, due to non-availability of vacancy within the ceiling of 5% of vacancies falling under direct recruitment quota, further by referring to clauses (e) and (f) of Para 7 of the DOP&T Scheme of 1998 pertaining to the compassionate appointment. It is further contended that not only the possibility of according compassionate appointment against the vacancies available under 5% quota is to be gone into by the respondents but also the vacancies in other Adminsitrative Ministries/Departments are also to be considered to be adjusted for according compassionate appointment. In this view of the matter, it is

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contended that the orders passed are bald and not in accordance with the Scheme.

3. Learned counsel for the respondents Shri S.M. Arif, denying the contentions of the applicant, stated that the applicant is only entitled for consideration for compassionate appointment and he has no right to be appointed as such. Learned counsel further stated that the case of the applicant for compassionate appointment has been considered in accordance with the DOP&T Scheme of 1998 which, inter alia, envisages ceiling of 5% vacancies failing under direct recruitment quota but the same was rejected by a speaking order and, therefore, the action is in accordance with the decision of the Apex Court (Supra).

4. I have carefully considered the rival contentions of the parties and perused the matter on record. In my considered view, the decision of the respondents through their letter dated 6.6.2001 does not suffer from any legal infirmity as the case of the applicant has been considered by them under the DOP&T Scheme but rejected on account of non-availability of the vacancy in the relevant quota. The aforesaid decision of the respondents gives support from the decision of the Apex Court where in similar circumstances the claim of the petitioners therein for compassionate appointment was rejected.

5. Having regard to the reasons recorded above as the case of the applicant was meticulously considered

as per the Scheme of the respondents, the order passed by the respondents does not require any interference. However, it is open for the applicant on availability of vacancies in the particular quota to seek appropriate remedy from the respondents in accordance with law.

6. As the applicant and his two brothers who are handicapped are in possession of Government accommodation and through the strength of the order passed by the Tribunal on 14.9.2001 are continuing and the undertaking given by the learned counsel for the applicant, further eight weeks is accorded to them to retain the accommodation. They are directed to vacate the same by 24.7.2002, failing which respondents have right to take appropriate proceedings against them in accordance with law.

7. O.A. is accordingly disposed of. No costs.

S. Raju
(Shanker Raju)
Member(J)

'SRD'