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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No.3469 of 2001

New Delhi, this the 27th day of September, 2002

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

1. Smt. Nirmal Jain
W/o Late Kamal Prasad Jain
R/o Bilas Chand Jain
3271 Arya Pura, Subzi Mandi,
Delhi.
2. Rajiv Jain
S/o Late Kamal Prasad Jain
R/o Bilas Chand Jain
3271 Arya Pura, Sabzi Mani
Delhi.

-APPLICANTS

(By Advocate: Shri Deepak Verma)

Versus

1. The Secretary,
Ministry of Defence,
South Block,
New Delhi.
2. Adjutant General Branch,
Army Hq.
West Block,
R.K. Puram,
New Delhi-110 066.
3. ADG. RVS (RV-I)
Q.M. Generals Branch,
Army Headquarters,
West Block-III,
R.K. Puram,
New Delhi-110066.
4. Senior Records Officer (SRO)
RVC Records,
P.B. 111,
Meerut Cantt.

-RESPONDENTS

(By Advocate: None)

O R D E R

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

Applicant No.1 is the widow of late Shri Komal Prasad Jain and applicant No.2 is the son of deceased Late Komal Prasad Jain who was employed by respondent No.2, and had died while in harness.



2. After the death of Late Komal Prasad Jain the applicant No.1 made an application for appointment of the applicant No.2 on compassionate grounds. The applicant No.2 was informed vide Annexure A-4 that his case had been considered and he had been listed at Sl.No.1 for compassionate appointment for the post of LDC and as soon as a vacancy for the post of LDC is released by AG's Branch, the name of applicant No.2 will be considered for the same. The applicant No.2 was also informed that Group 'D' vacancies (Syces and Sweepers) are available at present and in case he is interested for the same, a willingness certificate may be obtained from the applicant No.2 certifying that he is willing to work on any Group 'D' post at any of RV units, so that his name can be considered for Group 'D' post. But the name of the applicant No.2 has been considered and vide impugned order Annexure A-I the applicant No.1 was informed that since applicant No.2 had not sent any acceptance of Group 'D' post in RV unit by the given date, the offer to consider his case for Group 'D' post was finally dropped.

3. Besides that the applicant No.1 was also informed that as per the existing orders on the subject based on the judgment of Supreme Court, the cases where death of a Government servant took place more than a year ago do not warrant any consideration for compassionate appointment as such this office is unable to take any further action in this regard and as such the case of applicant No.2 for compassionate appointment was not considered.

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4. While challenging the impugned order the applicant has pleaded in the grounds that there are catena of cases which have held that in the matter of compassionate appointment, the plea of limitation cannot be accepted. Because of several assurances given by respondents that applicant No.2 is at S.No.1 for LDC, a legitimate expectation was born and the settled position of law is that compassionate appointment should be viewed with compassion and technicalities should not overtake the merits and the respondents cannot deny consideration for compassionate appointment.

5. I have heard the learned counsel for the applicant and gone through the records of the case.

6. The perusal of the counter-reply shows that the respondents had rejected the claim of the applicant on the basis of DOP&T OM No.14014/23/99-Estt.(D) dated 3.12.1999 which stated that the case cannot be processed further since the case had become more than one year old so his case could not be considered.

7. Shri Deepak Verma appearing for the applicant has also drawn my attention to the OM dated 3.12.1999. According to the respondents it is stated to have been issued based on the judgment of the Supreme Court. The said OM is reproduced hereinbelow for ready reference:-

"Subject: Time-limit for making compassionate appointment .

The undersigned is directed to refer to the Department of Personnel and Training Office Memorandum No.14014/6/94-Estt.(D) dated October 9, 1998 on the above subject and to say that the question of prescribing a time-limit for making appointment on compassionate grounds has received due consideration taking into

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account the ceiling of 5% of vacancies falling under direct recruitment quota in any Group 'C' or 'D' post prescribed in this regard in paragraph 7(b) *ibid* and the ruling of the Supreme Court that appointment on compassionate grounds can be made only if vacancies are available for the purpose (mentioned in paragraph 17(d)(*ibid*)). Accordingly, it has been decided that the committee prescribed in paragraph 12 *ibid* for considering a request for, appointment on compassionate grounds should take into account the position regarding availability of vacancy for such appointment and it should recommend appointment on compassionate grounds will be available within a year, that too within the ceiling of 5% mentioned above. This would ensure grant of compassionate appointment within a year. In respect of other really deserving cases the Committee should only recommend taking up the matter with other Ministries/Departments/Offices of the Government of India to consider those cases for appointment there as provided in paragraph 7(1)(*ibid*).

2. The instructions contained in the Office Memorandum dated October 9, 1998 stand modified to the extent mentioned above."

8. The perusal of this shows that a time limit has been fixed for making compassionate appointment. It is further stated in the said OM that the instructions contained in the OM dated 9.10.98 stands modified to the extent that the same is in conformity with the aforesaid instructions and compassionate appointment will be given only in deserving cases and that too has to be considered only if vacancy meant for appointment on compassionate grounds will be available within a year. There is ceiling of 5% of vacancies to be filled by means of compassionate appointment meaning thereby that the quota for compassionate appointment is restricted only to 5% vacancies which become available in a particular year and if in the year for which the applicant is held to be entitled for grant of compassionate appointment because of the death of predecessor while in harness, then the vacancies which became available during that year are to

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be considered and any vacancy that became available under this quota of compassionate appointment, the same has to be offered to the applicant.

9. Since no vacancy had become available so applicant No.2 was not offered compassionate appointment as such the department seems to have expressed their inability to offer appointment and has rightly rejected the request of the applicant for making any vacancy available.

10. Though Shri Deepak Verma has submitted that the department could be directed to create supernumerary post but I find that if a direction of such a type is issued by the Tribunal, that will amount to amending the settled rules which will be beyond the jurisdiction of this Tribunal and this Tribunal will be exercising excessive jurisdiction on this point.

11. No other contention has been raised before me.

12. Hence, I am of the considered opinion that no case has been made out. Accordingly the OA is dismissed. No costs.

13. Later Shri M.K. Bhardwaj, Counsel appeared for the respondents.


(KULDIP SINGH)
MEMBER (JUDL.)

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