

Central Administrative Tribunal
Principal Bench

OA 1533/99

New Delhi this the 28th day of November, 2000

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

Jai Prakash,
S/o late Shri Ramphal,
Vill - Katlupur,
PO - Nahri,
Distt. Sonipat (Haryana). Applicant.

(By Advocate Shri M.K. Bhardwaj)

Versus

1. NCT of Delhi through
the Chief Secretary,
NCT of Delhi, Old Secretariate,
Rajpur Road, Delhi.
2. The Chief Engineer (I&F),
Department of Flood Control & Drg.,
Govt. of NCT of Delhi, IV Floor,
ISBT Building, Kashmere Gate,
Delhi.
3. The Superintending Engineer,
NCT, Flood Control & Drg.,
Division No. VI, Gurmandi,
Delhi.
4. The Executive Engineer-VI,
O/o the Executive Engineer,
Flood Control & Drg. Division VI,
Gurmandi, Delhi. Respondents.

(By Advocate Ms. Jasmine Ahmed)

O R D E R (ORAL)

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

This is the second round of litigation by the applicant against the respondents, his earlier OA (OA 1575/97) having been disposed of by Tribunal's order dated 21.8.1998.

2. I have carefully perused the pleadings and considered the submissions made by the learned counsel for the parties.

3. Shri M.K. Bhardwaj, learned counsel has very vehemently submitted that the respondents' action in

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appointing the applicant in 1989 as casual labourer is discriminatory vis-a-vis the appointment of Smt. Sunita Sarna in a Group 'C' post in 1991. He has submitted that in pursuance of the Tribunal's order dated 21.8.1998 in OA 1575/97, the applicant had made a detailed representation regarding his claim for appointment in a Group 'C' post similar to what has been given to Smt. Sarna. His contention is that the rejection of applicant's request by the respondents is arbitrary and discriminatory because while the lady has been appointed in a Group 'C' post, ¹⁸ ~~and~~ the applicant has been appointed as ^a casual labourer. Ms. Jasmine Ahmed, learned counsel has, however, submitted that in furtherance of the Tribunal's order dated 21.8.1998, the applicant has been conferred temporary status. She has further stated that the applicant's case has been duly considered by the concerned Department but has been rejected on merits, although no reasons have been given in the counter reply for the same. Respondents, however, have stated in the reply that the applicant has unsuccessfully compared his case with Smt. Sarna who has been considered in a Group 'C' post. They have submitted that the applicant's case for consideration for appointment in a Group 'C' post has been duly considered but rejected on account of the fact that he cannot compare himself to the case of Smt. Sarna.

4. From the facts mentioned above, it is clear that the applicant had accepted appointment as a casual labourer in 1989 on the demise of his father in service. Smt. Sarna has been appointed in a Group 'C' post subsequently in 1991. In the facts and circumstances of the case, I am unable to agree with the contention of Shri M.K. Bhardwaj, learned

counsel, that these cases are similar and there has been discrimination against the applicant in the matter of appointment in 1989 on compassionate grounds. I am fortified in the view that I have taken from the observations and judgements of the Hon'ble Supreme Court in **Umesh Kumar Nagpal Vs. State of Haryana & Ors.** (JT 1994(3) SC 525). In this case, the Supreme Court had observed that "If the dependent of the deceased employee finds it below his dignity to accept the post offered, he is free not to do so. The post is not offered to cater to his status but to see the family through the economic calamity". In the present case, the applicant having accepted the appointment as a casual labourer in 1989, cannot plead discrimination based on a different set of facts and circumstances which are applicable in 1991 to the case of Smt. Sarna who might have also been appointed on compassionate grounds, at a subsequent date. In the O.A., the applicant has not been able to establish the grounds taken by him on discrimination vis-a-vis the case of Smt. Sarna to justify any interference in the matter. However, if the applicant is qualified for appointment as a Group 'C' employee, the respondents shall consider his case in terms of the rules and regulations against any application he may make for such a post.

5. O.A. is disposed of, as above. No order as to costs.

'SRD'

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)