

Central Administrative Tribunal
Principal Bench

GA No.904/95

New Delhi, the 19/K February, 1996.

Hon'ble Shri R.K. Ahooja, Member (A)

N. Dharm Raj
S/o Late Sh. Nathoo,
Ho.No.245-G/23A,
Jayanti Pur, Preetam Nagar
P.O.Sulem Sarai,
Distt. Allahabad. .. Applicant

(Advocate: Mrs. Meera Chhibber)

versus

Union of India: through

1. Secretary,
Min. of Defence
South Block, New Delhi.
2. Dy. Director General,
Military Farm Directorate,
West Block No.III,
1st Floor, Wing No.7,
RK Puram, New Delhi.66.
3. The Dy. Director,
Military Farms
Head Quarter, Southern Command
Pune (Maharashtra)
4. The Officer-in-Charge,
Military Farms
Hebbal,
Bangalore.24.

(Advocate: Shri V.S.R.Krishna)

ORDER

Hon'ble Shri R.K. Ahooja, Member(A)

The facts of this case in brief are
that the applicant's father who was working
as Farm Hand at Military Farm, Bebbal, Bangalore
was killed in an road accident on 24.11.1989

while in service of the respondents. The applicant who had obtained a Bachelor of Science degree from Bangalore University in the year 1989 sought an appointment as Sub-Assistant, Supervisor, Lower Divn. Clerk or Lower Division Store Keeper through an application filed by his mother on 7.2.1990. The applicant claims that the Officer-in-charge, Military Farms, Bangalore made a strong recommendation to give him a Group 'C' post. However, the request on compassionate ground for a Group 'C' post was turned down by letter dt. 26.12.90 in which it is mentioned that the applicant could be considered for Group 'D' appointment. ~~Moreover~~, Another letter was issued by the respondents on 15.7.91 mentioning that the applicant would not be provided any job on compassionate ground. The mother of the applicant again made a representation on 29.12.91 to the Officer-in-charge, Military Farms, Bangalore who again recommended the case but the reply came on 7.4.92 that compassionate appointment is given only when the family is in a distress condition. On 26.2.93 a representation was made to Secretary, Min. of Defence, New Delhi for compassionate appointment. Ultimately, a reply was received on 14.12.93 asking the applicant to

give his willingness for a Group 'D' post. The grievance of the applicant is that the respondents have rejected his request for appointment to a Group 'D' post keeping in view his educational qualifications and since in other cases ^{the} wards of deceased employees holding Group 'D' post have been offered Group 'D' posts ~~therefore~~ the applicant has been treated in a discriminatory ^{or} manner.

2. The respondents have denied the allegation of the applicant and have submitted that the appointment on compassionate ground is not a matter of right ~~but~~ ^{but} is a dispensation to see that the family of the deceased employee does not lead an indigent life when there is no earning member in the family. They ^{have} stated that the eldest son of the deceased Govt. servant in this case is already in service in the Military Farms of Bangalore. Further-more the applicant is barred by the principle of promissory estoppel since he had already given an undertaking on the first occasion that he was ready to accept a Group 'D' post. It has also been explained by the respondents that the Army Headquarters had turned down the initial request on the ground that no vacancy was available in Group 'D' post, the eldest son was employed in Military Farms Bangalore, the family owned a house as well as a plot of land

and the widow was also in receipt of family pension.

3. In ^{her} argument, the ld. counsel Mrs. Meera Chhibber, for the applicant, took two main grounds. Firstly, she submitted that there is no bar for appointment on compassionate grounds to Group 'C' post and such a restriction only applies when appointments are sought to post, higher than ~~the~~ class-III. The second ground she took was that once the respondents find enough justification to offer a compassionate appointment then there is no reason whatsoever to restrict it to Group 'D' post. She submitted that the appoint^{ment} is possible to ^{both} Group 'C' and Group 'D' and since the applicant was in possession of ^a degree of Bachelor of Science, it is only ~~correct~~ ^{just} that he should be given a job commensurate ⁱⁿ with ~~the~~ educational qualifications. She pointed out that the claim of the respondents that there were no vacancies available at the Military Farms, Bangalore was not correct and even if it was so they ~~could~~ have created a supernumerary post as done in the ~~past~~ ^{past or} the applicant ~~could~~ have been adjusted in some other Military Farm. On the second ground she argued that firstly, the claim of the respondents that the family of the applicant had sufficient assets to make both ends meet was not valid. Thus the house mentioned by the respondents was a joint property ^{which} the

deceased employee shared with other brothers and sisters. The land owned by the family was non-productive and infertile. Similarly, the pension obtained by the widow was ^{meagre, just} ~~the same~~, a sum of Rs.375/- per month. On the other hand, there was a marriageable daughter. The elder son was already married and living separately with his own family and from his income he could spare nothing for the applicant, his mother and his sister. The ld. counsel argued vehemently that these considerations were no longer relevant ^{since} by offering a Group 'D' post ~~since~~ the respondents themselves had considered that the applicant fulfilled ^{the} necessary and requisite pre-conditions for such an appointment. The only question now left to determine ^{was} whether he should be given a Group 'D' post or ^a Group 'C' post.

4. The ld. counsel for the respondents laid emphasis on the point that the compassionate appointment is not meant to be a back door entry into service ^{but is} the means of providing relief to a family of a deceased Govt. servant left ^{with} ~~little~~ little or no means of livelihood. He submitted that the financial condition of the family is the basis of compassionate appointment ^{and} neither the qualifications of the dependent nor the post which he can hold ~~is~~ ^{are} relevant. If the dependent of the deceased

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employee finds that the post is below his dignity to accept ~~the offer~~^{an} he is free to do so since the employment is offered not to cater to his status but to ~~see~~^{help} the family pass through the economic crisis. The ld. counsel pointed out that the father of the applicant passed away in 1989 and the offer of Group 'D' post was made to the applicant in 1990 and finally in 1993 and had the economic conditions of the family been so desperate, the applicant would not have stood on his dignity and refused a regular Group 'D' appointment. He cited the case of Umesh Kumar Nagpal vs. State of Haryana and Others - JT 1994 (3) SC 525 in which the Supreme Court held that mere death of an employee in harness does not entitle his dependents to a job on compassionate ground and it cannot be offered as a matter of course irrespective of financial condition or in posts above Class III and IV.

5. I have given careful consideration^{to} the arguments of the ld. counsel of both sides and pleadings on records. In the case of Umesh Kumar Nagpal (supra), the State Govt. had provided compassionate employment in Class II post on the ground that the person concerned had

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technical qualifications such as MBBS, BE, B.Tech etc. The Supreme Court held that such ~~exception~~^{action} is illegal since it is contrary to the object of making exception to the general rule of employment through open competition and the only ground which can justify ^{it is} the penurious condition of the deceased family. The Supreme Court held that neither the qualification of the dependent nor the post which he ^{can} hold is relevant. The applicant claims compassionate employment and the rules also provide for such an appointment only on the basis of the economic conditions of the family. I am unable to agree with the ld. counsel for the applicant that this condition becomes extraneous once a decision is taken to offer the compassionate appointment since the authorities are satisfied with the economic distress of the family; what remains then is only to offer a job which is available in consonance with the qualification of the applicant subject of course to the condition that the same is not above Class III post. It is, in my view, open to the employers, Govt. Department, to offer what they can and it is not for the applicant to pick and choose. ~~Since~~^{the appointment is} the job on compassionate ground is not to restore ^{the applicant} ~~him~~ or the ~~status~~^{to their old status} but only to ward off the economic calamity

with which the family is ^{facied} ~~confronted~~ on account of ^{the} sudden demise of the Bread earner. If the applicant wants a job commensurate with ~~his~~ ^{his} qualifications he is free to try for the same by applying and competing for the post in the open market, ~~As~~ held by the Hon'ble Supreme Court ^{any} ~~in~~ consideration of fitting the post with the qualifications of the applicant would be outside the ambit of the rules governing compassionate employment in such cases. It can also not ^{be overlooked} ~~be ignored~~ that the applicant had chosen to wait when the Group 'D' post was offered to him in 1990 for the first time, ^{though} ~~but he says~~ the offer was cancelled sometime later, and also now since it was offered in December, 1993. The respondents have stated that the offer of Group 'D' post was made in 1990 as the Group 'C' post was not available, ~~and~~ ^{was} the plea of the applicant that if such a post ~~was~~ not available, the respondents ~~could~~ have created a supernumerary post, itself indicates that he would not accept the compassionate appointment unless a Group 'C' post is offered to him. Since the compassionate appointment is not a matter of right the applicant deserves no further consideration.

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6. In the light of the foregoing discussions,
I find no merit in this case. Accordingly, the
application is dismissed. No orders as to costs.

R.K. Ahooja
(R.K. Ahooja)
Member (A)

SCS