

113

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

O.A.NO.148/2000

HON'BLE SHRI SHANKER RAJU, MEMBER(J)

New Delhi, this the 7th day of February, 2001

1. Shri Chand  
s/o late Sh. Kishan Lal  
c/o Raghbir Singh  
J-1269, Mangol Puri  
Delhi.
  2. Shanti Devi  
w/o Late Shri Kishan Lal  
r/o C/o Raghbir Singh  
J-1269, Mangol Puri  
Delhi.
- ... Applicants

(By Shri S.K.Gupta, Advocate)

Vs.

1. Union of India through  
Secretary  
Ministry of Defence  
South Block  
new Delhi.
  2. Ordinance Directorate  
Army Headquarters  
New Delhi.
  3. Commandant  
Gola-Barud Bhandar  
Amunition Depot  
Dappar (Ambala)  
Haryana.
- .. Respondents

(By Shri S.M.Arif, Advocate)

O R D E R (Oral)

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

Applicant No.1 is the son and Applicant No.2 is the widow of the deceased employee, Shri Kishan Lal, who was employed with the respondents as Civilian Mazdoor on permanent basis, who died in harness on 21.12.1994. The applicants are seeking compassionate appointment to a suitable post by alleging that they are deserving and indigent and their claim has been arbitrarily ignored by the respondents despite having the vacancies. It is also contended that even if there is no vacancy, for compassionate appointment,

the respondents can create a supernumerary post to accommodate a deserving candidate who is in harness on account of the death of a Government servant.

2. The brief facts leading to filing of this application are that the deceased Government servant, Shri Kishan Lal, who was a Civilian Mazdoor with Respondent No.3, died in harness on 24.12.1994. Applicant No.2 submitted an application before Respondent No.3 for appointment of her son on compassionate ground and after completion of the formalities, no information was sent to the applicants by the respondents. According to the applicants in the first week of February, 1999 on approaching the respondents, they were handed over a letter dated 1.1.1998/10.1.1998, Annexure-A1 whereby the case of the applicant for consideration for compassionate appointment has been closed on the ground that the Board, after duly considering the case, has not acceded to the request of the applicant as in comparison with more deserving cases and on account of limited number of vacancies. The applicant in these circumstances assailed the order by contending that the same has never been served upon the applicant and the same was handed over to them only in the first week of February, 1999 on approaching the respondents, as such the application was filed within the statutory period of one year as prescribed under Section 21 of the Administrative Tribunals Act, 1985. It is also contended by the applicants that the condition of family of the deceased employee is indigent and the deserve sympathetic consideration and also prayed for a direction to the respondents to review their case.

3. The respondents have refuted the contentions of the applicants by resorting to their guide-lines on compassionate appointment and contending that the case for compassionate appointment is to be considered only thrice and on satisfaction of the department that the family is indigent is in great stress the benefit of compassionate appointment may be extended to the same. According to the respondents, the Original Application is barred by limitation as the copy of the order dated 1.1.1998 was despatched on 1.1.1998 itself also contended that the more deserving cases than the applicants had been given effect to for the purpose of compassionate appointment and also on account of the limited vacancies existed with the respondents.

4. We have carefully considered the rival contentions of the parties and perused the available material record. We find from the record that the guide-lines issued by the respondents on employment in relaxation to normal rules and with regard to the compassionate appointment the principle condition which is to be satisfied is the indigency<sup>h</sup> and distress of the family in harness. For this purpose the application from the members of the family of the deceased Government servant is to be considered thrice. According to the record the respondents have considered the case of the applicant on three occasions, i.e., 7.8.1995, 22.1.1996 and 28.10.1998 and according to them as more deserving cases existing than the applicants and the fact that on account of limited number of vacancies the applicants case has been rejected all the three times.

5. As regards the contention of the learned counsel for the applicants that as there is a consistent stand of the respondents that vacancies were limited and the applicant was found one of the deserving candidate, in view of the ratio laid down by the Hon'ble Supreme Court in Smt. Sushma Gosain and Others Vs. Union of India & Others, 1989(4) SLR SC 327, according to this Judgment a supernumerary post can be created by the Government to accommodate the applicant. I have gone through the Judgment relied upon by the applicants' counsel. In this case the facts were that the applicant therein had staked<sup>u</sup> her claim for appointment on compassionate basis in view of the Government of India's OM dated 25.11.1978, which has been rejected by the respondents on the ground that the appointment of ladies in establishment was prohibited and thereafter the other departments were also approached to get the petitioner a compassionate appointment in order to mitigate her hardship. She was given an option to nominate the male members of her family to be considered for appointment. In this conspectus the Hon'ble Apex Court observed that where a delay in offering appointment on compassionate ground to mitigate the hardship, should be provided immediately. It was also observed that if there was no suitable post for appointment, supernumerary posts should be created to accommodate the applicant. I feel that the ratio laid down by the apex court is limited to the facts and circumstances of that case and would not be of universal application and cannot be treated as binding precedent. Apart from this despite limited vacancies the applicant claim has been considered by the

-5-

respondents thrice and this is not an averment of the applicant that while considering the claim the merits of the case of the applicant ever giving go by or arbitrarily ignored. I am of the opinion that a compassionate appointment cannot be claimed as a right by the family member of the deceased Government servant but a right is restricted to proper consideration. In this view of mine, I fortified by the ratio laid down by the Hon'ble Apex Court in Umesh Kumar Nagpal Vs. State of Haryana & Others, JT 1994(3) SC 525. As there was a proper consideration by the respondents and the applicant has no indefeasible right to claim compassionate appointment, I feel that the claim of the applicant is not legally sustainable. As regards the limitation, I have already dismissed the OA on merits, the question of limitation would be of no practical significance. In the result, the OA is bereft on merit and is accordingly dismissed. No costs.

S. Raju

(SHANKER RAJU)  
MEMBER(J)

/RAO/