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Central Administrative Tribunal  
Principal Bench: New Delhi

OA No.566/89

New Delhi this the 24th Day of February, 1994.

Shri N.V. Krishnan, Vice-Chairman (A)  
Shri B.S. Hegde, Member (J)

Sh. Feroze Akhtar  
S/o late Sh. Saeed Ahmed,  
R/o G-11, DMS Colony,  
West Patel Nagar,  
New Delhi-8.

...Applicant

(Applicant in person)

Versus

1. The Union of India,  
through Secretary, Ministry of  
Agriculture, Deptt. of  
Agriculture & Cooperation,  
Krishi Bhavan, New Delhi.
2. The Delhi Milk Scheme,  
through its General Manager,  
West Patel Nagar, New Delhi-8.
3. The Estate Officer,  
Delhi Milk Scheme,  
West Patel Nagar, New Delhi-8.      ...Respondents

(By Advocate: None)

ORDER(ORAL)

(Mr. N.V. Krishnan)

Shri M.L. Verma appeared before us and stated that he is not appearing for the respondents in the case. This case is listed at item No.5 in today's cause list under regular matters with a note to the Counsel that the first 10 cases are posted peremptorily for final hearing. In the circumstances, we have perused the record of the case and proceed to pass final order.

2. The applicant is son of Saeed Ahmed, an employee under the second respondent - Delhi Milk Scheme where he joined in 1959 and worked till his death 21.12.86. In this OA the applicant seeks compassionate employment on the death of his father.

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3. It is stated that on the death of his father he left behind his widow and three sons, including the applicant. The mother of the applicant being Pardanashin lady was not capable of getting employment. It is stated that the mother of the applicant requested the second respondent for the appointment of the applicant on any suitable Group 'C' and Group 'D' post.

4. The applicant states that he has passed Delhi Secondary Examination from C.B.S.E., New Delhi in the year 1983 and is eligible for Government service. He has also worked as Senior Winder earlier in a private firm. He has also registered his name with the Employment Exchange on 12.3.1987. The documents in proof of these averments are at Annexures A, B & C.

5. The second respondent examined the case of the applicant and sent letter dated 30.1.87 to the first respondent, i.e., Ministry of Agriculture. That letter reads as follows:-

"No.19-2/87-Estt-I  
Government of India  
Delhi Milk Scheme  
West Patel Nagar  
New Delhi-8.

Dated the, 30-1-1987.

To

The Deputy Secretary to the  
Government of India, (D.D.)  
Ministry of Agriculture,  
(Deptt. of Agri. & Coopn),  
Krishi Bhawan,  
New Delhi-110001.

Sub:-

Appointment on compassionate  
grounds of Sh. Feroz Akhtar  
S/o Late Sh. Saeed Ahmed,  
Ex Mechanic of DMS.

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Sir,

Sh. Saeed Ahmed, Mechanic of Delhi Milk

I am directed to say that

Scheme expired on 21.12.1986 leaving behind his family consisting wife and three sons. There is no earning member in the family as a result of which the family is facing financial hardship. The family of the deceased is in distress and needs immediate assistance.

In accordance with the guidelines as issued by the Deptt. of Personnel & Admn. Reforms's O.M. NO. 14014/1/77-Estt(D) dated 25.11.1978 the son/daughter or near relative of the Government servant who dies in harness, can be appointed to a Group 'C' or 'D' post if the family stands in immediate need of assistance.

Sh. Feroz Akhtar S/o Late Sh. Saeed Ahmed has requested for his employment on suitable post (preferably Motor Winding In Dairy Engineering Workshop) on compassionate grounds. As per the photostate copies of education and other certificates furnished by him (enclosed herewith). Sh. Feroz Akhtar is about 20½ years old and has passed Secondary School Examination (Xth class) from the Central Board of Secondary Education, Delhi. He has also worked as Sr. Winder with a reputed Pvt. Firm. Smt. Smeeda Khatun W/o Late Sh. Saeed Ahmed has also requested to appoint her 2nd son Sh. Feroz Akhtar as her elder son, aged about 22 years, is studying in B.Com (Hons) IIIrd year.

The possibility of his appointment could have been explored in Delhi Milk Scheme but since the Staff Inspection Unit of Ministry of Finance has recently reduced the strength in Group 'C' and 'D' posts and as such there is no post in Delhi Milk Scheme in Group 'C' & 'D' against which the appointment of Sh. Feroz Akhtar on compassionate grounds could be considered in accordance with the instructions contained in the Department of Personnel & A.R's O.M. No.14014/1/77-Estt(D) dated 25.11.78.

In view of the circumstances stated above, it is requested that Sh. Feroz Akhtar S/o Late Sh. Saeed Ahmed Ex Mechanic may kindly be given suitable employment in Group 'C' or 'D' posts on compassionate grounds in the Department of Agriculture or in any of its Subordinate offices where vacancies exist. Application alongwith its enclosures and the requisite proforma duly completed (in duplicate) for appointment are enclosed herewith for consideration.

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The above proposal has been sent by the Chairman, Delhi Milk Scheme.

Yours faithfully,  
sd/-

(BALDEV CHAND)

DEPUTY GENERAL MANAGER (ADMN.)"

6. Notwithstanding this letter no appointment was given to the applicant. In the meanwhile, the respondent No.3 initiated proceedings to evict the applicant from the quarter occupied by the applicant and the family of the deceased Saeed Ahmed which they were occupying when Saeed Ahmed was alive. Annexure 'F' is the order of eviction dated 28.7.88. It is in these circumstances that this OA has been filed, seeking the following reliefs:-

"The respondents No.1&2 be directed to appoint the applicant on compassionate grounds as a Motor Winder or on any suitable post in any Department from the date of his initial application i.e. 26.12.1986; and

The respondents No.1 & 2 be directed to regularise the residential accommodation in favour of the applicant since the date the said occupation of the applicant and other family members has been treated as unauthorised occupant."

7. When the matter came up for hearing an interim direction was issued on 11.4.89 to the respondents to maintain status quo and the respondents were further directed not to evict the applicant from quarter No.G-11, D.M.S. Colony, Delhi till further orders.

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8. When the respondents filed MP-2091/91 for vacating the interim order, a direction was issued to the applicant to make payment of Rs.5,000 which was done. The interim order has been allowed to continue since then until further orders.

9. The respondents have filed a reply. It is contended therein that compassionate employment is not a right in view of the abolition of the Group 'C' and 'D' posts in the D.M.S. as a result of a report of the Staff Inspection Unit. The applicant cannot claim appointment as a matter of right. The respondents have made no comments on the Annexure 'E' letter of the D.M.S. and they have no case that the family of the deceased Government employee was <sup>not</sup> in indigent circumstances when the Government employee was died. The application is resisted on the only ground that the compassionate employment cannot be claimed as a matter of right.

10. We have carefully considered these submissions. There are standing orders of Government which regulate grant of compassionate appointment to the dependants of a Government employee who has died in harness. Admittedly, the applicant's father was a Government employee who died in harness. The standing instructions envisage that if it is found that at the time of the death of the Government employee he has left his family in indigent circumstances the Government could consider giving employment to one of his dependants on compassionate grounds.

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11. In so far as the present case is concerned, we notice that in the Annexure 'E' letter of the second respondent it has been admitted that the family of the deceased is in distress and needs immediate assistance. Attention was also drawn to the guidelines issued by the Department of Personnel in their OM dated 25.11.78. Adverting to the qualification of the applicant it was stated that the applicant would be fit for employment in Government service. The second respondent could not provide compassionate appointment only because the strength of Group 'D' and 'C' have been reduced as a result of an inspection by the Staff Inspection Unit. He, therefore, requested that the applicant be given a suitable employment in a Group 'C' or 'D' post on compassionate grounds in the Department of Agriculture or in any of its Subordinate offices where vacancies exist.

12. In this view of the matter we are satisfied that the case of the applicant satisfied the requirements stipulated in the standing instructions of the Government and that, therefore, the applicant was entitled to be given compassionate employment by the second respondent. The mere fact that there was no post in the establishment of the second respondent would not be an adequate justification for refusing such employment. For, it has been held by the Supreme Court in Sushma Gosain Vs. Union of India 1989 (4) SCC 468 followed by another similar decision in Phoolwati Vs. Union of India 1991 (2) Supp. SCC 689 that if necessary compassionate appointment should be given by creating

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supernumerary posts. We are of the view that this was a fit case where a compassionate appointment ought to have been given to the applicant either in the office of the second respondent or in the office of the first respondent. The learned counsel for the applicant Sh. Ashok Aggarwal appeared at this stage.

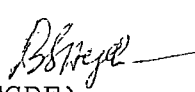
13. In the circumstances, we dispose of this OA with the following directions to first respondent:-

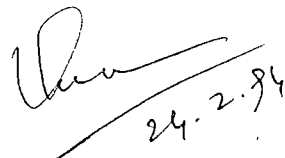
- i) The first respondent is directed to appoint the applicant on compassionate grounds on any Group 'D' post available in that Ministry or in any of the attached offices in Delhi and if no such post is available, it is directed to create a supernumerary post for this purpose and appoint the applicant against that post.
- ii) The impugned Annexure 'F' order of the Estate Officer, D.M.S. dated 28.7.91 is quashed. The applicant shall be allowed to continue in quarter No.G-11, D.M.S. Colony unless the competent authority thinks that, on his appointment to Group 'D' post in pursuance of our above order, the applicant will not be entitled to continue in such a big quarter, in which case the second respondent is directed to allot the applicant a suitable quarter, till which time he shall not be disturbed from the present quarter.
- iii) In so far as the rent of the house is concerned, the second respondent is directed to charge from the applicant rent at the same rate at which the deceased was paying at the time of his death. The arrears of

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rent payable in respect of this quarter calculated on this basis shall be paid by the applicant within a period of three months from the date of receipt of this order.

- iv) The first respondent is directed to comply with the above directions within two months from the date of receipt of this order. No costs.

  
(B.S. HEGDE)  
MEMBER(J)

  
(N.V. KRISHNAN)  
VICE-CHAIRMAN

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