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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn. No. O.A. No. 2768/91

Date of decision 21.9.92

Vimla Devi

Applicant

Shri A.K. Behra

Counsel for the applicant

vs.

Union of India

Respondents

Shri M.L. Verma

Counsel for the respondents

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The Hon'ble Mr. Justice Ram Pal Singh, Vice-Chairman(J).

The Hon'ble Mr. P.C. Jain, Member (A).

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether it needs to be circulated to other Benches of the Tribunal?

(Judgment of the Bench delivered by Hon'ble Shri Justice Ram Pal Singh, Vice-Chairman (J).)

JUDGMENT

This O.A. has been filed by a widow, Smt. Vimla Devi, whose husband, Surinder Singh Rawat, died in harness on 16.1.90 while in the employment of the respondents. The deceased was survived by the applicant widow, old mother and two minor sons. The deceased was working as a labourer in the office of Respondent No. 3. Therefore, the applicant-widow filed an application before the respondents for being appointed on compassionate grounds. She was asked by letter dated 25.1.90 by Respondent No. 3 to send a copy of her educational qualification so that her appointment on compassionate grounds may be concluded. She, therefore, sent her Primary School (5th class) Pass certificate to Respondent No. 3. Respondent No. 3 recommended the case of the applicant for compa-

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ssionate appointment by his letter dated 6.2.90. In consequence, Respondent No. 2, reserved a vacancy of a 'Searcher' in the office of Respondent No. 3 for giving compassionate appointment to the applicant. This vacancy was reserved by order dated 8/13.2.90. Subsequently, on being reminded, the Commandant refused to give the appointment to the applicant vide Annexure A-7 dated 18.9.90. Thereupon, the applicant filed an appeal on 26.2.91 before the Director General of Electrical and Mechanical Engineer, Army Headquarters, DHQ P.O., New Delhi, but the same was not disposed of. The applicant sent several reminders. After she filed the appeal, the applicant was again called for completion of the papers in connection with the compassionate appointment by the Commandant vide letter dated 17.5.91 (Annex. A-9). She, therefore, on 25.5.91 complied with the orders and completed all the papers. The request for appointment on compassionate grounds, however, was rejected on the ground that the Government has paid the applicant Rs. 45,195/- from the GP Fund, LIC and gratuity. The applicant refunded an amount of Rs. 9860/- towards the Credit Cooperative Primary Bank of the respondents. Subsequently, she filed this O.A. under Section 19 of the Administrative Tribunals Act of 1985 praying for the relief that the respondents be directed to provide the applicant suitable employment on compassionate grounds.

2. The respondents on notice appeared and in their counter they raised the plea that the applicant was called for trade test in which she failed. That is why, she was not found suitable to the post and hence not employed. They have nowhere taken the ground that the applicant is not indigent; that the applicant has anyone else in the family as bread earner and that the applicant benefits has any other means of livelihood after the death of her husband who died in harness. The respondents were directed to produce the documents with regard to the applicant's appointment on compassionate ground. They have produced the entire file which we have gone through minutely. It would not be out of place to mention that by order dated 22.11.91, a Bench of this Tribunal by way of interim relief directed the respondents to keep the post of 'Searcher' vacant which

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has been created by the respondents in their office vide letter dated 8/13.2.90 (Annex. A-4 to the O.A.). The respondents subsequently never prayed for the vacation of this interim order. Thus, we can presume that a post of 'Searcher' is still vacant and available with the respondents.

3. On perusal of the file produced by the respondents, we found that it contains the rules with regard to the duty of the 'Searchers' - military and civilian. Their duty is to carry out normal and rigorous search of all labourers, skilled and unskilled, passing in and out during working hours and also at the closing time. These searchers are also required to search for the tiffin carriers of the labourers and to keep a check that none takes out from the Government stores any article without a Gate Pass signed by the responsible officer. The tools on entry and also when they leave are required to be checked. The searchers are also required to seize unauthorised stores/goods discovered during the search. They are also required to keep a careful watch on all Government stores within their range of vision and will keep search rooms and their surroundings clean and tidy. It is to be noted that these rules do not contain any provision that the searchers will be only of male sex and no females shall be employed as searchers.

4. On 18.6.90, interview of the applicant was taken for the post of Searcher, who was sponsored for the appointment on compassionate grounds. She secured 55 marks out of 100 in written test and 50 marks out of 100 in practical test and was declared pass. This document, which is in the file of the respondents, is signed by Colonel Admn., Brig. Commandant and Officiating W.M. Thus, she passed the written and practical tests taken by these responsible officers of the respondents. The main contention of the respondents is that she failed in the trade test. We have made a search in the entire record produced by the respondents and no separate trade test was taken except this which has been referred to above. 1978 and is Rules provide that no test is required where the applicant is a widow / to be appointed on compassionate grounds.

information

5. The Minute Sheet of Sheet No. 1 contains that the applicant who was a widow filed an application for compassionate appointment with Commandant's remarks. This document also contains

information that a vacancy of a Searcher in this respect was available. It also contains the information that Smt. Bimla Devi was called for trade test vide letter dated 24.5.90 and the above named widow appeared in the trade test of Searcher but she did not qualify in the final interview conducted on 18.6.90 and the final result is placed on the opposite sheet. For convenience, we are reproducing that complete sheet:

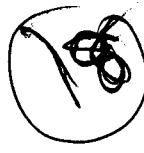
"2030/2610/Emp Cell Sheet No 2

Note-IV

1. Please refer to the note II ante on sheet-1.
2. I have the following to comment on it.
 - (a) The subject test was conducted practically by me and H/Capt Jabar Singh at main gate and the result was conveyed to Col. Adm on the same day and she was not found fit for the job due to the following reasons:
 - (i) She being the lady could not climb up the vehicle loaded with stores and could not search it effectively.
 - (ii) Her qualification is only 5th standard and can't read and write in English, so search and identification can't be accurately done.
 - (iii) She can't take search of male workers because of her gender, if she is employed then many problems of counter allegations will come up every day.
 - (iv) Searcher duties are very hard, one has to be vigilant and alert all the times which is not possible for such a lady to perform such hard duties.
 - (v) Sometimes a searcher has to physically stop a person who is doubted to take out or steal away the stores, which a lady can't do.
 - (b) No room was left for the second thought as the result was given to my seniors then and there.
 - (c) Her contention, that easy money was asked for through a labour Darshan Singh is totally incorrect, baseless and concocted as do not know lab. Darshan Singh. However, I have now come to know that he has retired long time back.
 - (d) She has never met me except on the day of her trade test.
 - (e) It is presumed that she is either misguided or trying her pressure tactics which one can easily do and it is a common allegation which she is trying.
3. Submitted for further action.

Sd/- CASO
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6. In the trade test, after her passing the written test, her candidature was rejected because she was a lady and could not climb the vehicle loaded with stores and could not search it effectively. She was also rejected because she cannot take search of male workers because of her gender. It also contains the statement that if she is employed, then many problems of counter allegations will come up every day. It further contends that the searchers duties are very hard and one has to be vigilant and alert all the times while she being a female cannot perform these duties. The perusal of this document indicates that the rejection of the candidature of the applicant is solely based upon one point and that is that she is a lady and belongs to female sex which is better known as weaker sex. Such an attitude of the respondents in post-1990 era is not only erroneous, but also unconstitutional. Females are undertaking very strenuous duties not only in offices but also in fields and factories and other important areas, including police and para military forces, which require very strenuous mental, physical and spiritual stamina. In no way they are inferior to the male sex and the candidature of the female cannot be rejected by the respondents because it contravenes the provisions of Article 16 of the Constitution of India. Article 16 of the Constitution of India is very explicit on this point that equal opportunity in matter of public employment shall be given to all the citizens and no citizen shall be denied it on the grounds only of religion, race, caste, sex, descent, place of birth.....

7. In the trade test conducted by the respondents after the applicant passed the written test qualifying it, the candidature of the applicant was rejected only on the ground of her sex. The rules, as referred above, do not contain any provision that the post of a searcher shall be filled from the male sex and not from the female sex. The respondents have also not taken the stand that the applicant is not indigent; that the applicant has any other source of income, that there is anyone else in her family who is a bread-earner and in the absence of this, the rejection of the candidature of the applicant on the ground of her sex is unconstitutional and cannot

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be sustained in law. We need not refer to the judgments on the point of compassionate grounds.

8. The practical difficulty has been expressed by the respondents in the order which has been passed on the trade test and which we have reproduced in para 4 of this judgment, if the applicant is appointed as such. A searcher is also required to make searches of the body of male labourers and it may create difficulty of modesty to the applicant herself if she is appointed in the post of a searcher. Hence, if this difficulty comes in the way of the respondents in appointing the applicant in the post of a searcher, then they can provide her an alternative or proper post equivalent to the searcher which is not likely to embarrass the applicant and create difficulties to the respondents.

9. We, therefore, allow this O.A. and direct the respondents to provide appropriate and suitable post to the applicant, if not as a searcher then equivalent to this post and otherwise proper post, as early as possible, preferably within a period of two months from the date of the receipt of a copy of this judgment. No order as to costs.

Clerk 21/9/92
(P.C. JAIN)

MEMBER (A)

Law. Lib. 21.9.92
(RAM PAL SINGH)

VICE-CHAIRMAN (J)