

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI**

O.A. NO.2358/2004

This the 5<sup>th</sup> day of August, 2005.

**HON'BLE SHRI V. K. MAJOTRA, VICE-CHAIRMAN (A)**

1. Smt. Natho Devi  
Widow of late Bhagwan Singh  
(Ex. Chowkidar M.I. No.461081)  
of the Office of Garrison Engineer (MES),  
Mathura Cantt.  
Resident of Village Pali Khera,  
Post-Maholi, Distt. Mathura (UP).  
... Applicants
2. Sushil Kumar S/O late Bhagwan Singh  
(Ex. Chowkidar M.I. No.461081)  
of the Office of Garrison Engineer (MES),  
Mathura Cantt.,  
Resident of Village Pali Khera,  
Post-Maholi, Distt. Mathura (UP).  
... Applicants

( By Shri D.N. Sharma, Advocate )

versus

1. Union of India through  
Engineer-in-Chief,  
Engineer-in-Chief's Branch,  
Kashmir House, Army Headquarters,  
DHQ Post Office, New Delhi.
2. Chief Engineer,  
Central Command Headquarters,  
Lucknow Cantt.
3. Garrison Engineer (MES),  
Mathura Cantt.  
... Respondents

( By Smt. Avinash Kaur, Advocate )

**O R D E R (ORAL)**

Applicants have challenged Annexure A-1 dated 13.5.2002 whereby claim of Shri Sushil Kumar (Applicant No.2) for appointment on compassionate ground was rejected.



2. The learned counsel of applicant pointed out that vide Annexure A-6 dated 10.3.2000 respondents had advised applicant to submit a declaration that he would wait for appointment till vacancy arises in the department for his appointment and also that he should submit a no objection certificate from all major members of the family stating that they would have no objection to his appointment as assistance to the family of the deceased. The learned counsel further took exception to applicant's consideration as stated in impugned Annexure A-1 dated 13.5.2000 that his case had been considered against 5% quota of Direct Recruitment (DR) vacancies occurring in a given year and that respondents found more indigent cases in comparison to applicant against the said 5% quota. Relying on the decision of Madhya Pradesh High Court in *T. Swamy Das v Union of India* in Writ Petition No.5760/2000 decided on 10.1.2002, the learned counsel contended that applicant's case should have been considered on the basis of respondents' policy of 13.6.1987 under which 20% Group 'D' posts can be filled on compassionate ground. The restriction of consideration for compassionate appointment against 5% DR vacancies only was imposed vide policy issued on 9.10.1998. The learned counsel stated that as applicant's father Shri Bhagwan Singh had died in harness on 6.8.1998, applicant's claim should have been considered under the 1987 policy against 20% DR quota for compassionate employment. The learned counsel further stated that while applicant's claim had been considered only once, his claim could have been considered thrice over under the existing government instructions. Thus the learned counsel sought quashment of the impugned order dated 13.5.2002 and direction to respondents for considering applicant's claim for compassionate appointment on the ground brought out by him.

3. On the other hand, the learned counsel of respondents submitted that applicant's name could be kept under consideration for compassionate appointment for three years subject to the condition that the committee had

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certified the poverty condition of applicant at the end of the first and second year and when compassionate appointment is not possible to be offered to applicant, his case has to be finally closed. The learned counsel further stated that applicant was above the poverty line as the family income was more than Rs.1767.20 (353+44x5) per month. The learned counsel further stated that under the policy guidelines applicant's case did not fall within the 5% DR vacancies.

4. In rejoinder the learned counsel of applicant stated that applicant's father died in harness on 6.9.1998 leaving behind widow, two non-earning sons and two unmarried daughters. The widow started drawing a family pension of Rs.1705/- per month. Applicant's case was rejected stating that there was no vacancy under 5% quota and further that his case had not been considered for three successive years before finally rejecting his case.

5. I have considered the respective contentions of parties. Annexure A-6 clearly states that the screening committee had found applicant fit for appointment on compassionate ground. He was merely to submit a declaration that he would wait for appointment till vacancy arose and he was also to furnish a no objection certificate from all major members of the family stating that they have no objection to applicant's appointment. This letter does not state anything regarding applicant's case not being one of below poverty line. As such, respondents cannot take this ground for denial of employment to applicant on compassionate ground. The learned counsel of respondents could not say anything against application of the ruling in the matter of *T. Swamy Das* (supra). Applicant's case is certainly under the policy prior to the policy of 9.10.1998 whereby the condition of consideration within 5% DR vacancies was imposed on compassionate appointments. Applicant's case is like the case of *T. Swamy Das* and had to be covered under 20% DR vacancies reserved for compassionate employment. Perusal of Annexure A-1 also indicates that applicant's case was not considered for three successive years.

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6. In the light of Annexure A-6 when applicant's case could be covered by the next first vacancy for compassionate employment against 5% DR quota, he would certainly have been covered under 20% quota of DR vacancies for compassionate employment under the policy of 13.6.1987 on 13.5.2002.

7. If one has regard to the discussion made above, present OA must succeed. Accordingly it is allowed quashing and setting aside Annexure A-1 dated 13.5.2002 and directing consideration of applicant's case for compassionate appointment duly applying the norm of 20% DR vacancies for compassionate employment as per policy of 13.6.1987 for three successive years from May, 2002 when applicant's case was considered for the first time. Respondents are directed to pass detailed and speaking orders, keeping in mind the above observations as also policy of 13.6.1987, expeditiously and preferably within a period of three months from communication of these orders.

V. K. Majotra  
5.8.05  
( V. K. Majotra )  
Vice-Chairman (A)

/as/