

12

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH : NEW DELHI**

**OA NO. 2504/2004**

**NEW DELHI THIS 13TH DAY OF JULY 2005**

**HON'BLE MRS. MEERA CHHIBBER, MEMBER (JUDICIAL)**

Shri Amit Sharma,  
Son of late Mahendra Pal Sharma,  
R/o Quarter No.419, Lancer Road  
Timarpur, Delhi – 110 054. ....Applicant.

(By Advocate Shri D.K. Rustogi.)

**VERSUS**

1. Union of India, Ministry of Defence, Secretary  
South Block, New Delhi – 100 001.
2. Controller General of Defence Accounts,  
West Block-V, R.K. Puram,  
New Delhi - 110 005.
3. Shri S.C. Luthar, Dy. Finance Controller(Co-ordination)  
Coordination Deptt., Ministry of Defence,  
South Block, New Delhi – 110 001. .... Respondents.

(By Advocate Mrs. Promila Safaya )

**ORDER (ORAL)**

By this OA applicant has sought directions to the respondents to issue appointment letter to him for the post of clerk on compassionate grounds.

2. It is submitted by applicant that his father died on 07.02.1998 while working as a Senior Auditor leaving behind his wife and two sons. The mother applied for compassionate appointment for the applicant vide representation date 13.07.1998 with request to relax his age as he was not major by that time. Applicant's mother was advised to apply after her son attained 18 years of age. Applicant attained maturity on 19.06.99 so again applied. He was called to appear in written test to be held on 10.04.2000 and interviewed also but since no appointment letter was received, he gave a detailed representation dated 17.04.2002 because vide letter dated 27.02.2001 applicant was informed that there was no vacancy available within 5% quota of direct recruitment. Moreover, there was no likelihood of vacancy to arise in future as other cases were already pending.

3. Subsequently applicant's mother received a letter from respondents dated 23.10.2002 informing her that the case was under consideration at Headquarter but finally vide letter dated 14.06.2004 respondents informed applicant's mother, the case for compassionate appointment has been rejected.



4. It is submitted by applicant that since his father had died while in service, he is entitled to get compassionate appointment.

5. Respondents on the other hand have submitted that compassionate appointment cannot be sought as a matter of right. Moreover it cannot give direction for appointment of a person on compassionate grounds. A person only has right of consideration and his case was duly considered as per OM dated 09.10.1998 and 03.12.1999 but since there was no vacancy available he could not be appointed, therefore, this case calls for no interference. On merits they have explained that the objective of granting appointment on compassionate grounds to a dependent family members of a govt. servant dying in harness leaving his family in penury and without any means of livelihood, is to relieve the family of the govt. servant concerned from financial destitution and to help it get over the emergency with this objective in view and in order to determine the financial destitution / penurious condition of the family, the Ministry of Defence vide para (a) of MOD ID No. 19(1)/2000-D(LAB) dated 12.2.2001(Ann. R-5) has fixed the poverty line as income of Rs. 1767.20 per month for a family of five members. In this case the family comprises 3 members and has received the under mentioned pensionary awards.

|                          |   |
|--------------------------|---|
| 1. Family                | Rs. 4,000/- + dearness relief.  |
| 2. D.C.R. Gratuity       | Rs. 3,05,210/-  |
| 3. G.P.F. accumulation   | Rs. 1,54,665/-  |
| 4. C.G.E. Insurance Amt. | Rs. 38,988/-  |
| 5. Encashment of leave   | Rs. 70,952/-  |
| 6. Total                 | Rs. 5,69,815/-<br>+Rs. 4000/- p.m. +dearness relief as<br>admissible from time to time. |

Considering these aspects the case for appointment on compassionate grounds in respect of Shri Amit Sharma, is not covered under the indigency criteria fixed by the Govt. Moreover compassionate appointment is made on the availability of vacancy only in the department within a ceiling of 5 % of maximum period of three years as such order issued by respondents no. 3 (annex.. A-7 ) is correct, as per orders on the subject and not illegal, malafide and in breach of the statutory right to appointment, as alleged by the applicant. Counsel for respondents also relied on the judgment given by Hon'ble High Court filed by applicant's mother.

7. Since none was present for the applicant, I am deciding the case on the basis of pleadings available and after hearing counsel for the respondents by attracting rule 15(1) of CAT Procedure Rules 1987. It is well settled by now that compassionate appointment cannot be claimed as a matter of right and a person only

14

has a right of consideration. In the instant case applicant's case has already been considered and respondents have clearly stated that his case did not come under the poverty line and there was not even any vacancy available. In Hindustan Aeronautics Ltd. Vs. Smt. Radhika Thirwalai reported in 1996(6) SCC 394 it was held by Hon'ble Supreme Court that compassionate appointment can be made only if vacancy is available. Similarly in JT 1996(5) SC 319 it was held by the Hon'ble Supreme Court that no post can be created to offer compassionate appointment. It has also been held by Hon'ble Supreme Court in the case of U.O.I. Vs. Joginder Sharma reported JT 2002 (7)SC 425 that Tribunal cannot direct the respondent to relax the limit of 5 % as compassionate appointment can be given only within 5 % of the direct recruitment.

8. In the instant case it is specific case of respondents that there is no vacancy. Apart from it, the judgment given by Hon'ble High Court (filed by applicant's mother against eviction) has also observed that the petition has duly been considered and claim has been rejected in terms of the norms.

9. The only ground raised by applicant in petition is that since his father had died while in service, he is entitled to get compassionate appointment. This is not correct because compassionate appointment is not one of the modes to get entry in service. It is to be given only exceptional circumstances where on the death of sole bread earner in the family, members are left in a lurch with no means and their pecuniary condition is so bad that they cannot even survive unless they are given immediate assistance by the department. In the instant case respondents have stated that applicants were not below the poverty line and even otherwise no vacancy was available and people were already waiting, therefore, I find no illegality in the order passed by respondents. The OA is accordingly dismissed. No order as to costs.



(MEERA CHHIBBER)  
MEMBER (JUDICIAL)

/mk/