

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA 2903/2004

New Delhi, this the 26th day of August, 2005

Hon'ble Shri M.K. Misra, Member (A)

1. Smt. Sunita Devi
W/o Late Shri Shital Prasad
(Formerly Group D employee- Washerman)
Military Hospital, Agra Cantt.
2. Anil Kumar
S/o late Shri Shital Prasad
Ex-Civilian Group D Employee
Military Hospital, Agra Cantt.

Both are residents of: -

House No.699, Sadar Bazar
Agra, UP.

...Applicants

(By Advocate Shri D.N. Sharma)

V E R S U S

Union of India through

1. The Director General of Medical Services (Army)
DGMS-3B, Adjutant General's Branch
Army Headquarters, 'L' Block, New Delhi - 1.
2. The Additional Director General of Man-Power
MP-4 (Civ.) Branch, Adjutant General Branch
Army Headquarters, DHQ Post Office, New Delhi - 1.
3. The Commandant, Military Hospital, Agra Cantt.

...Respondents

(By Advocate Shri B.K. Berera)

O R D E R (ORAL)

The applicants - Smt. Sunita Devi and her son Shri Anil Kumar
filed this OA with the following prayer:-

"(a) That the respondents be directed to furnish the record of selection for compassionate appointments on the basis of which merit-list was drawn leading to rejection of applicant's case vide letter dt. 21.1.2004 by Respondent No.1. In case the merit-list is found not to be in order or violating the prescribed instructions issued by the Additional Director General of Man-Power, the respondents be directed to rectify their omission and justice be done to the applicant by providing him compassionate appointment, to which he is otherwise held fit and eligible.

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(b) allow any other and further relief as may be deemed fit and proper in the circumstances of this case by this Hon'ble Tribunal in order to meet the interest of justice, and

(c) allow costs of this application."

2. Briefly the facts of the case are that Late Shri Shital Prasad, Ex. Civilian Group 'D' Employee (Washerman), of Military Hospital, Agra Cantt, died in harness on 18.6.2000 leaving behind his widow Smt. Sunita Devi and his elder son Anil Kumar and one younger son and two unmarried daughters. They applied for compassionate appointment on the ground of indigent condition of the family. Their case was considered by the respondents four times and the claim of the applicants was rejected on the ground that vacancies are not available and name of the applicant no.2 appears at Sl. No.23. His case was considered four times as per the directions of this Tribunal in OA NO.2959/2002 vide order dated 1.8.2003. A speaking order dated 21.1.2004 (Annexure A-1) was accordingly communicated to the applicants, which is under challenge.

3. Learned counsel for the respondents submitted that the case of the applicant has been considered four times as per the directions of this Tribunal in the above OA. Therefore, challenging this order again before this Tribunal is the misuse of process of law by the applicants. The family is not having any indigent condition because the family pension of Rs.2694/- per month is being given, which is the above the poverty line, i.e., Rs.1767.20. Further it was submitted that only 5% of the direct recruitment quota is available to fill in by such appointment. Due to non-availability of vacancies, the compassionate appointments could not be given to the applicant no.2.

4. The applicants filed MA 2407/2004 with the prayer that they should be allowed to join together on the ground that there being a

common cause of action and common prayer for common relief. Prayer is allowed. MA 2407/2004 is accordingly disposed of. B

5. The prayer is also made to the effect that the respondents be directed to furnish original records of the assessment of the candidates for compassionate appointment. The Tribunal vide its order dated 7.7.2005 directed the respondents to produce the relevant records as prayed for by the applicants.

6. The respondents produced the records on 26.7.2005 which were also perused by the Tribunal. It is observed that the name of the applicant No.2 appears at Sl. No.23 in the merit list of 2003 (October to December, 2003) and there are only 20 vacancies. Therefore, the claim of applicant no.2 cannot be accepted. Further as per the directions of this Tribunal in the above OA, the claim of the applicant no.2 was considered four times and there being only 20 vacancies and the name of the applicant no.2 being at Sl. No.23, therefore, he could not be offered any appointment on compassionate ground.

7. I have heard the learned counsel for the parties and perused the material available on record.

8. It is observed that in view of the Hon'ble Supreme Court decision in the case of ***Life Insurance Corporation of India vs. Mrs. Asha Ramchandra Ambekar and Anr.***, JT 1994 (2) SC 183, the High Courts and Administrative Tribunals cannot give direction for appointment of a person on compassionate grounds but can merely direct consideration of the claim of such an appointment. The Apex Court also held in the cases of ***Himachal Road Transport Corporation vs. Shri Dinesh Kumar***, JT 1996 (5) SC 319 and ***Hindustan Aeronautics Ltd. vs. Smt. A. Radhika Thirumalai***, JT 1996 (9) SC 197, that appointment on compassionate grounds can be made only if a vacancy is available for that purpose. In the case of ***Umesh Kumar Nagpal vs. State of Haryana and Anr.***, JT 1994

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(3) SC 525, the Apex Court held that appointment cannot be granted after a lapse of a reasonable period and it is not a vested right, which can be exercised at any time in future.

9. In the present case, the list of candidates eligible for compassionate appointments has been prepared and they are being given appointment on the basis of the available of the vacancies of 5% under direct recruitment quota. Since there is no vacancy available, the applicant No.2 was not given appointment as his name appears at Sl.No.23 and there were only 20 vacancies available for this purpose. As per the DOP&T's instructions issued vide OM No.14014/19/2002-Estt. (D) dated 5.5.2003, the applicant No.2's case was considered four times by the respondents but due to lack of vacancies, his case was rejected.

10. In the result, for the forgoing reasons, OA is sans merits and is accordingly dismissed without any order as to costs.


(M.K. Misra)
Member (A)

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