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**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH**

OA 1269/2004

New Delhi, this the 26<sup>th</sup> day of August, 2005

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

1. Smt. Krishna Devi  
W/o Late Shri Om Prakash  
R/o J 447-A, Sangam Vihar  
New Delhi – 67.
2. Dipesh Kumar  
S/o Late Shri Om Prakash  
R/o J 447-A, Sangam Vihar  
New Delhi – 67.

...Applicants

(By Advocate Shri M.K. Bhardwaj)

V E R S U S

Union of India through

1. Secretary  
Ministry of Urban Development  
Nirman Bhawan, New Delhi.
2. The Director General  
CPWD, Nirman Bhawan  
New Delhi.
3. Superintendent Engineer  
CPWD, New Delhi.
4. Executive Engineer  
Construction Division No.3  
CPWD, New Delhi.

...Respondents

(By Advocate Mrs. P.K. Gupta)

**ORDER**

The applicants – Smt. Krishna Devi, w/o Late Shri Om Prakesh and her son Dipesh Kumar both prayed through MA 1080/2004 for joining together in a single petition, as there is a

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common cause of action and common prayer for common relief. They are allowed to join together for the purpose of this OA. Accordingly, MA 1080/2004 stands disposed of.

2. The applicants' case is for grant of compassionate appointment to applicant no.2. Late Shri Om Prakash, who was working as Peon in Construction Division No.3, CPWD, husband of applicant No.1 and father of applicant no.2 died in harness on 17.12.1997. On the ground of indigent condition of the family, the applicants applied for compassionate appointment as per the Scheme of the DOP&T. The case of the applicants was considered by the competent authority and applicant no.2 Shri Dipesh Kumar, the son of the deceased employee, was issued the appointment letter, but he was not allowed to join the post. The applicant No.1, therefore, came to this Tribunal through OA No.2040/2003, which was decided on 22.8.2003 with a direction to the respondents that the claim of the applicant No.2 should be considered as per the provision of Scheme of the DOP&T. The respondents rejected the claim of the applicant No.2. In Contempt Petition No.392/2003 in OA No.2040/2003, which was filed by applicant no.1, this Tribunal vide its order dated 19.11.2003 discharged the notices issued to the respondents and also extended the time for compliance of directions in above OA. The applicant No.1 again approached this Tribunal with another Contempt Petition No.10/2004 in OA 2040/2003, which was disposed of on 12.3.2004 again discharging the notices issued to the respondents. It was further submitted by the learned counsel of the applicants that it is not correct to say by the respondents that

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there does not exist any vacancy because number of dependents of the deceased employees, who died in harness, were given appointment. In the present OA, the order dated 12.11.2003 was challenged. In this order, it is mentioned that applicant no.2 is at Sl. No.43 of the list of candidates who would likely to be appointed as LDCs on compassionate grounds. Later on vide letter dated 10.9.2003 of the respondents, for the post of Group 'D', i.e., Peon, the applicant No.2 was shown at Sl. No.48. The applicant No.2 is still without the employment. Hence, this OA.

3. Learned counsel for the respondents submitted that no appointment letter was issued to the applicant. Only the eligibility for the post of LDC of the applicant No.2 was approved by the Superintendent Engineer and the copy of which was not endorsed to the applicants. Therefore, the question of issuing the appointment letter to applicant no.2 did not arise. Since there is already large number of such cases, therefore, the same are to be considered on merits with regard to indigent condition of the family, including other factors. Therefore, the list was prepared according to certain norms and the appointment is being given on the basis of that list. The name of applicant No.2 for the post of LDC is at Sl. No.48. Therefore, his case would be considered only on his turn depending upon the availability of the vacancies of 5% under direct recruitment quota.

4. I have heard the averments made by the learned counsel for the parties and perused the material available on record.

(MME)

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5. 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 (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.

6. 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 to the post of LDC. However, as per the DOP&T's instructions, the applicant No.2's case should be considered at least three years, the respondents are directed to follow the instructions of the DOP&T's issued vide OM No.14014/19/2002-Estt. (D) dated 5.5.2003, which are as under:-

"The undersigned is directed to refer to Department of Personnel and Training O.M. No. 14014/6/94-Estt. (D), dated

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9.10.1998 and O.M. No.14014/23/99-Estt. (D), dated 3-12-1999 (Sl. Nos. 229 and 235 of Swamy's Annual, 1998 and 1999 respectively) on the above subject and to say that the question of prescribing a time-limit for making appointment on compassionate grounds has been examined in the light of representations received, stating that the one-year limit prescribed for grant of Compassionate Appointment is often resulting in depriving genuine cases seeking compassionate appointments, on account of regular vacancies not being available, within the prescribed period of one year and within the prescribed ceiling of 5% of Direct Recruitment quota.

2. It has, therefore, been decided that if Compassionate Appointment to genuine and deserving cases, as per the guidelines contained in the above OMs is not possible in the first year, due to non-availability of regular vacancy, the prescribed Committee may review such cases to evaluate the financial conditions of the family to arrive at a decision as to whether a particular case warrants extension by one more year, for consideration for Compassionate Appointment by the Committee, subject to availability of a clear vacancy within the prescribed 5% quota. If on scrutiny by the Committee, a case is considered to be deserving, the name of such a person can be continued for consideration for one more year.

3. The maximum time a person's name can be kept under consideration for offering Compassionate Appointment will be three years, subject to the condition that the prescribed Committee has reviewed and certified the penurious condition of the applicant at the end of the first and the second year. After three years, if Compassionate Appointment is not possible to be offered to the Applicant, his case will be finally closed, and will not be considered again.

4. The instructions contained in the above-mentioned OMs stand modified to the extend mentioned above."

7. The OA is disposed of accordingly without any order as to costs.

(M.K. Misra)  
Member (A)

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