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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No. 1332/2004

New Delhi, this the 10th day of August, 2004

Hon'ble Sh. Sarweshwar Jha, Member (A)

Smt. Bimlesh
W/o Late Sh. Naresh
R/o C/o Sh. Aidal Singh
Opposite Dayal Public School
Sanjay Nagar, Meerut, UP.

(By Advocate Sh. V.P.S.Tyagi)

...Applicant

V E R S U S

Union of India : through

1. Secretary
Ministry of Defence
South Block, New Delhi.
2. The Deputy Director General Mily. Farms
QMG's Branch, AHQrs
West Block-III, R.K.Puram
New Delhi.
3. The Director, Military Farms
HQ Central Command
Lucknow (UP).
4. The Additional Director, Mily. Farms
Mawana Road, Meerut Cantt, UP.

...Respondents

O R D E R (ORAL)

Heard the learned counsel for the applicant.

2. The applicant had approached this Tribunal earlier twice seeking appointment on compassionate grounds on the death of her husband who was a Group-'D' employee in Military Farm when he died in harness on 8-6-2000 leaving behind his family consisting of the applicant and four minor children. The first time he had filed OA 332/2002 which was disposed of on 7-3-2002 with the following directions :-

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"Having regard to the submissions made, I find that the present OA can be disposed of at this very stage itself even without issuing notices with a direction to the respondents to consider her claim expeditiously and take a decision in any event within a maximum period of three months from the date of receipt of a copy of this order. Simultaneously they are also directed to consider if in accordance with the relevant scheme framed by the Government of India the applicant can be considered for conferment of temporary status on the strength of the job work she has been doing for over a year. The respondents will take a decision on this question also within the aforesaid period of three months. I direct accordingly."

3. The respondents, in compliance with the said directions of the Tribunal issued a reasoned and speaking order on 17-4-2002 which has been referred to in their order dated 20-10-2003. The request of the applicant for appointment on compassionate grounds was rejected by them mainly for the reason that there was no vacancy available with the respondents within the prescribed limit of 5 % for such purposes.

4. The applicant approached the Tribunal thereafter vide OA 2698/2002 which was decided on 16-7-2003 with the following directions :-

"In the result, for the foregoing reasons, OA is partly allowed. Impugned order is quashed and set-aside. Respondents are directed to reconsider the request of the applicant for accord of compassionate appointment in the light of the above observations within a period of three months from the date of receipt of a copy of this order by passing a detailed and speaking order. No costs."

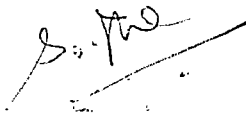
5. The said directions also were given consideration by the respondents, but in the end they again did not provide any employment to the applicant on compassionate grounds mainly for the reason that they have no vacancy and further that there were surplus posts/incumbents in their organization. While so doing, the respondents all the time appear to be taking the position relating to vacancies and non-availability thereof with reference to the position as existed in the Directorate General of Military Farms and not outside. The said organization is under the Ministry of Defence. Learned counsel for the applicant, in this regard, has invited attention to the Instructions as issued by the Ministry of Defence on 7-4-2003, a copy of which is placed at Annexure A-4 whereby the organization/authorities under the Ministry of Defence have been instructed to invariably apprise the Ministry and get their speaking orders or draft affidavits vetted by them where Defence Secretary is cited as respondent in any Court case. In the OAs that had been filed by the applicant in the past including the present one, the Union of India through Secretary, Ministry of Defence, South Block, New Delhi has been

Respondent No.1 and, therefore, the speaking order as has been issued by the respondents should have been issued only after having his approval, as contended by the learned counsel. On perusal of the said order, it is not clear whether the said order has been issued by the respondents after having shown the same to the Ministry of Defence.

6. Learned counsel for the applicant has argued that apart from the requirement of the Ministry of Defence that such speaking orders should have been shown to the said Ministry before the same were issued, the advantage which he expects from the said requirement being satisfied by the respondents is that the applicant could have been considered also against the vacancies existing under other organizations of the Ministry, and as such, her request stood a much greater chance of being given a positive application of mind and acceptability.

7. Learned counsel for the applicant has referred to the decisions of the Hon'ble Ernakulam Bench of the Tribunal in OA 580/2003 decided on 24-2-2004 on a similar subject in which, among other things, it has been held by the Tribunal that the case of the applicant in the said OA was rejected by lower authority saying that the approval of the Ministry of Communications (in the said case) had been obtained before representation of the applicant was rejected and, in the process, there was non-application of mind by the appropriate authority, i.e., Secretary, Ministry of Communications. The Hon'ble Tribunal has also held that mere approval is not which is sought by the direction of the Tribunal and as such the impugned order in the said OA was not found to be sustainable. It has also been held in the said decisions that appointment on compassionate grounds can be granted only if vacancy is available for that purpose. Learned counsel for the applicant has argued that the applicant had a greater chance of being offered an appointment on compassionate grounds if the matter had been referred to the Ministry which has other organizations also under them with greater number of vacancies and which could have granted the relief as prayed for by the applicant.

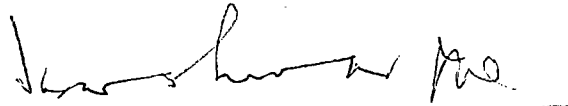
8. Learned counsel has further argued that, according to the Instructions of the DoPT, the applicant should have been considered beyond one year, whereas in this case, it has been considered only once and rejected. Accordingly, he has prayed that the respondents be directed to refer the matter to the Ministry of Defence and also to



consider her case against vacancies not only for one year but also for subsequent two years.

9. The submissions made by the applicant and also the facts as submitted in this OA have been considered and it is observed that there is no evidence in the speaking order as to show that the speaking order of the respondents has been issued with the approval of the Ministry of Defence/Secretary, Ministry of Defence. It is also not clear from the said speaking order whether the applicant's case has been considered second time or third time.

10. Under these circumstances, I am of the considered opinion that there is considerable justification to dispose of this OA at the admission stage itself with a direction to the respondents to apply fresh mind to the case of the applicant at the level of the Ministry of Defence/Secretary, Ministry of Defence as required vide their own Instructions as referred to hereinabove and to dispose it of keeping in view the vacancies as exist not only in the respondents' organization but also under other organizations of the Ministry of Defence and also the decisions of the Ernakulam Bench of this Tribunal as referred to hereinabove. Ordered accordingly.



(SARWESHWAR JHA)
ADMINISTRATIVE MEMBER

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