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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

O.A. NO.359/2004

This the 28th day of September, 2004.

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

Vivek Srivastava S/O Late A.S.Srivastava,
R/O c-285, Minto Road Complex,
New Delhi.

... Applicant

(By Shri Jasbir Singh Malik, Advocate)

-versus-

1. Union of India through
Secretary, Department of Urban Development,
Ministry of Urban Affairs and Employment,
Nirman Bhawan, New Delhi.
2. The Director of Printing,
Directorate of Printing,
Government of India,
Ministry of Urban Affairs and Employment,
B Wing, Nirman Bhawan,
New Delhi.
3. Assistant Manager (Admn.),
Govt. of India Press,
Ring Road, Mayapuri,
New Delhi-110064.

... Respondents

(By Shri R. N. Singh, Advocate)

ORDER

By virtue of this application, memorandum dated 15.12.2003
(Annexure-A) has been assailed whereby the applicant has been
informed that his name had not been included in the list of deserving
cases in October, 1993 for compassionate appointment in the

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category of Copy Holder as the appropriate authority did not find his case deserving.

2. Applicant had earlier on approached this Tribunal through OA No.914/1992 which was decided on 27.8.1993. On behalf of the respondents it had been stated that applicant's name was placed at Sl. No.76 in the list for offering appointment on compassionate grounds and that applicant would be given an appointment when his turn comes. It was directed that respondents should strictly abide by their statement for considering applicant's case on merits for compassionate appointment. Thereafter respondents vide Annexure-D dated 13.2.1996 informed the applicant that his name had been included in the list of deserving cases for the category of LDC/Copy Holder (at Sl. No.44 for the category of LDC and at Sl. No.16 for the category of Copy Holder). It was also stated therein that applicant would be considered when his turn matured subject to availability of vacancies against the compassionate appointment quota.

3. The learned counsel of applicant pointed out that applicant's junior Suresh Kumar whose father died on 16.5.1991 was appointed on 27.2.2002 as Copy Holder on compassionate grounds, while applicant whose father died prior in time on 17.3.1991 has not been offered such appointment. As such applicant has been discriminated against. The learned counsel also stated that one Smt. Santosh wife of Shri Balbir Singh was also appointed as Photo Typesetter though her husband died only on 30.9.1999. The learned counsel stated that applicant could have been considered for

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appointment as LDC/Copy Holder/Photo Typesetter. According to the applicant his name is presently listed in the category of LDC at SL No.27 and in the list of Copy Holder at Sl. No.6. The learned counsel also referred to respondents' letter dated 1.11.1991 (Annexure-H to the rejoinder) whereby applicant had qualified the trial test for the post of Key Board Operator on 5.10.1991. The learned counsel of applicant contended that seniority of the applicant for compassionate appointment under the Government instructions relates to the date of death of the government employee. The learned counsel maintained that applicant's father had died prior to the Government servants related to Suresh Kumar and Smt. Santosh. As such, applicant should have been considered for granting appointment on compassionate ground earlier than Suresh Kumar and Smt. Santosh. The learned counsel further stated that respondents had included applicant's name in the list only in 1996 and not in 1993 although applicant's father had died on 17.3.1991.

4. Respondents have produced the records relating to the case of applicant for appointment on compassionate ground. The learned counsel of respondents stated that applicant's name was included in the 1996 list after Tribunal's orders dated 27.8.1993. He was kept at Sl. No.44 for the category of LDC and at Sl. No.16 for the category of Copy Holder. He stated that Smt. Santosh was in a different category of Photo Typesetter. The learned counsel relied upon : (1) **Veer Mohd. V. Municipal Corporation of Delhi**, 95 (2002) Delhi Law Times 663 (DB); and (2) **Sanjay Kumar v. State of Bihar &**

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Ors. (2000) 7 SCC 192, to contend rejection of applications for compassionate appointment after a long lapse of time is in order being time barred.

5. I have considered the respective contentions of the parties and also perused the records produced by the respondents.

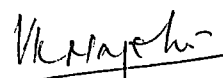
6. It has not been denied on behalf of the respondents that the criterion for allocating seniority in the eligibility list of candidates for appointment on compassionate grounds is the date of death of the deceased employees. This was admitted by the respondents in their reply dated 4.5.1999 in OA No.2476/1998 (Annexure-G to the rejoinder). It has also not been disputed on behalf of the respondents that while applicant's father died on 17.3.1991, that of Shri Suresh Kumar died on 16.5.1991 and husband of smt. Santosh died much later on 30.9.1999. The records produced by the respondents do not reveal the reason for exclusion of applicant's name in the list prepared in 1993. These records also do not reveal why applicant's seniority on the basis of the date of death of his father was not considered for allocating seniority to him in the eligibility list. It is also not revealed why applicant was listed in the category of LDC/Copy Holder only and not in the category of Photo Typesetter/Key Board Operator. Applicant had acquired the additional qualification ~~and~~ having qualified in the test held for Key Board Operator. Applicant has certainly been discriminated against in the sense that applicant's juniors, i.e., Suresh Kumar and Smt. Santosh were appointed on compassionate grounds and applicant's case has

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been rejected as not deserving despite Tribunal's earlier directions dated 27.8.1993 in OA No.914/1992.

7. While in normal cases as held in the case of **Veer Mohd.** (supra) delay on the ground of limitation would have been a good ground for rejection of applicant's claim, but non-consideration of applicant's seniority, non-inclusion of his name in the 1993 list and non-consideration of his name in any category of LDC/Copy Holder/Photo Typesetter/Key Board Operator would constitute sufficient ground to overcome the hurdle of limitation. Respondents' order dated 15.12.2003 (annexure-A) is accordingly quashed and set aside being arbitrary not having been passed on rational grounds. The applicant has also been discriminated against juniors having been preferred for appointment on compassionate ground. In result respondents are directed to consider the applicant's claim for appointment on compassionate ground in any next available post of LDC/Copy Holder/Key Board Operator/Photo Typesetter in the quota for compassionate appointment.

8. The OA is accordingly allowed.


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

28.9.04

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