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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI.

O.A. No. 1075 of 1993

DATED THIS 17<sup>th</sup> DECEMBER, 1993.

1. Smt. Pushpa Wd/o Late K.B.L. Kapoor
2. Deepak Kapoor S/o Late K.B.L. Kapoor  
R/o Qtr. No. 13/204, Old Type-I  
Ordnance Factory, Murad Nagar,  
Distt. Ghaziabad (U.P.)

Applicants

By Advocate Shri V.P. Sharma

versus

Union of India through

1. The Secretary,  
Ministry of Defence,  
Government of India,  
New Delhi.
2. The Director-General,  
Ordnance Factory Board,  
10-A, Auckland Road,  
Calcutta.
3. The General Manager,  
Ordnance Factory Muradnagar,  
Distt. Ghaziabad (U.P.)

Respondents

By Advocate Mrs. Raj Kumari Chopra.

JUDGEMENT

(delivered by Hon. Member(J) Shri C.J. ROY)

This application is filed under Section 19 of the Administrative Tribunal's Act, 1985 against the Annexure A-1 order of the respondents dated 3.5.93 by which the claim of the applicant for appointment to any class-III post has been rejected.

2. The facts of the case are that the applicant No.1 is the widow and the applicant No.2 is the son of late Shri K.B.L. Kapoor who was working in the Ordnance Factory Murad Nagar and died in harness on 6.1.91. Based on the representation dated 18.1.91

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(Annexure A-8 for appointment on compassionate ground, the applicant No.2 was called for interview/written test on 15.3.91 for the post of L.D.C. and was found fit for appointment. Vide order dated 4.6.91, the applicant received a communication to the effect that for want of vacancies, he cannot be appointed as L.D.C. The indigent circumstances of his family forced him to accept the lab post vide order dated 1.12.91 (Annexure A-9) but did not waive his right to the Group 'C' post. The applicant was also interviewed for the post of Security Assistant vide order dated 28.2.92 (Annexure A-3), but was not given appointment. He represented for consideration under Group 'C' post but was rejected vide order dated 3.5.93 (Annexure A-1). He has referred to the cases of Smt. Sushma Gosain versus Union of India and Smt. Phoolwati versus Union of India, both decided by the Hon. Supreme Court, in which it was laid down that appointment on compassionate ground should be to the post commensurate to the academic qualification. Hence the applicant No.2 is entitled for appointment to the post of L.D.C. He states that the rejection order therefore, is illegal, unjust, violative of Articles 14 and 16 of the Constitution of India and hence the same is liable to be quashed and prays for a direction to the respondents to declare him as entitled for Group 'C' post or any suitable post commensurate to his qualification on compassionate grounds. He has also referred to the OA 449/92 in which the applicant who was similarly situated was considered for the Group 'C' post.

3. The respondents in their reply have stated that considering the indigent circumstances of the family, the applicant was interviewed for the post of LDC on 15.3.91 along with other similar cases. However, in the meantime, the sanctioned strength of group 'C' posts was reduced thereby freezing the vacancies and as such, he could not be appointed as LDC. In order to render assistance to the deceased family, the case of the applicant was again considered for the post of Labour 'B' and he was intimated vide letter dated 4.6.91 to appear before the selection Board for Test/Interview on 12.6.91 if he is willing to be considered for the Labourer 'B' post without commitment. In response, the applicant appeared, was found suitable and accordingly appointed w.e.f. 11.12.91. The counsel for the respondents while referring to the Government of India, OM.No.14014/6/86-Estt(D) dated 30.6.87 stated that when a person has accepted a compassionate appointment to a particular post, the set of circumstances which led to his initial appointment should be deemed to have ceased to exist and thereafter the person who has accepted compassionate appointment in a particular post should strive in his career like his colleagues for future advancement and claim for appointment to higher post on consideration should invariably be rejected. In view of the above Government instructions, the applicant has no case and the OA is liable to be dismissed.

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4. I have heard the learned counsel for both parties and perused the documents on record. The short point involved in this case is whether the applicant who was initially called for interview for the post of LDC and was declared fit and could not be appointed on the ground of freezing of vacancies but was alternatively given appointment in the post of labour 'B' after obtaining his willingness can now claim for consideration in the Group 'C' post. No doubt the respondents have considered the applicant for appointment in the labour 'B' post when the deceased family was in indigent circumstances. But the issue here is, as to why was the applicant called for interview for the post of LDC and after declaring him fit was the vacancy freezed. The onus lies on the respondents to clarify the vacancy position in advance as to whether the applicant should be called for interview or not and having called for interview and found fit for appointment to the post of LDC, he should have been appointed and instead he should not have been asked for his willingness to the alternative job without any commitment. Every person in the situation of the applicant will be prepared to join in any post when the family is in indigent circumstances and the applicant in the instant case is not an exception. Because he has accepted a post that was offered to him on compassionate ground on that point of situation, it is not that he loses his right to claim for higher post for which, otherwise he was considered and found fit for appointment. The contention of the respondents that when a person has accepted a compassionate appointment to a particular post, the set of circumstances which led to his initial appointment should be deemed to have ceased to

exist and thereafter the person who has accepted compassionate appointment in a particular post should strive in his career like his colleagues for future advancement and claim for appointment to high post is not acceptable to me. Had this situation had arisen after appointing the applicant in the post of Group 'C' on his being found fit, then the argument advanced by the respondents would have been right. In the circumstances, without going into the merit of the case, I have no hesitation in directing the respondents to reconsider the case of the applicant for appointment in any Group 'C' post or any suitable post commensurate to his qualification, if the vacancy exists and if the vacancy does not exist, the respondents to consider him in the forth coming vacancies subject to his fulfilling all other conditions in accordance with rules since he had already been tested and found fit for the Group 'C' post.

5. With this observation, this OA is disposed of with no order as to costs.

*urfor*  
(C.S. ROY) 17/12/93

MEMBER(J)