

CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH, ALLAHABAD.

O.A./CCPT/A/R.A. NO. 1308/87

Date of Decision 9/3/88

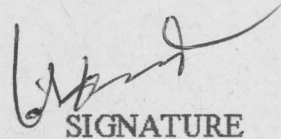
Rajendra Kumar Applicant(s)
Sri S.K. Pandey Counsel for the Applicant(s)
Versus.

union of India & Ors. Respondent(s)
Sri Ashok Mohikey Counsel for the Respondent(s)

CORAM:

HON'BLE MR. K.B.S. Rayan J.C./MEMBER (J)
HON'BLE MR. / MEMBER ()

1. Whether Reporters of local News Papers may be allowed to see the judgment. no
2. To be referred to the Reporters or not. yes
3. Whether their Lordship wish to see the fair copy of the judgment. yes
4. Whether to be circulated to all the Benches. no


SIGNATURE

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD.**

ORIGINAL APPLICATION NO. 1308 OF 1997

THIS THE 7th DAY OF March, 2005.

HON'BLE MR. K.B.S. RAJAN, MEMBER(J)

Rajendra Kumar,
S/o Late Barkhu Ram,
R/o Village Magholi Bhedwan,
Tehsil Burhanpur,
District Azamgarh.Applicant.

By Advocate: Sri S.K. Pandey.

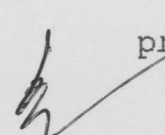
Versus

1. Union of India, through the Ministry of Defence,
New Delhi.
2. General Manager, Ordnance Parachute Factory, Napier
Road, Kanpur.Respondents.

By Advocate: Sri Ashok Mohiley

ORDER

The applicant in this case has sought a direction to the Respondent No. 2 to appoint him on a Class IV post on compassionate grounds under the "Dying in Harness Rules, 1974". A brief fact of the case necessary for consideration of this application is given in the succeeding paragraphs.

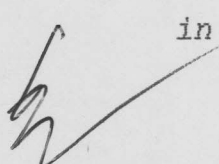
- (a) The father of the applicant was working as a semi-skilled permanent labourer under Respondent No. 2 and while in service he expired on 12.12.1993, leaving behind his widow, three sons and a daughter. Of the three sons, the elder son of the deceased has been married and has been living separately. He is a practising Advocate in Azamgarh and has no
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concern with the other brother, sister and mother.

(b) The widow of the deceased (i.e. mother of the applicant) had requested for compassionate appointment of the applicant vide letter dated 14.9.1994 (Annexure I). The Respondent had requested DM Azamgarh to ascertain the financial position of the widow of the deceased and her family. The District Magistrate had furnished the financial position of the entire family by his reply dated 31.3.1994.

(c) After considering the case of the applicant, the Respondent had rejected the request of the applicant for compassionate appointment. Communications contained in Annexure III of Compilation No. II refers. The applicant made further representations to the Respondents in December 1996 as well as January and April 1997 and there being no response to the above representations, he had moved this present O.A. on the following amongst other grounds:-

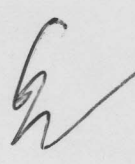
(d) The rejection of his request for compassionate appointment is illegal and is against the law laid down by Hon'ble Supreme Court in the case of Sushma Gosain, reported in AIR 1989 SC 1978 and in the case of Phoolmati reported in AIR 1991 SC 469. While the spirit behind the Dying in Harness Rules is to provide for immediate



employment to meet out the hardship faced by the family on the untimely demise of the Government servant, rejection of the case of the applicant vide orders dated 18.8.1994, 7.2.1995 and 4.4.1995 is illegal and arbitrary and is also in violation of the Dying in Harness Rules.

2. The Applicant's further representations have not been disposed off.

3. It has been stated on behalf of the Respondents that terminal benefits to the tune of Rs. 76,135/- was made available to the widow of the deceased and in addition, family pension of Rs. 490 + D.A. per month was also sanctioned. Taking into account the above as well as the fact that the eldest son of the widow is an earning member, compassionate appointment was not given and as such the case was rejected. The applicant's mother then filed an application stating that her eldest son is living separately and hence asked for compassionate appointment for the second son. As this was not found to be a sufficient ground the same was also rejected. Request made by the applicant's mother addressed to the Hon'ble President of India, which percolated term down upon the Respondent was also considered on merit and rejected as there was new or additional ground justifying compassionate appointment in this case. The Petitioner's mother had also



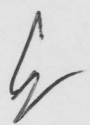
approached the SC/ST Commission and on its reference to the respondents, it was also informed as to the decision as well as reasons thereof by Respondent No. 2.

4. The applicant had filed necessary rejoinder reiterating his contentions made in the application.

5. In the course of arguments, the Ld. Counsel for the applicant has strenuously argued that the Respondents have not taken into account the fact that the applicant's elder brother was living separately and the mother has been living with the applicant and that under such circumstances, the request of the applicant ought to have been acceded to. The Learned Counsel for the applicant had relied upon the following Judgement:-

1. 2000 SCC (L&S) 767
2. 1991 (18) ATC 786
3. 1995 (30) ATC 351
4. Order dated 22.9.2004 in O.A. No. 1045 of 2004
5. Order dated 1.3.2001 in O.A. No. 1659 of 1999

6. The Counsel for the Respondent, contesting the O.A. has stated that employment on compassionate ground is not a right and it is being granted only in the case of acute penurious situation and that too as a matter of relieving the family of



the deceased from the immediate hardship faced by the family in the sudden and unfortunate death of the Government employee while in service. And, in the instant case, as the eldest son is an earning member as an Advocate and notwithstanding the fact that he has been living separately, there is no justifiable ground to grant compassionate appointment especially when the widow was paid a substantial amount as terminal benefits in addition to family pension which is reckoning feature. On his part, the Ld. Counsel for the Respondent relied upon the following decisions :-

- (a) 2004 (1023) (SC) FLR
- (b) Order dated 12.11.2002 in O.A. NO. 1019 of 2002
- (c) Order dated 26.1.2003 in O.A. NO. 1230 of 2000
- (d) Order dated 22.4.2003 in O.A. NO. 178 of 2003
- (e) Order dated 9.5.2003 in O.A. NO. 500 of 2003
- (f) Order dated 12.5.2003 in O.A. NO. 1154 of 2002
- (g) Order dated 5.1.2004 in O.A. No. 126 of 2004
- (h) Order dated 29.6.2004 in O.A. NO. 995 of 2002
- (i) Order dated 16.8.2004 in Civil Appeal No. 5256 of 2004
- (j) Order dated 20.9.2004 in O.A. NO.1170 of 2003

7. I have given anxious consideration to the rival contentions. The admitted fact is that the father of the applicant died in the year 1993 in harness

and initially the application was preferred by the widowed mother for compassionate appointment of her second son. Action was taken by the Respondent to find out the financial condition of the family and in this regard, report of the District Magistrate was also requested for who had given the exact position as gathered by him and the same included the fact that the eldest sons has been practising as an Advocate living separately and that some landed property was also available. Of course, he had not reflected anything about the terminal benefits paid to the widow or as to the widow of the deceased Government servant being in receipt of family pension. These particulars are however already available with the Respondents.

8. The law is by now well settled that compassionate appointment is not a vested right and it is only when the financial condition of the family of the deceased is hopelessly poor that such appointments can be granted. The Hon'ble Supreme Court in one of the latest Judgements in **Punjab National Bank v. Ashwini Kumar Taneja, (2004) 7 SCC 265**, has clearly laid down the law in matters of compassionate appointment. The Apex Court in page 268 has held as under:-

"Courts and Administrative Tribunals cannot confer benediction impelled by sympathetic considerations to make appointments on compassionate grounds when the regulations framed in respect thereof do not cover and

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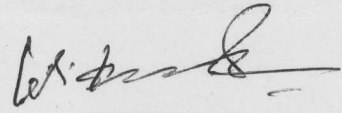
contemplate such appointments. Such appointments on compassionate ground have to be made in accordance with the rules, regulations or administrative instructions taking into consideration the financial condition of the family of the deceased. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread-earner in the family. Such appointments should, therefore, be provided immediately to redeem the family in distress. (Emphasis supplied)."

9. The Judgement cited by the Ld. Counsel for the applicant have also been considered. It may be seen that in most of the orders relied upon by the applicant, the matter was only remanded back to the Respondents for consideration of the case, on the basis of those facts which were not earlier considered. In the instant case no such ground has been raised that the Respondents have not considered any particular point or ground which, if so considered would have tilted the decision in favour of the applicant. As such, the judgments cited by the learned counsel for the applicant are not of any help to him. Instead, the judgments cited by the learned counsel for the respondents clearly reflect the law on the subject. Telescoping the law on the subject to the facts of the case, I find that no justifiable ground is available to assail the decision of the respondents in rejecting the application for compassionate appointment preferred by the applicant.



10. In view of the above, I find no merit in the
O.A. and accordingly the same is dismissed.

No order however as to costs.



MEMBER-J

GIRISH/-