

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD**

ORIGINAL APPLICATION NO.311/1997

DATED, THE 21st DAY OF JANUARY, 2008.

CORAM:

HON'BLE DR.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE MR.K.S.MENON, ADMINISTRATIVE MEMBER

- 1 Vindhya vashni prasad yadav
- 2 Vijay pal yadav
Both sons of Late Sr.Rama Nand Yadav,
R/o.VII & P.O. Balapur,
Tehsil Karchhana, P.S.Ghoorpur,
Dist. Allahabad.
- 3 Ram Pal Yadav aged about 27 years
son of Late Sr.Rama Nand Yadav,
R/o.VII & P.O. Balapur,
Tehsil Karchhana, P.S.Ghoorpur,
Dist. Allahabad. ... Applicants

(By Advocate Sr.R.Verma)

V/s.

- 1 Union of India through Director
General of Ordnance Services,
Master General of Ordnance Branch,
Army Headquarters DHQ P.O.,
New Delhi – 110 011.
- 2 The Commandant, Central Ordnance
Depot, Chheoki, Naini, Allahabad.
- 3 Sri Bhuvaneshwar Singh,
aged about 30 years S/o.Late Shri Jag Pal,
working as Lower Division Clerk in
C.O.D., Chheoki, Naini, Allahabad. ... Respondents

(By Advocate S.Chaturvedi & S.Ram)

(ORDER)

Hon'ble Dr.K.B.S.Rajan, Judicial Member

This case has been remanded by the Hon'ble High Court, vide Judgment
dated 16th October, 2007 wherein the Hon'ble High Court had held as under:-

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"Shri C.L.Pandey, learned counsel appearing for the petitioner has submitted that the policy decision of the Army Headquarters dated 8th June, 1989 was required to be considered in the light of the counter affidavit filed by the Union of India, wherein it was explained that if a employed family member of the deceased employee, was living separately, independently, and was not supporting the other family members, the ineligibility clause would not operate. The learned Tribunal decided the case without taking into consideration the averments made by the petitioner also in this regard. In the counter affidavit filed before the Tribunal, the present petitioner has stated as under:-

"It is stated that elder brother of respondent no.3 was appointed about 14 years ago and is living separately. Respondent no.3 was living with his father and was dependent to his father. There were other members of family of respondent no.3 who were dependents of their father, namely, two sisters. After the death of father, the family of respondent no.3 was in precarious condition".

Similarly, Union of India has stated as under:-

"..... So far the employment of the brother of the respondent no.3 is concerned, it is stated that his brother is employed but he was living separately and not supporting the family of the deceased at all. Hence it would not be fair to deprive dependant family of the deceased on this pretext. This matter may please be taken in the spirit that if there is earning member amongst the dependants of the deceased all other factors be considered in the present case, is living separately and do not support the family of the deceased it would be injustice to declare the deceased family for employment benefit."

The averments made by the present petitioner and Union of India did not find any consideration in the impugned judgment and order passed by the learned Tribunal.

Shri N.P.Shukla, learned counsel appearing for respondent nos 3 and 4 and Shri Rakesh Verma, learned counsel appearing for respondent nos.1 and 2 have submitted that as the matter requires the interpretation of the policy decision, it would be desirable that the matter be remitted to the Tribunal for re-consideration instead of deciding it here.

Shri C.L.Pandey has submitted that as the case of respondent no.4, Shri Ram Pal Yadav, has also been considered 3-4 times, he shall also fall within the ambit of ineligibility, provided in the said policy decision, as on that issue also the Tribunal has not recorded any finding.

Considering the facts and circumstances of the case and the submissions and suggestions made by the learned counsel for the

parties and with their consent, we set aside the judgment and order dated 08.04.2004, impugned, and request the learned Tribunal to reconsider all the issues agitated by the parties in their pleadings and decide the same expeditiously."

2. The case was taken up with the Apex Court, by which time, the applicant having expired, his legal heirs were to be brought on records and the Apex Court, while dismissing the special leave petition filed by the Union of India, had however, allowed the application for substitution, subject to just exceptions. Accordingly, the legal heirs were substituted.

3. Brief Facts: Late Ramanand, father of the applicants was working as UDC in COD, Chheoki who died while in service in 1992 and was survived by a family of ten members. All these were stated to be dependents of the said deceased Ramanand. By virtue of the then order on matters of compassionate appointment, the widow/son/daughter of the deceased employee could be considered for compassionate appointment and for this purpose, there had been certain guidelines including units of marks to be allotted to Minor Children and unmarried daughters, total number of family members, Number of year of service that the deceased could have served more, assessment of monthly income etc., According to the applicants, they were entitled to such marks corresponding to the size of family etc., While as per their calculations the marks total 49, respondents have calculated only 29 marks and thus, the applicants have been discriminated. Respondent No. 3, yet another aspirant under compassionate appointment was granted 33 marks and had been afforded compassionate appointment as lower division clerk. Applicant's mother had preferred representations and the respondents have passed the impugned order dated 18th November, 1996 stating that there being only one vacancy, and the merit position

of the applicant's mother being nine, she or any of her family member could not be considered for compassionate appointment.

4. Private respondent has stated that there were three more individuals who were appointed on compassionate ground and he is not necessary party to the proceedings. Notwithstanding the same, the OA suffers from limitation and that in so far as merit of the matter is concerned, it has been contended that some of the family members of deceased Ramanand are earning through business.

5. Official respondents submitted that vide Ministry of Home Affairs, Deptt. Of Personnel and Administrative Reforms ~~in their~~ Memorandum dated 25-11-1978 provides that even where there is an earning member in the family, if the said family member lives separately and does not support the family, then compassionate appointment could be granted to other family member so that the remaining family members could be taken care of. The only rider is that in such a circumstance, approval of the Ministry of Defence should be obtained. It was on that ground that Respondent No. 3 was granted compassionate appointment, though one of his brothers was employed. Even in 1998 the above rule position was revaluated. The Army Headquarters circular dated 8-06-1989 is neither exhaustive nor issued in supersession of the earlier rules on the subject and hence the said circular cannot be read in isolation but with the prevailing rules on the subject. Vide Annexure SA – 6, the comparative chart in respect of the applicant and private respondent would give the the true picture.

6. Counsel for the applicant submitted that the case of the applicant has not been properly dealt with by the respondents. While the father of the applicants expired in 1992, the rules then in extant alone should have been considered and

this was not done. If that be done, and if the exact number of family members be also taken into account, the applicant gets preference over the private respondent.

7. Respondents have reiterated their contentions as in the counter.

8. Arguments were heard and documents perused. Originally the OA was allowed on the ground that respondents were not all that right in affording compassionate appointment to respondent No. 3 as there was an employed family member. However, taking into account the provision contained in 1978 order, under which the case of the private respondent could be covered, and on the ground that the Tribunal had not considered fully the counter filed by the respondents the Hon'ble High Court has, with the consent of the parties, set aside the said order of this Tribunal and directed that the case be considered afresh.

9. The question that thus remains that when the rules that are applicable are taken into account, whether the applicant's case should have been considered in preference to the private respondent or whether both of them could also be considered, subject to availability of vacancies.

10. Army Headquarters have certainly issued the guidelines, vide Annexure A-III. These guidelines have been based on the DOPT OM dated 30th June, 1987 and the preamble to the letter states, "the orders issued on the subject have been simplified and consolidated in this letter." Para 2 of the order specifically deals with non eligibility and excludes cases of such applicants where a member of the family of the employee is already employed or the case has already been considered thrice and rejected. This stipulation, which is based on the DOPT order dated 30th June, 1987, impliedly supersedes the earlier orders on the subject.

b Viewed from that angle, certainly, the appointment of the private respondent

would become invalid. The applicant would then be considered against that appointment. Further, if the details of the family members of the deceased Ramanand are considered, there seems to be some confusion in this regard. The comparative chart does not reflect the exact number of family members.

11. However, taking into account the fact that the private respondent has been continuing in service since 1997, it may not, at this distance of time, be appropriate to dislodge him from service to consider the case of compassionate appointment to the applicant. His appointment should be deemed to have been made with the approval of the Ministry of Defence, in relaxation of the rule in existence. The case of the applicant can well be considered independent of the same by considering the case of the applicant now in the next available vacancy. The details as contained, as of 1996, when the case was rejected should be taken into account and the same considered under the law then existing so that justice would be rendered to the applicant.

12. In view of the above, the OA is disposed of with the following directions :

- (a) That the respondents shall set the clock back to 1996 and consider the case of the applicant.
- (b) While so considering, the rule that is applicable as of that date should be the guiding factor.
- (c) If the case of the applicant falls within the parameter (which appears so as per the details furnished by the applicant), the applicant's case should be compared with others who had been considered and his merit fixed accordingly.
- (d) If any one who had secured less marks than the applicant was appointed, the applicant should also be considered for suitable appointment

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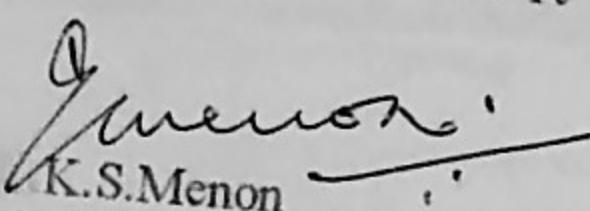
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from that date, though from that date till the applicant joins duty, the period of service would be taken as notional, which would be considered only for notional fixation of pay and notional seniority.

(e) The applicant shall be deemed to have been in service from the date the next meritorious one has been in service. But no back wages shall be paid.

13. The above drill shall be completed within a period of three months from the date of receipt of a certified copy of this order. No costs.


K.S.Menon
Administrative Member


Dr.K.B.S.Rajan
Judicial Member