

CENTRAL ADMINISTRATIVE TRIBUNALALLAHABAD BENCH, ALLAHABAD

Allahabad this the 20th day of November 2001.

Q U O R U M :- Hon'ble Mr. C.S. Chadha, Member- A.

Orginal Application No. 868 of 1998.

Jai Shankar Prasad S/o Late Dukhanti Prasad  
R/o Onhai Post Bagali Pizara, Distt. Mau.

.....Applicant

Counsel for the applicant :- Sri Anant Vijay

V E R S U S

1. Union of India through the Secretary, M/o Water Resources, Shram Shakti Bhawan, New Delhi.
2. The Chief Engineer and Member, Central Ground Water Board, N.H. Vith Faridabad, Haryana.
3. Executive Engineer No. Div. III, Central Ground Water Board, Patel Nagar, Varanasi, U.P.

.....Respondents

Counsel for the respondents :- Km. S. Srivastava

O R D E R (Oral)

(By Hon'ble Mr. C.S. Chadha, Member-A.)

This O.A has been filed under section 19 of the Administrative Tribunals Act, 1985.

2. The case of the applicant is that his late father was a driver in the Central Ground Water Board Div. III at Varanasi and died in harness on 01.09.1994. An application was submitted to the respondents on 03.10.1994 for the compassionate appointment of the

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applicant, but despite several representations in 1995-1997, no decision was taken by the respondents. The applicant then approached the Hon'ble High Court in a writ petition and an order was passed on 27.04.1998 directing consideration of the case of the petitioner in accordance with rules. The department then passed a detailed speaking order on 15.06.1998 rejecting the application on the ground that no vacancy was available within the 5% quota meant for compassionate appointment. Hence this O.A has been filed.

2. The only issue to be decided in the O.A is whether the lack of<sup>3</sup>vacancy in the 5% quota is a valid and sufficient reason for refusing appointment on compassionate grounds or should a vacancy be created for the purpose. The learned counsel for the applicant cited the judgment of the Hon'ble Supreme Court in Kamal Narain Tripathi Vs. Basic Shiksha Adhikari, Kanpur and others ( (1990) 3 U.P.L.B.E.C 1753) wherein it was held that an order refusing appointment on the ground of no vacancy was bad. It was therefore, pleaded that on the same analogy a post should be directed to be created for the appointment.

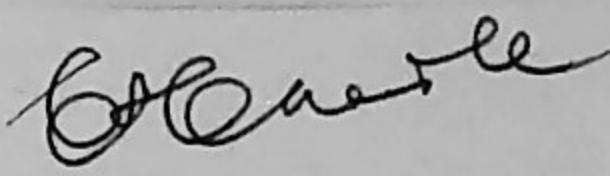
3. On the other hand, the learned counsel for the respondents cited several judgments of the Hon'ble Supreme Court in all of which there is a clear conclusion and direction that a post cannot and need not be created for giving compassionate appointment when no vacancy existed in the 5% quota meant for such appointments. This principle was laid down by the Hon'ble Supreme Court in the case of Himachal Road Transport Corporation Vs. Dinesh Kumar (1996 SCC (L&S) 1053), Hindustan

*Robert* Aeronotics Ltd. Vs. A. Radhika Thirumalai (1996 SCC(L&S) 1427), Director of Education (Secondary) and others Vs.

Pushpendra Kumar and others ( 1998 SCC (L&S) 1302) and as lately as in 1999 in three cases of the Orissa State Electricity Board (1999 SCC (L&S) 729). In view of the clear decisions of the Hon'ble Supreme Court, no interference is called for in the order passed by the department on 15.06.1998 rejecting the appointment's case for compassionate appointment.

4. In the circumstances, the O.A is rejected.

5. There shall be no order as to costs.



Member- A.

/Anand/