

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 1407 of 2001

Dated: This the 05th day of August, 2004

HON'BLE MRS. MEERA CHHIBBER, MEMBER(J)

1. Smt. Tara Devi, aged about 50 years, Widow of Late Shri Kailash Singh, R/o House No. 74, Hajaryana, Jhansi.
2. Manoj Kumar, aged about 26 years, S/o late Shri Kailash Singh, R/o House No. 74, Hajaryana, Jhansi.

.....Applicants.

By Advocate: Shri Rakesh Verma

Versus

1. Union of India through the Secretary, Ministry of Defence, New Delhi.
2. The Commander Works Engineer(HQ), MES, Jhansi Cantt.
3. The Officiating Garrison Engineer (MES), Jhansi Cantt.
4. The Chief Engineer (HQ), Lucknow Zone, Lucknow.

.....Respondents.

By Advocate: Shri Saumitra Singh

O R D E R

By Hon'ble Mrs. Meera Chhibber, JM

By this O.A. applicant had initially challenged the letter dated 26.9.2000(Annexure-A-I) whereby applicants were informed that as per Headquarters, C.W.E., Jhansi letter dated 19.9.2000 his name is at serial no. 64 in the merit list for compassionate appointment .

....pg 2/-



~~appointment~~. It was submitted by the applicant that this letter is absolutely vague as it neither said whether applicant is going to be granted the compassionate appointment and if yes ~~then~~ ^{within 12} what time ~~is~~. Moreover this was ~~merely~~ an information given to the applicant that his name was at serial no. 64 ^{why 12} that ~~to~~ without giving any reason his name has been placed at serial no. 64.

2. During the pendency of the O.A. respondents issued an order dated 10.6.2002 (Annexure-A-V) whereby the claim of applicant was rejected on the grounds that the death of government servant had occurred on 16.11.1995. He had left behind his wife, two sons and one daughter. The deceased government servant's family received Rs. 1,38,247/- as terminal benefits, Apart from monthly pension of Rs. 1275/- plus Dearness relief as applicable. Moreover, the need for immediate assistance by way of compassionate employment to tide over the emergency and crisis is lacking as Death of the govt. employee had taken place on 16.11.1995 i.e. six years and six months ago, and her case has been rejected due to non availability of sufficient vacancies within ^{order} 5% quota. Applicant amended his O.A. to challenge this, which was allowed by the Tribunal.

3. It is submitted by the applicant that after the deceased employee died on 16.11.1995, application for compassionate appointment was moved on 08.3.1996 and if respondents took 4 years to decide the case of applicant, it cannot be used against the applicant by the respondents. He further submitted that respondents have not given the financial status of the family nor have said whether applicant has

B

movable ~~and~~ immovable property or any other source of
~~have received~~
income but ~~merely basing~~ the case on the basis of
terminal benefit and family pension received by the
~~which~~
family member of deceased employee /is contrary to
the judgment given by Hon'ble Supreme Court in the
case of Balbir Kuar. Counsel for the applicant, thus,
prayed that these orders may be quashed and set aside
and matter be remitted back to the authorities for
re-consideration in accordance with law.

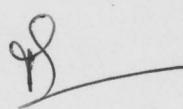
4. Respondents, on the other hand, have submitted
that the scheme for grant of compassionate appointment
to a dependant of the deceased employee died in harness
or retired on extreme~~s~~ medical grounds, thereby leaving
the family, without any means of livelihood is to relieve
the family of the deceased from financial destitution and
~~thus &~~
to help ~~it~~ to get over the emergency. The combined
seniority list of compassionate appointment was prepared
by the higher authorities and circulated in which the
name of petitioner stands at serial no. 64. The said
combined list is prepared in the Headquarters every year
to consider/examine the genuine application based on the
norms prescribed for the purpose and the name are placed
in the merit list based on genuiness and financial position
of the family. The compassionate appointment can be made
upto a maximum 5% of vacancies falling under direct
Recruitment quota in any Group 'C' or 'D' provided vacancy
is available for the purpose. In the present case the
family of the deceased was paid a handsome amount of
terminal benefits and also drawing the family pension of
Rs. 1275/- plus D.A. hence it cannot be said that the family
is in financial trouble. The impugned order is legal and
does not suffer from any illegality. The name of the
petitioner no.2 has been placed strictly in accordance

with the merit amongst all others. It is stated that in the next board of officers the entire list along with fresh applications will be considered and the serial number of the petitioner may be changed according to merit of the applications and circumstances of the family.

5. It is further stated that according to the Ministry of Personnel, Public Grievance and Pension Government of India D.O. dated 13.1.1999 the poverty line amounts to income below Rs.1767/-20 for a family of 5 persons. Hence, if the yard stick of poverty line is applied to determine the financial destitution/penurious condition of the family to decide whether or not a case is really a deserving one the ~~number~~ of really deserving would surely be within the ceiling of 5% prescribed by O.M. dated 26.9.1995. It is stated that as per Engineer in-Chief Army H.Q. New Delhi letter dated 1.5.2001 the system of maintenance of Waiting list ~~be and~~ ^{has} dispensed with. All the wait listed cases of compassionate appointments are to be reviewed afresh keeping in view the yardstick for determining the penurious condition/Financial status of the family. As per the yardstick, issued by the DOP & T according to Planning Commission norms, the poverty line amounts to income below Rs.1767/- per month for a family of five members only. Those who are below the poverty line as per the said yardstick are to be considered deserving cases. They have further submitted that appointment on compassionate ground can be made only if vacancy ^{is} available for this purpose but since applicant did not come within the vacancy available for compassionate appointment, therefore, his case has rightly been rejected by the respondents. Counsel for the respondents, thus, submitted that this D.A. may be dismissed.



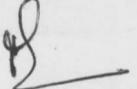
6. I have heard both the counsel and perused the pleadings as well. It is now well settled that compassionate appointment cannot be sought by an individual as a matter of ^{as R} right or ^{as R} a line of succession. A person only has a right of consideration but when we say right to consideration, this right of consideration has to be in an objective manner ^{into P} by taking [^] consideration the number of family members left by the deceased employee whether they are minor or major, married or unmarried whether the family members have any moveable or immovable property, whether they have the house of own to live in, whether they have other source of income apart from the terminal benefits, which have ~~not~~ been given ^{expected} to the family members. The respondents are ~~accepted~~ to make a comparative chart and then recommend the most deserving cases, who came within 5% limited vacancy meant for compassionate appointment in a year. In the instant case from perusal of both the orders, it is clear that case of applicant has been rejected mainly on two grounds. Firstly, that the family had got terminal benefits and as per the D. M. the amount received by them ^{is} shown xxxx to be above the poverty line and that since the deceased employee had ^{six year &} died ^{six months} back, the need for compassionate appointment was over. On both these points, Hon'ble Supreme Court has held in the case of Balbir Kaur that nobody can be denied for compassionate appointment merely on this ground that they have been given terminal benefit after the death of deceased employee and as far as delay is concerned ^{if delay is} there are ~~else~~ attributable to the department itself, then it cannot be used against the applicant to suggest that the case for compassionate appointment is not made out. In the instant case, I have already given above parameters, which are required to be looked into by the departments while considering the case for compassionate appointment.



From the perusal of both the impugned orders as well as the Counter Affidavit, it is clear that respondents have not applied their mind to those parameters as has been mentioned above.

7. In view of this I am not satisfied with ^{the 18} reply given by the respondents, therefore, both the impugned orders are quashed and set aside. The matter is remitted back to ~~the~~ respondent no.4 with ~~the~~ ^{a M} direction to reconsider the case of applicant for compassionate appointment by keeping in view the parameters as mentioned above and then to pass reasoned order thereon within the period of 3 months from the date of receipt of a copy of the order under intimation to the applicant.

8. With the above direction this D.A. is disposed off with no order as to costs.



Member(J)

Brijesh/-