

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH, ALLAHABAD.

Allahabad, this the 6th day of November, 2003.

QUORUM : HON. MRS. MEERA CHHIBBER, J.M.

O.A. No. 1550 of 2001

1. Smt. Urmila Saxena W/O Late Om Prakash Saxena R/O 190,  
Meh. Azizganj, Shahjahanpur.
2. Kamal Prakash Saxena S/O Late Om Prakash Saxena R/O 190,  
Meh. Azizganj, Shahjahanpur.

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..... Applicants.

Counsel for applicants : Sri M. Lal.

Versus

1. Union of India through the Controller General, Defence  
Accounts, West Block-V, R.K. Puram, New Delhi.
2. The Principal Controller of Accounts (FYS), 10-A, Khudi  
Ram Bose Road, Kolkata.
3. The Controller of Finance & Accounts, Kanpur Group of  
FYS, Accounts Office, O/O Additional Director General  
Ordnance Factories, Kanpur.
4. Joint Controller of Finance and Accounts, Incharge Account  
Office, Ordnance Clothing Factory, Shahjahanpur.

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..... Respondents.

Counsel for respondents : Sri A. Mohiley.

O R D E R (ORAL)

BY HON. MRS. MEERA CHHIBBER, J.M.

By this O.A. applicants have sought quashing of order dated 8.2.2001 (Annexure A-1). She has further sought a direction to the respondents No.1 to offer immediate compassionate employment to Applicant No.2 being eldest son and fully qualified for the post of Auditor, and pass any other direction or order which this Tribunal may deem fit and proper under the circumstances of the case.

2. Applicant No.1 is the wife while Applicant No.2 is son of Late <sup>86</sup>Om Prakash Saxena, who died while he was posted as Senior Auditor on 24.11.99 leaving behind him his wife,





two sons and one unmarried daughter. It is submitted by the applicant No.1 that her husband was suffering from paralysis and asthma for the last more than 15 years, therefore, they had to spend a huge <sup>amount of Rs</sup> money in his treatment by taking loan <sup>benefits Rs</sup> which ~~had~~ to be repaid after his death when terminal <sup>is</sup> ~~is~~ <sup>are</sup> paid. She has further submitted that the second son was still studying in B.Sc. and the daughter was to be married. They don't even have any land or any house as they were living in a rented house. Therefore, the family was in total indigent condition after the death of sole bread earner in the family. Applicant No.1, therefore, applied on 27.12.99 for giving appointment to her son as Auditor. Vide letter dated 16.11.2000, applicant was informed that due to non-availability of vacancies, her case for compassionate appointment cannot be considered immediately. However, she was advised to wait till <sup>availability of</sup> ~~arising~~ of further vacancy and fulfilment of the laid down criteria (Page 16). Thereafter, vide another letter dated 8.2.2001 (Page 12), applicant was informed that her request had been examined but the same is <sup>regretted</sup> ~~rejected~~ and cannot be acceded to. On her representation to the Controller General Defence Accounts, she was again informed vide letter dated 8.5.2001 that no vacancy exists for compassionate appointment (Page 18). Being aggrieved, applicant has filed this petition seeking reliefs as mentioned above.

3. Counsel for the applicant relied on the judgment of Education given by Hon'ble Supreme Court in the case of Director/and Another Vs. Pushpendra & others reported in 1988 SCC (1&S) Page 1302 wherein it was held as under :-

"Compassionate appointment - Held, cannot be insisted upon for a particular post - Relevant regulation containing provision for "appointment to a non-teaching post...if (the person seeking appointment) possesses requisite educational qualifications prescribed for the post and is otherwise suitable for appointment" on compassionate grounds - Held

*B*



a appointment on class IV post could be offered if class III post was not available - High Court's direction for creating a supernumerary class III post cannot be upheld - If necessary only a supernumerary class IV post can be created - U.P. Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974 - U.P. Intermediate Education Act, 1921 (2 of 1921), S. 9(4) - Regulations framed thereunder, Regns. 101 to 107."

4. It is on the basis of this judgment that counsel for the applicant submitted that if there was no vacancy, respondents ought to have created a supernumerary class IV post to adjust the applicant No.2.

5. Respondents, on the other hand, have opposed this O.A by submitting that applicant had already got an amount of Rs.3,78,780/- by way of terminal benefits apart from getting family pension of Rs.4600/- p.m. A request for giving appointment to her son was duly considered but the same could not be acceded to as there was no vacancy. They have submitted that compassionate appointment can be issued only for 5% of the direct recruitment and since there was no vacancy at all, naturally applicant could not have been given compassionate appointment. In any case they had already informed the applicant that she should await for the creation of vacancy or availability of the vacancy when her case would be considered at appropriate stage. Counsel for the respondents relied on the judgment given by Hon'ble Supreme Court in the case of Umesh Kumar Nagpal Vs. State of Haryana and Anil Malik Versus State of Haryana wherein it was held as under :-

"As a rule the appointments in public services should be made strictly on the basis of open invitation of applications and merit and appointment in compassionate grounds is an exception to this general rule; that mere death of an employee in harness does not entitle his family for such source of livelihood (by way of appointment on compassionate grounds); that it should not be offered as a matter of course irrespective of financial condition of the family;





that the only ground which can justify the compassionate employment is the penurious condition of the deceased employees family; that it should be offered only as relief against destitution and that it must be remembered in this connection that as against the destitute family of deceased government servant, there are millions of other families which are equally, if not more, destitute."

6. He also relied in the case of LIC of India Versus Mrs. Asha Ramchaner Ambedkar and another Page 193 wherein it is held that :-

"The High Courts and the Administrative Tribunals cannot confer benediction impelled by sympathetic consideration yielding to instruct will tend to ignore the court logic of law. It should be remembered 'law is the embodiment of all wisdom'. Justice according to law is a principle as old as the hill. The courts are to administer law as they find it. However, inconvenient may be the court in the instant case should endeavour to find out whether a particular case in which sympathetic consideration are to be weighed falls within the scope of law which is the regardful of law. However, hard the case may be, it should be never be done. It is true that there may be pitiable situation but on that score, the statutory provisions cannot be put aside."


He further relied on the case of Hindustan Aeronautics Ltd. Versus Smt. A. Radhika Thirumalai reported in 1996 SCC (1&S) page 1427 where<sup>in</sup> it is held that :-

"Appointment on compassionate grounds can be made only if the vacancy is available. If no vacancy is available, no duty caste to appoint an employee."

Further in the case of Hindustan Road Transport Corporation Versus Dinesh Kumar, the Hon'ble Supreme Court has held that :-

"In the absence of vacancy it is not open to the Corporation to appoint a person to any post. It will be gross abuse of the powers of an public authority to appoint persons when vacancies are not available."

He has thus, submitted that there is no merit in the case and the same may be dismissed.





7. I have heard both the counsel and perused the pleadings as well.

8. The judgment relied upon by the applicant's counsel does not show that in every case supernumerary post has to be created. It was only a passing reference that if necessary only a supernumerary Class IV post can be created whereas Hon'ble High Court had given a direction to <sup>create supernumerary</sup> ~~supernumerary~~ Class III post which was ~~held~~ by Hon'ble Supreme Court not to be correct. There are number of judgments given by Hon'ble Supreme Court as referred to above wherein it is held by Hon'ble Supreme Court that courts cannot give direction to create supernumerary post for giving compassionate appointment to the person concerned as compassionate appointment can be given only when vacancies are in existence. In fact, as per the latest scheme issued by the Government of India, it has been made clear that compassionate appointment can be given only to the extent of 5% from amongst the direct recruitment quota which would mean that availability of vacancies is a pre-condition. In the instant case, respondents have specifically stated that the case of applicant could not be considered for want of vacancy and they ~~are~~ <sup>had</sup> also asked applicant to wait for the availability of the vacancy, therefore, I do not find any illegality in the order passed by the respondents. It is, however, seen that in the counter affidavit, only ground taken by the respondents for justifying their action, is that applicant had been given terminal benefits and the family pension after the death of her husband. This ground cannot be upheld in view of the judgment given by Hon'ble Supreme Court in the case of Balbir Kaur.

9. It is seen that the respondents have themselves advised the applicant to wait for the availability of the vacancy when her case could be considered. The applicant probably filed this O.A. because otherwise it would have been hit by limitation. Therefore, while no interference is called

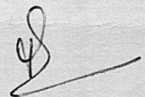




for at this stage I do hope and expect that as and when the vacancy became available in the direct recruitment quota, applicant's case would be considered if it falls within the limit of 5% quota of vacancy as stipulated by the instructions issued by the Government of India. At this stage it is also ~~be~~ pertinent to mention here that applicant cannot insist that he should be given appointment on compassionate ground against a particular post. In the application given by Applicant No.1 she had requested for giving appointment to her son as Auditor. I do not know what are recruitment rules for the post of Auditor and whether applicant fulfills the eligibility condition for the said post. Therefore, it is made clear that it would not be open for the applicant to insist that he should be considered only for the post of Auditor. Counsel for the applicant had submitted that he may even be considered for Class IV post if the vacancy arises. Therefore, keeping in view the statement made by counsel for applicant, this case is disposed of by giving a direction to respondents to consider the case of applicant for grant of compassionate appointment by looking into the various factors as envisaged by the instructions issued by the Government of India as and when the vacancy becomes available within 5% quota of the direct recruitment.

With the above direction, this O.A. is disposed of.

No order as to costs.



J.M.

Asthana/