

OPEN COURT

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH : ALLAHABAD**

**ORIGINAL APPLICATION No. 1180/2004**

**MONDAY, THIS THE 11<sup>th</sup> DAY OF SEPTEMBER, 2006**

**HON'BLE MR. P.K. CHATTARJI ... MEMBER (A)**

Smt. Kushum Devi,  
Aged about 36 years,  
W/o Late Gama Ram,  
R/o 311/241, Chak Niratul,  
C.T.B. Nagar, Allahabad.

...

Applicant

(By Advocate Shri Swayambar Lal)

Vs.

1. Union of India, through its Secretary,  
Ministry of Defence,  
New Delhi - 110 011.
2. Dy. Director General,  
Military Farms, QMC's Branch,  
Army Headquarters, West Block III,  
R.K. Puram, New Delhi - 110 066.
3. The Director,  
Military Farms, Headquarters,  
Central Command, Lucknow (U.P.).
4. Officer In-charge,  
Military Farms,  
Allahabad.

...

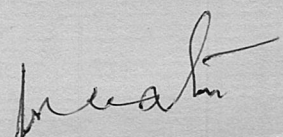
Respondents

(By Advocate Saumitra Singh,  
Senior Central Government Standing Counsel)

**ORDER**

Heard Shri S. Lal, the learned counsel for the applicant and Shri Saumitra Singh, the learned Senior Central Government Standing Counsel, for Respondents.

2. The applicant in this O.A., has represented to Respondents for a job under compassionate quota after the death of her husband. Her husband, Shri Gama

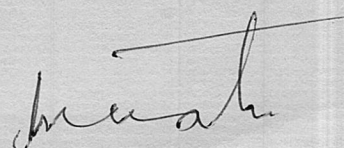




Ram, was working with Military Dairy Farm, Allahabad, as a Permanent Farm Hand, in a Group 'D' category. He died while in service on 01.04.2001, leaving behind his widow wife and five minor children, three sons and two daughters. The applicant made a representation for providing her a job under compassionate quota and that was sent by the Dairy Farm to the Director, Military Farms, Headquarters, Central Command, Lucknow, on 20.07.2001. However, as the applicant did not hear anything from the Respondents, even after a lapse of much time, she filed O.A. No.526/2003, before this Tribunal. This Tribunal issued a direction dated 14.05.2003, to Respondent No.2, to decide the case of compassionate appointment of the applicant within six months by a reasoned and speaking order.

3. Thereafter, Respondent No.2, passed an order on 25.09.2003, on the representation of the applicant. In the said order, the Respondents informed the applicant that appointment on compassionate ground would be made within a period of one year and not beyond that and in her case, the period had expired. Thereafter, the applicant filed another O.A. in this Tribunal in O.A. No.1532/2003. The Tribunal considered the O.A. and passed an order dated 14.07.2004. The relevant part of the decision is as follows:

"6. In the instant case, it is seen, that the employee had died at young age leaving behind his widow who was only 35 years of age and had liability of five young minor children. At such an age, it does seem to be a hard case but I do not wish, to make any observation on this aspect because the case would have to be considered by the committee on the basis of parameters laid down in the policy decision taken by the respondents themselves for arriving at a conclusion, whether it is a fit case for consideration in the second year or not. Since from the impugned order, it is not clear whether applicant's financial position qua the liabilities has been assessed by the committee or not, therefore, I am of the opinion, that keeping in view, the latest instructions issued by the department of Personnel and Training as laid down on 05.05.2003 (page 32) case of the applicant needs to be re-considered by the committee constituted by the department concerned, to see whether it is a deserving and fit case for consideration in the second year or not. After evaluation, if committee is of the opinion that this case is deserving for grant of compassionate appointment but could not be considered for want of vacancy in the first year, it should be certified that the case should be considered in the next and third year. In case, committee takes a negative view against the applicant the same shall be informed to the applicant by a reasoned and speaking order in either case within a period of three months from the date of receipt of a copy of this order."





A copy of the tribunal's order was passed on to the Respondents. After issue of the tribunal's order, the Respondents passed an order dated 28.09.2004, expressing regret that the Respondents were not in a position to offer any job to the applicant on compassionate grounds for several reasons which include:

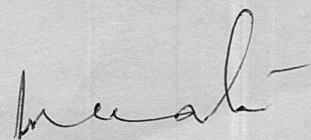
- (a) Limited quota of vacancies for compassionate appointment;
- (b) Reduction in the establishment of the department for streamlining the operation on the recommendation of the V Central Pay Commission;
- © Time limit of one year for entertainment of applications for jobs on compassionate quota; and
- (d) That the order of the Tribunal that the applicant's case should be considered for three consecutive years. The death occurred on 01.04.2001 and three years passed on 01.04.2004, and during this period, no vacancy occurred.

4. This order of the Respondents which has been impugned by the applicant saying that it is arbitrary, unreasoned and it is not a compliance of the direction of the Tribunal dated 14.07.2004.

5. The Respondents denied the allegation, saying that the impugned order is a detailed and reasoned order as all the grounds for which the request could not be acceded to has been explained. Moreover, as per the directions of the Tribunal, the applicant's request was to be considered for three years. But, during these three year period beginning from 01.04.2001, i.e., the date of death of the applicant's husband to 01.04.2004, no vacancy has arisen. Therefore, the learned counsel says that the order of the Tribunal has been fully complied with, with a reasoned and detailed order vide memo dated 28.09.2004. He relies on the judgment of Supreme Court in the case of *U.K. Nagpal Vs. State of Haryana & Ors. (JT 1994 (3) SC 525)*:

*"As a Rule appointment in public service should be made strictly on the basis of open invitation of applications and merit and appointment on compassionate ground is an exception to the Rule. Any such exception should therefore be made to the minimum of five percent and if it exceed that it will be no longer be an exception."*

*In this judgment the following principle laid down in regards to the appointment on compassionate ground:*



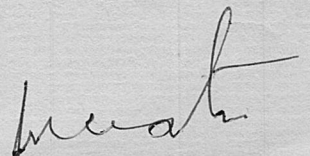


*"Compassionate appointment cannot be granted after lapse of reasonable time and it is not a vested right which can be exercised at any time in future."*

Further, the Respondents have cited two other cases, viz., *Himachal Road Transport Corporation Vs. Dinesh Kumar (JT 1996 (5) SC 319)* and *Hindustan Aeronautics Ltd. Vs. A. Radhika Tirumalai (jt 1996 (9) sc 97)*, both of which had held that appointment on compassionate grounds was only available subject to availability of the vacancies.

6. The learned counsel for the applicant also cites a decision of the Patna High Court in the case of *Rajesh Kumar Pandey Vs. Union of India & Ors. (2004 (2) ATJ 243)*. In this case, the Hon'ble High Court has held that consideration of cases for appointment under compassionate quota need not be confined to a particular department. If vacancy was not available in a particular department, it may be recommended and necessary inquiries made with other departments, if vacancy was available, to accommodate the person. For this reason, the applicant has sought the relief from this Tribunal of quashing the order of the Respondents dated 28.09.2004.

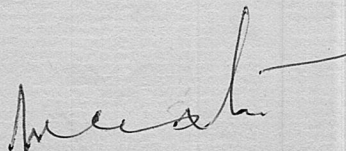
7. I have applied my mind to the pleadings and arguments adduced during the hearing. If we look at the order of the Tribunal, the intention and purpose would be clear that the direction was to consider the case in the first instance, and if it was not possible to approve it in the first instance, it could be kept for consideration in the next two years. In other words, the Tribunal wished that in view of the very distressful and indigent situation of the applicant, her case should be considered more than once. In this case, it is seen that the request has not been considered even once after the issue of the direction of the Tribunal. Therefore, I cannot agree that the decision of the Tribunal has been complied with and the plea of the applicant that the Respondents have not taken action as per the directions is found to be tenable.





8. Accordingly, the O.A. is allowed and the order dated 28.09.2004, passed by Respondent No.4, on behalf of Respondent No.2, is hereby quashed with the direction that the Respondents will consider the case of the applicant afresh whenever the next vacancy arises, without concerning themselves about the limitation of time and if it is possible to approve the request of the applicant in the first instance, it would be well and good, otherwise, it should be considered once again in the occurrence of the next available vacancies and appropriate orders issued.

9. It may be mentioned here that this order is issued in the context of the peculiar facts and circumstances of this case and would not form a precedent, unless, the facts and circumstances are precisely identical.

  
(P.K.CHATTARJI)  
MEMBER (A)

psp.