

OPEN COURT.

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH; ALLAHABAD.**

ORIGINAL APPLICATION NO.1195 OF 2004.

ALLAHABAD THIS THE 07TH DAY OF APRIL 2005.

HON'BLE MR. D.R. TIWARI, MEMBER-A

Hem Kumar
Son of Sri Ram Dhani
Aged about 21 years,
Resident of village-T/UNJA, Post Officer
T/UNJA Khaga, District Fatehpur.

.....Applicant.

(By Advocate: Sri D.P. Singh)

Versus.

1. Mahanideshak Medical Services (Army),
Adjudicated, General Branch Army,
Headquarter-DMQ PO, New Delhi.
2. Joint Director,
Medical Services (Army)
Adjudicated General Branch Army Head
Quarter-
DMQ PO New Delhi.
3. Kaman Officer Military Hospital, Faizabad.
4. Union of India through Secretary Defence,
New Delhi.

.....Respondents.

(By Advocate: Sri Saumitra Singh)

D. K. Singh

O R D E R

By this O.A., filed under section 19 of A.T. Act 1985, the applicant has prayed for quashing the impugned order dated 23rd July 2003 (Annexure A-1) by which his application for compassionate appointment has been rejected. He has further prayed for issuance of direction to the respondents to provide a suitable job to him as per his qualification and eligibility.

2. Shorn of superfluities, the relevant factual matrix to adjudicate the controversy is that the applicant's father was working as Parivar Kalyan Prasar Nirikshak in the Military Hospital, Faizabad U.P. who died on 30.05.1994 during his service period (Annexure A-1 and A-2). When his father died he was left with seven more years of service. On 20.6.2003 his mother represented to the Competent Authority for appointment of his son on compassionate ground wherein she also submitted that her daughter was mad and his mother-in-law was blind and except the elder son there were two children in the family. She submitted that she was in a very indigent condition and her son may be provided employment on compassionate ground (Annexure A-3). By a letter dated 8th June 2002, the Competent Authority wrote back to her stating that there was no suitable post was vacant in the Hospital for appointment of her son and he will be offered the job as and when the vacancies will arise. After some time by her letter dated 20.5.2003, she reminded the competent authorities for providing a suitable job to her son. She as well as the applicant approached the Competent Authority in-person on various occasions and the applicant met the Commandant on 18.12.2001 and he was directed to get his name registered in the Employment Exchange. Accordingly, the applicant got his name registered in the Fatehpur Employment

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Exchange and a copy of the same was forwarded to the Competent Authority (R.A-1).

3. The applicant was expecting a favourable response from the respondents as he complied with all the directions given by the respondents. Unfortunately for him, he received the impugned order dated 23rd July 2003 by which his request for compassionate appointment was rejected on the ground that her husband died 9 years before. Aggrieved by this order, the applicant has filed the instant O.A and has challenged the order on various grounds mentioned in para 5 of the O.A namely, the order is arbitrary and illegal, is against the Rules for providing compassionate appointment and the criteria of financial hardship has not been taken into account. It has been further submitted that the request for compassionate appointment was made to the Competent Authority immediately after the applicant became major in the year 2001. The applicant has also pleaded that the written as well as verbal assurances given to the applicant and her mother have been totally ignored while considering his case for compassionate appointment, as such submits the applicant that there has been no application of mind by the respondents and his O.A. is bound to succeed on merit and may be allowed.

4. The respondents, on the other hand, have opposed the O.A. by filing a detailed counter affidavit wherein it has been argued that the compassionate appointment can be given within five years of the death wherein in this case the applicant's father died 09 years before. They have further submitted that the assurance given by respondent NO.3 was informal assurance to give priority once appropriate vacancies arises and the

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application was received only after 9 years of the death of the applicant's father. In view of this, the O.A. is devoid of merit and may be dismissed.

5. During the course of arguments, the learned counsel for the applicant has very forcefully argued that rejection of the applicant's request on the ground of late submission of application is against the Rules for compassionate appointment as well as the various decisions of the Courts. He has placed reliance on the following judgments of Hon'ble High Court, Allahabad :-

- (i) *Rajendra Kumar Versus. Union of India- Civil Misc. Writ Petition No. 34696 of 1998 decided on 5.11.1998.*
- (ii) *Pushpendra Singh Versus. Regional Manager U.P. State Road Transport Corporation Aligarh and others- (2000) 1 U.P.L.B.E.C. 415.*
- (iii) *Manoj Kumar Saxena Vs. District Magistrate Bareilly and others- (2000) 2 U.P.L.B.E.C 1694 &*
- (iv) *Jagdish Ram Vs. Central Administrative Tribunal, Allahabad Bench and others- (2001) 2 U.P.L.B.E.C. 1075.*

6. The learned counsel for the applicant has stated and explained in brief the ratio of each case to contend that the case of compassionate appointment can not be rejected only on the ground that the request has been made after 5 years of the death particularly when at the time of death the applicant happen to be minor. He submitted that in the case of *Manoj Kumar Saxena* (supra) the Hon'ble High Court has rejected the plea of the respondents that the application for appointment was made much after the death and the Court found on the facts of that case that at the time of death of his father in 1987, the petitioner was minor and when he attained the eligibility age in 1993 he applied for the appointment on compassionate ground and the Court

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allowed the petition. In the case of Pushpendra Singh (supra) wherein it was held after expiry of 14 years, because he was a minor when his father died and attained majority in 1998, the Hon'ble High Court directed consideration of his application afresh in view of his financial straits. Similarly in the case of Jagdish Ram (supra), the Court took into account the financial hardship of the family and also the fact that application was made within a reasonable time and the respondents did not accede to the request and after seven years the request was rejected on the ground that it was time barred. In the case of Rajendra Kumar (supra), the Hon'ble Court directed to issue an appointment orders in favour of the petitioner within a period of one month. This case was regarding the appointment on compassionate ground when the applicant's father died in 1993 and the applicant made application and finding no response, the applicant moved the Hon'ble High Court for issuance of suitable direction because the delay involved in not providing suitable job to the petitioner. Accordingly, the Hon'ble High Court issued direction as stated above. Finally the counsel for the applicant concluded his argument by saying that the case of the applicant has been rejected arbitrarily and there has been no application of mind hence be allowed.

7. The counsel for the respondents, on the other hand, has reiterated the facts and the legal pleas of the counter affidavit filed by the respondents. He submitted that rejection of the application of the applicant was as per Rules and there was no illegality involved. He submitted that no application for compassionate appointment could be entertained after 5 years of the death of the applicant and in this case the application has been made after 09 years of the death of the

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applicant's father. He argued that the O.A. lacks merit and may be dismissed.

8. I have heard counsel for the parties at the considerable length and given a thoughtful consideration to the rival submissions made across the bar. I have perused the records very carefully.

9. From what has been discussed above, the only question emerges for consideration is the validity of the impugned order dated 23rd July 2003 (Annexure No.1). At the outset I would like to state that the objective consideration of the scheme of compassionate appointment underlines the need to tide over sudden financial crisis due to demise of only earning member. The question that delay in providing immediate relief by the employer or making a belated claim for the same by the Member of bereaved family, has redeemed the crisis or has increased it, depends upon the facts and circumstances of each case. In the present case the father of the applicant who died leaving behind him his widow one mad daughter and his blind mother and two small children except the applicant who was minor at the time of the death. It is not the case of the respondents that the applicant was financially sound and he has any other source of income. It is also not their case that after 9 years his financial position has improved and there is any other source of income for family to survive. There is nothing on record to show that financial crisis stood solved due to delayed decision of the respondents on the claim of the applicant. It can, therefore, be presumed that the financial destitution continued to exist in its increased dimension. The Hon'ble Supreme Court in the case of Sushama Gosain Vs. Union of India, AIR 1989 SC 1976- has held as under:



"It can be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate grounds is to mitigate the hardship due to death of bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the appellant".

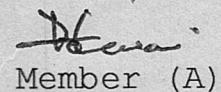
10. In the light of decisions of the Apex Court and High Court and the legal position mentioned hereinabove, I am of the considered view that the respondents have failed to apply their mind in this case. The rejection of the request of the applicant does not even show that financial status of the family was taken into consideration. Nothing is mentioned as to how many vacancies were available in the department. The settled legal position is that while considering the case of compassionate appointment, the criteria like the size of the family, number of children, whether they are minor or major, whether they have any pucca house, whether family has any immovable property, whether they have any source of income or any member of the family is in service. From the records, I find that these criteria were even alluded to, much less taken into consideration. They have even ignored their own assurances given to the applicant both in writing as well as oral, about his appointment after availability of the vacancies. They have rejected only on the ground that there has been delay of 9 years after the death of the applicant's father. I would like to mention that the respondents have taken unduly long time to finalize the case of the applicant and are now appear to take advantage of their mistakes by denying him the compassionate

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appointment on the ground of late submission of the application. Here the decision of the Apex Court in case of Sushama Gosain (supra) would squarely apply. As such the O.A. is bound to succeed.

11. In the light of the reasons recorded above, the O.A. succeeds and the impugned order dated 23rd July 2003 is quashed and set aside. The respondents are directed to consider the applicant's case and appoint on compassionate ground within a period of 2 months from the date of receipt of the certified copy of this order.

12. There shall be no order as to costs.


Member (A)

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