

(Open Court)

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD

ALLAHABAD this the **12th** day of **April, 2011**

Present:

HON'BLE MR. JUSTICE S. C. SHARMA, MEMBER- J

ORIGINAL APPLICATION NO. 1277 OF 2004

Ram Khilawan Yadav, son of late Ram Roop Yadav, resident of House No.50 Adharsh Bihar Delhi-Sujanpur Road, Kanpur Nagar.

.....Applicant.

V E R S U S

1. The General Manager, Ordnance Equipment Factory, Kanpur.
2. The Chairman Ordnance Factory Board, Kolkata.
3. Union of India through Secretary Ministry of Defence, New Delhi.

.....Respondents

Present for the Applicant: Sri R.C. Gupta

Present for the Respondents: Sri R.K. Tiwari

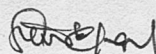
O R D E R

(DELIVERED BY HON'BLE MR. JUSTICE S.C. SHARMA, J.M.) :

Under challenge in the OA is the order dated 10.7.2003 passed by respondent No.1. Further prayer has also been made for directing the respondent to appoint the applicant in a Class-IV post on compassionate ground under Dying in Harness Rules.

2. The facts of the case may be summarized as follows :

The father of the applicant namely Ram Roop was employed in Class IV in permanent capacity in Ordnance Equipment Factory, Kanpur and father of the applicant met with an accident on 4.6.2002 while he was going to duty. Thereafter he was admitted in the



hospital where he died on 2.7.2002. That certificate is filed. That the deceased father of the applicant left his widow Smt. Ram Rani, applicant Ram Khilawan Yadav, Km. Pushpa daughter, Km. Usha daughter and Km. Sahi daughter. That there is no source of the livelihood of the family and the family is dependent on the deceased father. The applicant is also unemployed and has no source of income and after the death of the father entire family is destitute condition without any source of income. The applicant is intermediate and his date of birth is 12.7.1980 and qualified for a post in Government Office and mother of the applicant submitted an application to respondent No.1 for giving appointment to the applicant on compassionate ground under dying-in-harness Rule. The applicant was not given the job by respondent No.1 and the case of the applicant was rejected on the grounds mentioned in the order that the financial condition of the applicant is pitiable, there are three unmarried daughters in the family besides widow of the mother of the applicant and as the respondents are not considering the case of the applicant, hence the OA.

3. The respondents filed the counter and denied the allegations of the applicant. It has been admitted that the father of the applicant died on 2.7.2002 when only one year and about 6 months remain in the superannuation he was due for retirement in 2003. According to the report of Welfare Commissioner of the Ordnance Equipment Factory, the family of the deceased has been living in own house and also having 02 Bigha agricultural land. The mother of the applicant was paid a sum of Rs.1,88318/- towards terminal benefits and she is also getting regular family pension @ Rs.1540/- plus 50% Dearness Relief merged with pension i.e. 770/- and 14% Dearness Relief in all

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Rs.2633/- per month. The application of the applicant was duly considered by the competent authority on three occasions i.e. 4.1.2003, 4.4.2003 and 4.7.2003 in the light of guidelines/instructions contained in Ministry of Defence and circulated in the Ordnance Factory vide letter dated 3.4.2001. The case of the applicant could not find place ^{on} merit due to more deserving candidates as compared to others and hence the application was rejected in view of the many judgments of Hon'ble Apex Court reported in various judgment that compassionate appointment is not a right but it is a welfare measure in order to provide succor to dependents of an employee who are left in immediate indigent circumstances by the untimely demise of the wage earner. As per revised policy of the Government, the application for compassionate appointment would remain alive for a period of one year and after that the name of aspirant would be deleted. In pursuance of the decision of the Apex Court only 5% posts are filled up by compassionate ground. That the case of the applicant was not found fit in comparison to other applicants and the request of the applicant was rejected on valid grounds. That OA is liable to be dismissed.

4. I have heard Sri R.C. Gupta, Advocate for the applicant and Shri R.K. Tiwari, Advocate for the respondents and perused the entire facts of the case.

5. It is admitted that that the father of the applicant was employed with the respondents and it is also admitted fact that the deceased father of the applicant met with an accident on 4.6.2002 and died on 2.7.2002. It is also not disputed fact that in the family of the deceased there is widow Ram Rani, applicant Ram Khilawan Yadav



and Km. Pushpa daughter, Km. Usha daughter and Km. Sahi daughter aged about 17 years, 15 years and 12 years respectively daughters of the deceased. It has also been alleged by the respondents that the case of the applicant was considered thrice but his case was not found fit for compassionate ground in comparison to other candidates and the case of the applicant was rejected. I have perused the order dated 10.7.2003 passed by the respondents in connection of compassionate appointment of the applicant. The case of the applicant was rejected. Considering the fact number one that only one year and about six months remains in superannuation of the deceased and that the applicant and his family is living in own house and is also having 2 Bigha agricultural land. A sum of Rs.1,88,318/- was paid to the widow of the deceased and she is also getting the pension.

6. Learned counsel for the applicant argued that a meager amount of pension has been received at that time by the mother of the applicant was not sufficient for the maintenance of the family and specially in the circumstances there are three unmarried daughters of the deceased on ~~married~~^{able} stage. The applicant is not in a position to do the marriage due to non~~ed~~ availability of funds that the case of the applicant was rejected illegally. It has been alleged by the respondents that in view of the several judgments of Hon'ble Supreme Court the compassionate appointment is not a right. It is only provided to the family so that the family may not come at the stage of starvation. That the case of the applicant was considered thrice as per the direction of Hon'ble Supreme Court and the instruction of Ministry of Defence vis-à-vis other applicants. In view of the judgment of Apex Court only 5% vacancy in a year is for

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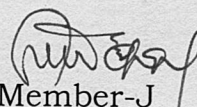
compassionate appointment and for this 5% of this vacancy in a year the cases of the other candidates is to be considered. Learned counsel for the applicant argued that nothing has been filed on behalf of the respondents that whose case was considered by the respondents vis-à-vis the applicant and that the respondents shall have to state that why the case of the applicant was not fit for giving the compassionate appointment in comparison to other deserving candidates. That respondents must have given the detail reason about rejection of the case of the applicant but nothing has been filed on behalf of the respondents.

7. I have also perused the order dated 10.7.2003 passed by the respondents. The case of the applicant was considered thrice on 4.1.2003, 4.4.2003 and 4.7.2003 and it has been alleged that more deserving candidates were available in comparison to the applicant. Hence the appointment was given to those deserving candidates. The detail has not been given in the order and in the document that whose case were considered by the respondents. It should be mentioned in the order. Moreover it is fact that compassionate appointment is not a right and it has also to be given upto 5% of the vacancy in a year. But the applicant's case would have been considered after words also. It is a fact that the mother of the applicant received a sum of Rs.1,88,318/- as terminal benefit and those amount is payable to the family to each and every applicant hence beside those other candidates which also to be considered. It is also fact that the applicant's family is living in his own house and is also having 2 Bigha Agricultural land and this fact is taken ⁱⁿ ~~to~~ the consideration. It is also fact that in superannuation of the deceased remains only one and half year. It is also considered by the respondents while

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considering the case of the applicant vis-à-vis other candidates. It will be appropriate the respondents may consider again also the case of the applicant. No direction can be given for giving him compassionate appointment as ^{if wife} sufficient ~~letter or~~ ² direction is given to the respondents to consider the case of the applicant again.

8. For the reasons mentioned above I am of the opinion that it will be just and proper to direct the respondents in order to consider the case of the applicant for compassionate appointment at least ² ~~once~~ more and all the facts which are also relevant must also be taken for consideration. The OA is deserves to be allowed. The OA is allowed. Order dated 10.07.2003 passed by respondent No.1 is quashed and the respondents are directed to decide the case of the applicant once again as per norms and law laid down by the Apex Court. No order as to costs.


Member-J

RKM/