

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 17 day of 7 2009

Original Application No. 1551 of 2004

Hon'ble Mr. A.K. Gaur, Member (J)

1. Ganga Ram, son of Shri Kewal Ram, aged about 62 years, Ticket No. 95 Revolver Section, Resident of 84/85 Sakera Estate Anwarganj, Station Road, Kanpur.
2. Rajendra Kumar, son of Shri Ganga Ram, aged about 30 years, Resident of 84/85 Sakera Estate, Anwarganj, Station Road, Kanpur.

Applicants

VERSUS

1. Union of India through Ministry of Defence, New Delhi.
2. General Manager, Small Arms Factory, Kanpur.

Respondents

Advocate for the applicant: Sri Ashish Srivastava

Advocate for the Respondents: Sri Ajay Singh

ORDER

By this Original Application filed under section 19 of Administrative Tribunals' Act 1985, the applicants have prayed for quashing the order dated 09.05.2003 coupled with prayer for a direction to the respondents to give appointment in favour of applicant No. 2 on compassionate grounds.

2. The facts of the case, in brief, are that the applicant No. 1, who was working as class IV employee in Small Arms Factory, Kanpur, became seriously ill in the year 1999 and he was sanctioned medical

✓

on compassionate grounds in Small Arms Factory was upto 52/100, therefore, the case of the applicant was rejected vide order dated 09.05.2003

5. The applicants have filed Rejoinder Affidavit in which nothing new has been stated except what has been stated in the Original Application. Suppl. CA and Suppl. RA have also been filed from either side reiterating the averments made in the CA and RA.

6. I have heard counsels for the both sides and perused the pleadings as well as the Written Arguments filed by the learned counsel for the respondents. No Written Submissions has been filed by the learned counsel for the applicants.

7. Having heard learned counsel for the respondents, I am firmly of the view that the request of the applicant No. 1 made vide his application dated 03.02.2000 has duly been considered and after completing requisite formalities, it was placed before the Board of Officers, who after considering all parameters, awarded 47 marks out of 100. As the request of applicant No. 1 was not found within the zone of consideration, it was rejected vide order dated 09.05.2003. It is settled principle of law that the High Court and Tribunal cannot give direction to give appointment on compassionate ground and can only issue direction to consider the case of appointment ground on compassionate grounds. Hon'ble Supreme Court in **M.T. Latheesh's case reported in 2006 (7) SCC 350 and State of J&K and Ors. Vs. Sajad Ahmad Mir (2006)5 SCC 766 as well 2007(1) SCC (L&S) 668, National Institute of**

leave from time to time. As he was not in a position to attend the office for long time on medical grounds, the respondents constituted a Medical Board. According to the applicant, he has served the department for more than 35 years. During medical examination, the Medical Board found the applicant not fit to be retained in service and declared him medically unfit permanently. Based on the report of the Medical Board, the respondents vide order 25.03.2000/Annexure-1 of O.A. medically boarded out the applicant. Immediately after being medically unfit, the applicant No. 1 got fracture in the leg and was admitted in hospital for a period of 4 to 5 months. In Medical treatment the applicant had to spent entire money already received by him. Thereafter, he made an application dated 03.02.2000, followed by another reminder dated 15.10.2000, before respondents No. 2 for appointment in favour of his son/applicant No. 2 on compassionate ground. According to the applicant No. 1, despite repeated applications, the respondents did not pay any heed to their request and finally, vide order dated 09.05.2003/Annexure A-3 of the O.A rejected the same on the ground that his son cannot be given appointment on compassionate grounds, as he has been paid a sum of Rs. 1,21,200/- as terminal benefits and Rs. 3718/- + DA is being paid as family pension. The grievance of the applicants is that the order dated 09.05.2003 is wholly illegal in as much as the same has not been passed in accordance with the provisions of the rules. In view of the provisions of dying in harness rules, if an employee has been



boarded out or declared medically unfit and has already completed considerable period of service in a particular department, his next kith or kin may be considered for appointment on compassionate ground.

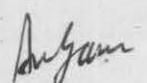
3. Learned counsel for the applicant argued that the DOPT vide O.M. dated 09.10.1990 has issued instructions for giving compassionate appointment to a member of the family of an employee who has either died in harness or has been retired or boarded out on medical ground. Learned counsel for the applicant further submitted that in Clause II of the said instructions, it has clearly been stipulated that these rules are applicable to those persons, who retires on medical grounds between the age of 55 to 57 years. It has further been contended by the learned counsel for the applicants that the respondents have not refused to give the appointment due to short fall of vacancies under 5% quota of direct recruitment.

4. On notice, the respondents filed Counter Affidavit. In para 12 of the Counter Affidavit, it has been stated that on receipt of application dated 03.02.2000, the case was processed as per procedure. The pecuniary condition and family details were also verified by the Civil Authorities as well as DLWC, Small Arms Factory, Kanpur. After verification, the matter was referred to Board of Officers, who after considering all the parameters, awarded 47 mark out of 100. Learned counsel for the respondents further argued that as the minimum bench mark for appointment

Technology Vs. Manoj Kumar Singh has clearly held that appointment on compassionate ground cannot be granted after lapse of sufficient time.

8. In view of above observations, I am firmly of the opinion that the order dated 09.05.2003 is perfectly just and proper. NO notice or opportunity is required to be given to the applicant any more. As per the decision of Hon'ble Apex Court rendered in **Manoj Kumar Singh's case (supra) and State of J&K (supra)**, in which it has been held that 'once it is proved that the family can be survived and substantial period is over, there is no need to make appointment on compassionate ground at the cost of the interest of several others ignoring the mandate of Art. 14 of the Constitution'. In the instant case, the applicant No. 1 has been medically boarded out in the year 2000. Therefore, in view of the law laid down by the Apex Court, the order dated 09.05.2003 rejecting the claim of the applicant is not liable to be interfered. The applicants have failed to make out any case for interference. Accordingly the O.A. is dismissed being devoid of merit.

9. There will be no order as to costs.


Member-J

/Anand/