

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD

ORIGINAL APPLICATION NUMBER 306 OF 2004

ALLAHABAD, THIS THE 26th DAY OF MARCH, 2004

HON'BLE MRS. MEERA CHHIBBER, MEMBER(J)

Varun Kumar Yadav,  
aged about 18 years,  
son of Late Ravindra Kumar Yadav,  
Resident of 78/72, Jawaharganj,  
Dharhariya, Post-Kutchery,  
Allahabad.

.....Applicant

(By Advocate : Shri B.L. Shukla)

V E R S U S

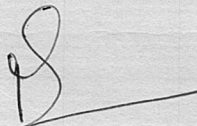
1. Union of India through Chief Controller,  
Raksha Lekha Maha Niyantak, Karyalaya,  
West Block-5, Ram Krishna Putam, New Delhi-110 006.
2. Chief Controller Defence Account  
Controller Pension Office, Drapudi Ghat,  
Allahabad.
3. Deputy Controller Defence Account Office of Admn,  
Principal CDA, (Pension),  
Allahabad.

.....Respondents

(By Advocate : Shri R.K. Tiwari)

ORDER


By this Original Application, applicant has sought quashing of the order dated 26.06.2003 whereby his claim for compassionate appointment was rejected on the ground of non-availability of vacancy. He has further prayed for a direction to the respondents to appoint the applicant on any suitable post



on compassionate ground in place of his late father with all consequential benefits.

2. It is submitted by the applicant that his father died on 31.01.1999 after a long illness, leaving behind his widow two daughters and the applicant who was minor at the relevant time. Therefore, when his mother applied for compassionate appointment, she was informed that he should apply only after attaining the majority, but now the case has been rejected on the ground of non-availability of vacancy. Counsel for the applicant relied on 1989(2)UPLBEC 636 Judgment given by Hon'ble Supreme Court in the case of SMT. SHUSHMA GOSAIN AND OTHERS VERSUS UNION OF INDIA AND OTHERS wherein it was held that even though widow passed necessary written test and interview but not given employment. Subsequently in 1985 a notification was issued imposing ban on appointment of ladies, she was denied appointment by taking shelter under the said notification. It was in these circumstances that Hon'ble Supreme Court held that it was not justified on the part of the respondents who have first delayed the matter then rejected the claim by taking shelter under the notification of ban. Therefore, Supreme Court had directed <sup>the</sup> respondents to appoint the widow by creating a post.

3. In the instant case, it is not the claim of applicant that she was even fit for grant of compassionate appointment on



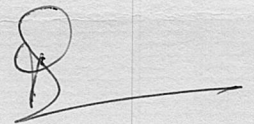
the contrary since applicant was not even ~~major~~ <sup>on the date when his</sup> major, <sup>obviously</sup> <sup>father</sup> <sup>died</sup> he could not have been given ~~the~~ compassionate appointment at the time <sup>his B</sup> when father had died in the year 1999. After he attained majority and application was given for grant of compassionate appointment, his case was duly considered by Board of Officers not once but thrice as is reflected in the impugned order but the same could not be recommended for want of vacancy. In this connection, it would be relevant to quote the judgment of Hon'ble Supreme Court in the case of HINDUSTANNAERONAUTICS LTD. VERSUS A RADHIKA THIRUMALAI reported in 1996 SCC (L&S) 1427 wherein it was held that appointment on compassionate ground can be made only if the vacancy is available, if no vacancy is available, no duty is cast on the respondents to appoint a person on compassionate ground. Similarly in the case of HINDUSTAN ROAD TRANSPORT CORPORATION VS. DINESH KUMAR it was held by Hon'ble Supreme Court that in absence of vacancies, it was not open to the corporation to appoint a person to any post. It will be gross abuse of the powers of a public authority to appoint person when vacancies are not available. Similarly in JT 1996(5) S.C. 319 it was held by Hon'ble Supreme Court that no post should be created to offer compassionate appointment.

4. <sup>been B</sup> The above judgments have <sup>been B</sup> given at a subsequent point of time by Hon'ble Supreme Court, therefore, the law is now changed on the subject by none <sup>else than B Hon'ble B</sup> ~~the case to~~ by <sup>^</sup> Supreme Court itself and it cannot be disputed that subsequent judgments on the same issue would definitely prevail over the earlier judgments.



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Therefore, in these circumstances, if the case of the applicant has been rejected on the ground of non-availability of vacancies, no relief can be given to the applicant as prayed for by him. The O.A. is accordingly dismissed at the admission stage itself with no order as to costs.



Member (J)

shukla/-