

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 434 of 2004

Friday day this the 4th day of ~~April~~ ^{May}, 2007
Menon

Hon'ble Mr. K.S. Menon, Member (A)

Munauwar Alam S/o Late Syed Fkhre Alam, Aged 27 years,
r/o Vill.-Makhdoom pur, Post-Gnaja, District-
Kaushambi.

Applicant

By Advocate Sri O.P. Gupta

Versus

1. Union of India through Secretary Ministry of Human Resources, Govt. of India, New Delhi.
2. Commissioner, Kendriya Vidyalaya Sangathan, 18, Institutional Area, Shahid Jeet Singh Marg, New Delhi-110016.
3. Dy. Commissioner [Admin.], Kendriya Vidyalaya Sangathan, 18 Institutional Area, Shahid Jeet Singh Marg, New Delhi-110016.

Respondents

By Advocate Sri D.P. Singh

O R D E R

K.S. Menon, Member (A)

By this O.A., the applicant has sought the following reliefs: -

- (i) to quash the impugned order dated 16.03.04 (annexure A-6) passed by respondent no.2 by which claim of the applicant for appointment on compassionate ground has been rejected again.
 - (ii) the respondent no.2 may be directed to consider sympathetically for providing compassionate appointment to the applicant on any available post of Group 'C' or 'D' at any place as early as possible.
2. It is submitted by the applicant that his father died in harness on 22.11.2000 while working as Head

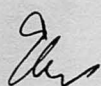
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Clerk in the Kendriya Vidyalaya, Air Force, Manauri, Allahabad. The deceased Government servant left behind his widow, 3 sons and two unmarried daughters. The Counsel for the applicant states that the eldest son of deceased Government servant has been living separately since long and has no relation with rest of the family though no proof was provided to substantiate this statement. The applicant as well as one of his sisters is physically handicapped as is evident from the documents, filed as annexure A-7 and annexure A-8, while other two children are studying. The widow applied for compassionate appointment to be given to her second son Sri Munauwar Alam-the applicant on any appropriate post. The respondents, however, rejected the claim of the applicant vide their letter dated 05.04.2002, by stating therein that there is no post available in the grade of L.D.C., against which his case could be considered. His request for compassionate appointment was, therefore, not acceded to. The applicant, who is aged about 27 years, passed M.A. in History and knows typing in English. It is submitted that the applicant even though he has passed M.A., had never asked for only Group 'C' post in his application and is willing to work on any post including that of Group 'D' anywhere because of his adverse family condition. He has, thus, prayed that the respondents be directed to consider his case even against a Group 'D' post.

3. Counsel for the respondents submitted that the compassionate appointment cannot be sought as a matter of right. The applicant's request was considered for compassionate appointment according to his education qualification i.e. for Group 'C' post but since there is no post of Group 'C' available in the Sangathan, there was no cause for considering his case for compassionate appointment against such a vacancy. Based on the letter dated 05.04.2002, rejecting his request for compassionate appointment, the applicant filed one O.A. No. 1599 of 2003, challenging the aforesaid order. This Tribunal accepted the decision

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of the respondents in rejecting the applicant's case for consideration of compassionate appointment to a Group 'C' (L.D.C.), post as there was no post of L.D.C. against the vacancy ^{on} which the applicant could be considered. The O.A. was disposed of on 08.01.2004 with direction to the respondents to consider the applicant even for a Group 'D' post if, he submitted an application showing his willingness for appointment on a Group 'D' post. In pursuance of the direction of this Tribunal, the applicant submitted his application dated 27.01.2004, showing his willingness to work on a Group 'D' or 'C' post. His application was duly considered by the respondents in pursuance of this Tribunal's Order dated 08.01.2004 and was rejected vide Order dated 16.03.2004 due to the reason that no recruitment of Group 'D' was being undertaken as several works being done by Group 'D' employee, are being outsourced and consequent vacancies against them have been surrendered in accordance with Government of India, Department of Personnel & Training O.M. No.14014/6/94-Estt.(D) dated 10.12.1998. Since no direct recruitment on the post of Group 'D' is being done, no appointment can take place within 5% of total existing vacancies, as envisaged in Government of India, Department of Personnel and Training O.M. No. 14014/6/94-Estt. dated 09.10.1998. The order further states that there is no recruitment or vacancy of L.D.C. due to reduction of post in view of revised staff strength norms and closure of some Kendriya Vidyalayas run by various project authorities. As such, there is no direct recruitment in the grade of L.D.C. also. Learned counsel for the respondents has also argued that widow of the deceased Government servant was in receipt of terminal benefits amounting to Rs.6,22,000/- besides ² of family pension of Rs.3500/- per month. He has argued that in view of these terminal benefits, the family cannot be stated to be in penury condition. The respondents, in view of the facts mentioned above, have prayed for dismissal of the O.A.



4. Learned counsel for the respondents has also relied on the Judgment of Hon'ble Apex Court in the case of Union of India Vs. Joginder Sharma (2003) 1 UPLBEC 444, in which their Lordships clearly held that compassionate appointment is intended to enable the family of the deceased to tide over the sudden crisis resulting due to death of the sole bread-winner. Their Lordships further held that Tribunal or High Court cannot compel the department concerned to relax the ceiling and appoint a person on compassionate basis.

5. Heard, the learned counsel for the parties and have perused the documents on record alongwith the case laws referred to and submitted to the Court.

6. During arguments the learned counsel for the applicant Shri O.P. Gupta drew the attention of the Court to Rule 7 (c) and Rule 16 of Swamy² Establishment and Administrative² in support of his arguments. He subsequently furnished copies of the same. I have gone through the relevant document, Rule 7 (c) which deals with determination and availability of vacancies, stipulates that the ceiling of 5% for making compassionate appointment against regular vacancies should not be circumvented by making appointment of dependent family member of the deceased Government servant on casual/daily wage/ad hoc/contract basis against regular vacancies, there is no bar to considering him for such appointment, if he is otherwise eligible as per normal rules/orders, governing such appointments. I find this particular rule is not at all relevant in this case as no appointment has been given to the applicant either on casual basis or against a regular vacancy. As regards Rule 16 (d) which has some relevance to the present case it is seen that the respondents have not denied compassionate appointment on the ground that as a result of reorganization within the Department, there is no post of L.D.C. or Class 'C' post. There was no post of L.D.C. to begin with against which he could be

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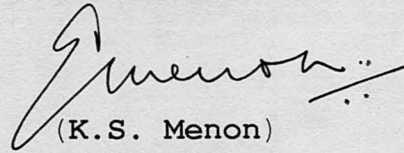
considered. This was further compounded by closure of some Kendriya Vidyalayas run by various project authorities giving rise to stoppage of direct recruitment in the grade of L.D.C.

7. It is ^a~~the~~ fact that compassionate appointments are not to be given as a matter of right. It has to be expeditiously finalized in order to mitigate the immediate distress and financial liability of the deceased Government servant's family. At the same time, it is also a fact that Tribunals cannot direct the administration to give compassionate appointment. It can only direct the administration to consider the cases of compassionate appointment on merits as per application pending before them. In the instant case, the Administration had duly considered the case of compassionate appointment of the applicant to the post of Lower Division Clerk based on the qualification of the applicant and had rejected the same as there was no post of L.D.C. in the Sangathan against which his case could be considered. Further in pursuance of this Tribunal's Order dated 08.01.2004 and based on the applicant's application specifically requesting for appointment as a Group 'D', was also duly considered and was rejected in accordance with the Government of India instructions' dated 10.12.1999 as per which the Kendriya Vidyalas were directed to outsource the task hither^{to} to being performed by Group 'D' to private agencies. They had also been directed that till such time adjustments are made and all Schools have been made to privatize these services, wherever possible, no fresh recruitment in Group 'D' post in any Kendriya Vidyalaya would be made. From the above, it is quite apparent that the respondents have considered the applicant's request for appointment on compassionate ground to the post of L.D.C. as well as the post of Group D as per directions of this Tribunal and have rejected the same, giving detailed reasons within the ambit of Government of India's instructions prevailing at present. They have also taken note of the fact that

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the family cannot be said to be in penury condition, though this is not the only reason for rejection of the applicant's case.

7. In view of the above, there does not appear to be any necessity for this Tribunal to pass any order or give direction to the respondents to consider the applicant's case for compassionate appointment. The O.A. is, therefore, dismissed with no order as to cost.


(K.S. Menon)
Member (A)

/M.M./