

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

Original Application No. 498 of 2004

Thursday, this the 24th day of January, 2008

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

1. Smt. Sunder Devi, Widow of Late B.R. Khairwar C/o Sri Bans Raj, Quarter No. 633 (R) D.L.W. Varanasi.
2. Gulab Singh Son of Late B.R. Khairwar C/o Sri Bans Raj, Quarter No. 633 (R) D.L.W. Varanasi.

Applicants

By Advocate Sri P.K. Ganguly

Versus

1. Union of India through Commissioner, Kendriya Vidyalaya Sangathan, Head Quarter Office, 18, Institutional Area, Shahidjit Singh Marg, New Delhi.
2. Assistant Commissioner, Kendriya Vidyalaya Sangathan, Patna Region, Vijay Nagar, Bailey Road, Post B.V. College, Patna.
3. Principal, Kendriya Vidyalaya, Ghazipur.

Respondents

By Advocate Sri N.P. Singh

ORDER

By K.S. Menon, Member (A)

This O.A. has been filed by the applicants seeking directions of this Tribunal to the respondents to reconsider the case regarding compassionate appointment of applicant No. 2 in Group 'C' cadre as L.D.C. in Kendriya Vidyalaya Sangathan.

2. The facts of the case in brief are that the husband of applicant No.1 Bachchan Ram Khairwar who was working as an Assistant Teacher in Kendriya Vidyalaya, Ghazipur, met with an accident and died in harness on 14.09.1999, leaving behind a widow (applicant No.1) who is illiterate and four small children, three of whom were pursuing their studies. Applicant No. 1 applied to the respondent No.1 on 16.10.1999 seeking a compassionate appointment for her third son Gulab Singh (applicant No.2) alongwith all requisite documents (annexure-3) to this O.A. The respondent No.1 rejected the applicant's claim for grant of compassionate appointment vide their order dated 21.08.2000

(annexure-6) which was conveyed to the applicants by respondent No.3 vide letter dated 06.09.2000. The applicants submitted representations on 17.10.2000, 26.06.2001, and 07.11.2003 all of which are yet to be disposed of by the respondents. The applicants submit that the letter of the respondents dated 21.08.2000 by which their application has been rejected is not a reasoned and speaking order as it does not indicate clearly the reasons as to why their case has been rejected. They further submit that the Order dated 21.08.2000 has been passed mechanically without any application of mind and reasons have to be recorded in the Order and cannot be supplemented by fresh reasons in the form of an affidavit as per Apex Court's decisions in Mahindra Singh Gill Vs. Chief Election Commissioner AIR 1978 SC page 851. Being aggrieved by the above action of the respondents, they have filed the present O.A.

3. The respondents in their preliminary objections in the counter reply have pointed out that the letter of rejection issued by the respondents is dated 21.08.2000, while this O.A. has been filed on 15.04.2004 after more than three and a half years hence the same is barred by limitation. They have relied on the Apex Court's decision in the case of Jai Deo Gupta Vs. Union of India and others wherein it has been held that repeated representation does not extend the period of limitation. They therefore maintain that on this ground alone the O.A. is liable to be dismissed. Respondents further contend that the Kendriya Vidyalaya Sangathan can only be sued through the Joint Commissioner (Administration), Kendriya Vidyalaya Sangathan, Headquarters, New Delhi, who has not been impleaded by the applicants hence on this ground alone the O.A. should be dismissed. On the merits of the case, the respondents submit that the applicants case was considered and evaluated by a Committee constituted for the purpose of considering cases for grant of compassionate appointment but was not found fit for grant of such an appointment as he did not pass the required qualification of computer knowledge. Respondents submit that it cannot therefore be said that the respondents have not applied their mind while rejecting the applicants' claim. Besides they have also contended that compassionate appointments can only be made against 5% of the total direct recruitment vacancies in a year and since there was a surplus of posts in the cadre of LDCs no recruitment was possible and accordingly the applicants case was not considered fit and the rejection of the applicants claim was communicated vide the impugned orders dated 21.08.2000. They have in support of their

contention relied on the High Court of Patna's Judgment dated 21.05.2002 CWJC No. 2234 of 2002 (Geeta Kumari Vs. U.O.I.) in which it has been held that compassionate appointment cannot be treated as a vested right and should come only as a help to the bereaved family to mitigate their hardships on account of the sudden death of the bread earner. Appointments if granted would tantamount to discrimination between similarly situated persons who might have been refused^g compassionate appointment. Respondents, therefore, submit that in view of the above the applicants are not entitled to any of the reliefs prayed for in this O.A.

4. Heard Shri P.K. Ganguly, learned counsel for the applicants and Shri N.P. Singh, learned counsel for the respondents and perused the pleadings on record.

5. The Department of Personnel and Training has vide the O.M. dated 03.12.1999 laid down that: -

"The ruling of the Supreme Court that appointment on compassionate grounds can be made only if vacancies are available for the purpose (mentioned in paragraph 17 (d) ibid). Accordingly, it has been decided that the Committee prescribed in paragraph 12 ibid for considering a request for appointment on compassionate grounds should take into account the position, regarding availability of vacancy for such appointment and it should recommend appointment on compassionate grounds only in a really deserving case and only if vacancy meant for appointment on compassionate grounds will be available within a year, that too within the ceiling of 5% mentioned above. This would ensure grant of compassionate appointment within a year.

The application of the applicant for compassionate appointment was considered by the respondents through a Committee constituted for the purpose and was rejected on the grounds that the applicant did not possess the requisite qualification of computer knowledge and non-availability of vacancies in Group 'D' cadre due to privatization of Group 'D' services and Group 'C' cadre due to existence of surplus staff in this category.

6. A bare reading of the impugned order dated 21.08.2000 indicates that it is not a reasoned and speaking order. If an application for grant of compassionate appointment is to be rejected it is incumbent on the part of the respondents to indicate clearly why the case is being rejected. In this case admittedly the committee concerned had

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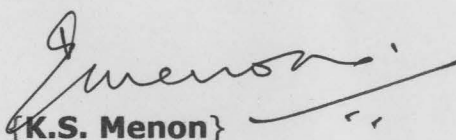
considered the applicants case as per the rules, however, while communicating the decision of the Committee, the applicants were not informed the basis for rejection. The Supreme Court has in several cases laid down that departments concerned should clearly indicate reasons for rejection while considering cases for grant of compassionate appointment to the entire satisfaction of the applicants to prevent them from approaching Courts of law to obtain a redressal of their grievances. In this case it is clear that the respondents should have issued a clear, reasoned speaking order which has not been done. The applicants refuting the respondents contention that Group 'D' posts have been privatized hence no vacancies are available, submit that it was incorrect on the part of the respondents to entrust Group 'D' duties to private agencies. They submit that despite this submission, respondents appointed one V.K. Singh as a Group 'D' in Kendriya Vidyalaya, Ghazipur on compassionate ground.

7. Respondents however maintain that Shri V.K. Singh² was appointed as a Group 'D' on compassionate basis on the recommendations of the committee in its meeting dated 15.12.1999 well before the applicant's representation was received in the answering respondents' office on 04.02.2000 and by the time the applicant's case was considered by the Committee, the work of Group 'D' was entrusted to private agencies and consequently there were no vacancies in the direct recruitment quota out of which appointments to the extent of 5% could be made. The Committee therefore did not recommend any case for appointment in Group 'D' cadre. They contend that this position continues till date.

8. Perusal of the respondents' Supplementary Counter reveals that the respondents had considered the applicants' case in accordance with D.O.P.T. O.M. dated 09.10.1998. In 2000 the applicants' case was not considered as he did not possess the requisite qualification in 2001 out of 79 cases only the 5 most deserving cases were recommended for 100 vacant posts of L.D.C. In 2001-2002 and 2002-2003, Kendriya Vidyalaya Sangathan was burdened with 70 surplus posts consequent upon a revision in the sanctioned strength of LDC, so in these two years also Committee did not recommend any case for appointment in LDC grade. The contention of the respondents that their case was rejected arbitrarily does not appear to be well founded. The respondents have in the submissions also pointed out that the family was in receipt of Rs.5,57,286/- as terminal benefits in addition to Rs.3565 plus D.A. per month as pension besides the two elder sons who were in a position to

look after the family, although this was not the reason for rejection of the case.

9. In view of the above, though the impugned order is not a speaking order, it cannot be said that the applicants have not considered the applicants' case in accordance with DOPT O.M. dated 09.10.1998. The case is more than 9 years old and no useful purpose would be served if the respondents are asked to merely issue another reasoned and speaking order. In view of the analysis in the preceding paragraphs, I do not find any valid reason to interfere with the order of the respondents dated 21.08.2000. The O.A. being without merit is accordingly dismissed. No costs.


{K.S. Menon}
Member (A)

/M.M/