

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.**

ORIGINAL APPLICATION NO.978 OF 2004.

ALLAHABAD THIS THE 17TH DAY OF SEPTEMBER 2007.

Hon'ble Mr. Justice Khem Karan, V.C.

1. Smt. Asha Devi, adult widow of late Raju, resident of House No. 85/290, Luxmi Purwa, Kanpur Nagar.
2. Sandeep Kumar son of late Raju residence of House NO.85/290, Luxmi Purwa, Kanpur Nagar.

.....Applicants

(By Advocate: Shri Krishna Lal)

Versus.

1. Union of India through the Secretary, Ministry of Defence, New Delhi.
2. The Secretary, Ordnance Factory Board, 10-A, Saheed Khudiram Bose Road, Kolkata-700001.
3. The General Manager, Ordnance Equipment Factory, Post Box No. 76, Kanpur Nagar.

.....Respondents

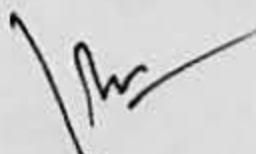
(By Advocate: Shri A. Mohiley)

O R D E R

The present one is the second O.A. by the applicants for compassionate appointment of applicant NO.2 namely Sandeep Kumar under Dying In Harness Rules, on death of his father late Shri Raju, who died on 29.2.2000, while working as Sweeper in Ordnance Equipment Factory, Kanpur. Applicants have prayed for directing the respondent NO. 3 to consider the case of the applicant No. 2 for compassionate appointment.

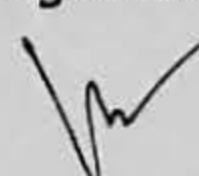
✓

2. There is no dispute between the parties that late Shri Raju, husband of applicant NO.1 and father of applicant NO.2 died in harness on 29.2.2000, leaving behind him as many as five members in his family including applicants, one minor son and one unmarried daughter aged about 22. It has been said that late Shri Raju was suffering from Blood Cancer since 1996-97 and family had to spend a lot of amount, even by borrowing some of it from others, in giving medical treatment to late Shri Raju. It is averred that amount received to the tune of Rs.99,919/- on death of late Shri Raju, was used to repay the loan taken from Ordnance Equipment Factory Sahakari Bank Ltd. Kanpur and from money lenders. It is alleged that after death of late Shri Raju, there was no member in the family to make both ends meet and family was in great distress. Applicant NO.1 applied for compassionate appointment of her son Sandeep Kumar, stating all relevant facts but the request was rejected by the respondent NO. 3 vide letter dated 21.2.2002. The applicants challenged that rejection by filing O.A. NO.143 of 2003, which this Tribunal finally disposed of vide order dated 28.4.2004 (Annexure A-2), directing the respondent No. 3 to reconsider his case, within a period of two months. The Tribunal noted that according to the minutes of meeting dated 10.10.2001 of Board of Officers, applicant secured 72 points and Smt. Pratima Singh, widow of late Shri Surendra Singh secured only 71, then how Smt. Pratima Singh was recommended for such appointment and not the applicant. It appears, the respondent NO.3 has passed the impugned order dated 23.7.2004 in compliance of said directions of this Tribunal. They say that on revision of score points, applicant got 74 and Smt. Pratima Singh got 81, so there was nothing wrong in recommending the name of Smt. Pratima Singh, for such appointment and not recommending the case of applicant. The applicants have tried to say that this reconsideration pursuant to the orders of this Tribunal is no consideration in the eyes of law

A handwritten signature consisting of a stylized 'W' and a downward-sweeping line.

and Authorities failed to appreciate the poor economic condition of the family.

3. The respondents have contested the claim reiterating that in view of various judicial pronouncements of Apex Court as well as of this Tribunal, such appointment being an exception and is possible against 5% of vacancies of Direct Recruitment in an year, no legitimate claim can be put by such applicants for such appointment. They say that applicants' case was considered thrice by the Board of Officers in accordance with Guidelines laid down for the purpose but owing to the limited number of vacancies earmarked for this purpose and owing to other more deserving candidates, the applicants' case could not be recommended. In para 9, they say that on death of late Shri Raju, the family was paid Rs.99,919/- as terminal benefits and widow was getting a family pension of Rs.2804 a month (including Dearness Relief) and so it can not be said that family has no means to sustain itself. As regards the revision of marks, it has been said in supplementary reply dated 25.11.2005 that it was necessitated on account of Revised Guidelines dated 24.8.2001 (Annexure SCA-1). They have annexed the Revised and unrevised score Sheet (Annexure SCA-2) of Smt.Sushila W/o late Harish Kumar, Smt. Maya Devi W/o late Prem Chandra, Smt. Manjoo Devi wife of late Mohan Lal, Smt. Pratima Singh W/o late Surendra Singh, Smt. Premwati w/o late Bhagwandeen, Shri Brahm Dutt Tiwari s/o late Om Prakash Tiwari, Shri Ashish Kumar Vishwakarma s/o late Hari Narain, Smt. Kaushlya Devi w/o late Ram Harakh, Smt.Laxmi Devi w/o late Chandrika Prasad and late Shri Raju, so as to demonstrate that scoring was done as per the Guidelines issued from time to time and no favouritism or discrimination or manipulation was resorted to. They say that afterall the entire exercise was done by Board of Officers, who had no malice or prejudice against the applicants.



4.

4. In para 6 of the her rejoinder filed in April 2005, applicant NO.1 has tried to say that according to revised guidelines, applicant NO.2 ought to have secured as Under:-

1. Family Pension excluding DA &

allowances is	Rs. 1640/-	Scoring marks	16
---------------	------------	---------------	----

2. Terminal benefits	Rs.99,919	==	10
----------------------	-----------	----	----

3. Monthly Income	Nil	==	05
-------------------	-----	----	----

4. Movable/Immovable Property	Nil	==	10
-------------------------------	-----	----	----

5. NO. of dependents	05	==	
----------------------	----	----	--

15.

6. Number of Unmarried daughter	01	==	05
---------------------------------	----	----	----

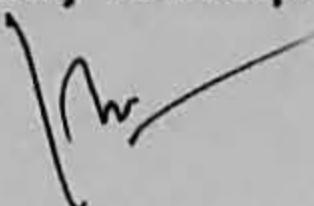
7. Number of Minor Children	02	==	10
-----------------------------	----	----	----

8. Left over service	20 Yrs.	==	
----------------------	---------	----	--

08.

Total Marks scored 79.

According to her instead of showing 79 marks in the account of applicant NO.2, the respondents manipulated to reduce the same. An attempt has also been made to say that in the case of dependents of Shiv Kumar, whose wife Uma Devi daughter of Mahabir was an employee of Kanpur Nagar Mahapalika getting salary of Rs.5000 a month, employment was given to her son and in this way respondents resorted to discrimination. It has been reiterated in this rejoinder that whatever the family received in the form of terminal benefits, was spent in repaying the loans. Quoting from a decision of High Court at Lucknow in Durgesh Kumar Tiwari Vs. Chief General Manager, State Bank of India, Lucknow and others. Applicant No.1 tried to say in para 25 of the rejoinder that considering the number of family members, family pension and other aspects, the family was in dire need of such appointment. She says that an amount of family pension is totally inadequate to meet



the requirements of family. In her supplementary rejoinder affidavit filed in December 2005, applicant NO.1 has stated in para 8 that it is surprising that Smt Pratima Singh, who secured only 71 points, was recommended for compassionate appointment and applicant NO.2 who secured 74 points was not recommended. It is also said that letter dated 24.8.2001 (Annexure SCA-1) is not applicable in the case of applicant No.2 as the matter was considered on 10.7.2001 much before the issuance of said letter dated 24.8.2001. According to her, in view of letter dated 9.3.2001 issued by Ministry of Defence where number of dependents was three and above 15 marks were to be given but in the case of the applicant NO.2 only 10 were given.

5. The respondents have filed supplementary reply reiterating that on revision of marks in the light of OEB dated 24.8.2001 Smt. Pratima Singh secured 81 points and applicant NO.2 secured 74 points, so there was nothing wrong if Smt. Pratima Singh was recommended for compassionate appointment. They have tried to explain the appointment of Shri Ashish Kuar Vishwakarma s/o late Hari Narain, who got 74 points and also appointment of Arun Kumar S/o late Sri Shiv Kumar and Smt. Uma Devi. Copy of D.O.P.T OM dated 19.10.1998 applicable to the Ministry of Defence has also been annexed to this supplementary reply.

6. Applicants ⁴ have filed one supplementary rejoinder in September 2006, reiterating the same points taken earlier but referring to certain judicial pronouncements of the Apex Court in Director of Education (Secondary) and another Vs. Pushpendra Kumar and others, 1998 3 A.W.C. 1772 (SC) and to a case of Durgesh Kumar Tiwari Versus Chief General Manager, State Bank of India, Lucknow and others decided on 20th May 2003.

✓

7. I have heard Shri Krishna Lal, learned counsel for the applicant and Shri Ashok Mohiley, learned counsel for the respondent and have also perused the entire material on record.

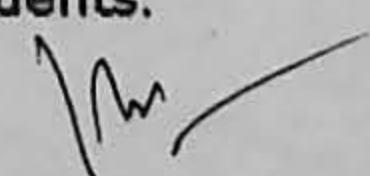
8. There is no dispute as regards the legal position, that compassionate appointment under Dying In Harness Rules is not a regular source of Recruitment but is by way of exception, just to render the economic assistance to the family, so as to meet the sudden financial crisis created due to death of employee concerned. I do not want to refer to each and every judicial pronouncement on the said point. There is further no dispute that such appointments are possible against 5% vacancies of Direct Recruitment in a year. Experience shows that while number of vacancies under 5% quota are few, the number of applicants for such appointment is proportionately greater one. Result is that inspite of the fact that family is indigent or in financial crisis, but appointment can not be provided to each and every applicants and it is with a view to meet such a situation and with a view to ensure ~~objectively~~ transparency in such consideration, that the Government has issued Guidelines as to how it has to be decided as to whose case is more genuine, as compared to the cases of others. The Guidelines annexed to the Supplementary reply of the respondents provide sub-Heads, such as amount of family pension, amount of terminal benefits, monthly income, movable/immovable property, number of dependents, number of unmarried daughters, number of minor children and left over service and marks are allotted accordingly to each and every such candidates whose case is under consideration in a particular meeting of Board of Officers. This marking is in such a way that one whose family pension is lesser or one whose terminal benefits are lesser or one who has no monthly income or less monthly income, or who has no movable/immovable property or one who has more dependents or more minor children or

unmarried daughters or more left over service of the deceased, gets comparatively more marks. The criteria so evolved by these Guidelines is not being attacked nor appears to be unreasonable or illogical.

9. What Shri Krishna Lal, learned counsel for the applicant argues is that by same reckoning or yardstick, applicants ought to have secured 79 marks/points as stated in para 6 of the rejoinder. He has said that under the head of Minor Children, applicant ought to have been given 10 points instead of 5 points, as number of minor children was two. The difference in marks given by the respondents and the marks stated in para 6 of rejoinder is one of five only. According to respondents, applicant NO.2 secured 74 marks and according to para 6 of the rejoinder, he ought to have secured 79. I have not been able to understand as to how, applicant No.1 has quoted two minor children in para 6 of the rejoinder, when according to para 4.2 of O.A., there is only one minor children namely Ashwani, Km. Meena, daughter of deceased has been shown 22 years of age and applicant himself has been shown to be of 21 years. There is no other issue shown in the family. There appears to be no mistake on the part of respondents in giving only 5 marks under the head of minor children.

10. I have also seen the Revised and Unrevised Score Sheet of Smt. Pratima Singh, ² there appears no apparent error in the allotment of marks to her.

11. Shri Krishna Lal, learned counsel for the applicant was not able to demonstrate as to how the applicants are saying that favouritism or discrimination is reflected in allotment of marks to the candidates, scoresheets of whom have been annexed to the supplementary reply, filed by the respondents.



12. Since Shri Krishna Lal, learned counsel for the applicant has not been able to demonstrate before me that there was any favouritism or discrimination on the part of Board of Officers in allotting the marks to applicant NO.2 or to Smt. Pratima Singh or to any other candidates, whether before or after the revision

13. Shri Krishna Lal, learned counsel for the applicant has argued on the basis of Director of Education (Secondary) and another Vs. Pushpendra Kumar and others, 1998 3 A.W.C. 1772 (SC) that even if there was no vacancy, applicant No.2 could have been appointed by creating a supernumerary vacancy. The facts of the case before their Lordships were entirely different. There dependent of a Teaching/non-Teaching Staff in non-Government recognized aided Institution, had staked his claim for appointment in Class III, but no such vacancy was available in Class III in the Institution concerned and so in that situation the Apex Court directed to appoint him in Class IV in the same institution in which the employee concerned worked and died. The said case cannot be treated to be a precedent, so as to say that vacancy has to be created for accommodating such person.

14. Shri Krishna Lal has also referred to Abhishek Kumar Vs. State of Haryana 2007 (2) SRJ 302, where respondents were directed to appoint the applicant in any other office, under their control. The facts of the case before their Lordships were different. There in the State of Haryana, State wise list was being maintained of the candidates for being considered for compassionate appointment. Here no such pleading is there.

15. Relying on Durgesh Kumar Tiwari Vs. Chief General Manager, State Bank of India, Lucknow and others, 2003 All. CJ 1604, Shri Krishna Lal, learned counsel for the applicant has argued that

9.

respondents can be asked to give compassionate appointment to the applicant. That was a case where amount of family pension was downsized to Rs.450 and in the opinion of Court, the same was too ^{meagre} ~~meager~~ to feed the family. Each case has to be considered in the light of its own facts and circumstances. In the case in hand, the case of the applicant was considered thrice by the Board of Officers, in accordance with Guidelines issued in this behalf. There is nothing in the pleadings that either of the Officers, was prepossessed in favour of someone or was biased against the applicant NO.2. Material placed on record, does not reveal that the Board of Officers resorted to any discrimination, manipulation, favouritism etc. in allotting the marks under each Sub Heads to each of candidates, under consideration in relevant meetings. It is true that applicants are poor and have no sufficient means. They come from lower strata of society. They have no house and are living in a rented house. It is also possible that they might have spent the amount of terminal benefits in repaying the loan taken from others, for meeting medical expenses incurred on treatment of late Shri Raju. It is also a fact that the family has one daughter, who is to be married but the question is whether the case of applicants as compared to the cases of those, whose appointments were recommended, can be said to be more genuine. I do not know the family circumstances of those persons, whose case might have been recommended. Applicants' family is getting a family pension of Rs. 2804 a month. The amount is not adequate but it cannot be said that family is not having any income. I think a reference to the appointment of son of Uma Devi does not help the applicant.

16 In the result, I find no merits in this O.A. and it deserves to be dismissed. It is accordingly dismissed but with no order as to costs.

*C. J. M. - ur
17.9.07*

Vice-Chairman

Manish/-