

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
~~ALLAHABAD BENCH~~
ALLAHABAD

Dated: this the 25 day of 8 2008

Original Application No.1037 of 2007

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

Ajai Kumar Singh, S/o late Rajeshwar Singh, R/o 108 B/1, Abu Baqarpur, Dhoomanganj, Allahabad.

...Applicant.
By Adv : Shri S. Mandhyan

Versus

1. Union of India through Secretary, Ministry of Defence, New Delhi.
2. Director General, E.M.E., Army Headquarters, New Delhi.
3. Commandant, 508 Army Base Workshop, Allahabad.

...Respondents.

By Adv: Shri Tej Prakash

O R D E R

Through this OA the applicant has claimed compassionate appointment and prayed for quashing of order dated 10.07.2004.

2. The brief facts of the case are that the father of the applicant was employed as Store Keeper in 508, Army Base Workshop, Fort, Allahabad. He died on 25.06.1996 leaving behind his widow, two sons and a daughter. It is alleged that after the death of the deceased employee a meager amount of Rs. 64,011/- was paid to the family and a monthly pension of Rs. 1275/- was sanctioned to his widow. Father of the applicant

died on account of massive heart attack while in service. The applicant applied for compassionate appointment. A call letter was also sent to him 12.09.1996/12.12.1996. On meeting with the establishment officer of the workshop the applicant was required to make a declaration prior to medical examination, which was furnished by him on 17.01.1997. The applicant was got medically examined and found medically fit for Government service. The applicant received letter on 18.08.1997 informing that his name has been placed on the waiting list for the post of L.D.C./Store Keeper at Sl. No. 98 and he will be offered appointment at his turn. Vide letter dated 16.12.2000, the applicant was informed that his claim did not stand on merit and found him unfit for appointment on compassionate ground and his claim was rejected. This letter came as a bolt from blue as earlier he was informed that his name has been placed on the panel and he has to wait for his turn. This contradictory letter of rejection made applicant very much perturbed. The applicant filed Writ Petition before Hon'ble High Court. The Writ Petition was disposed of with a direction to consider and dispose of application of the applicant for appointment on compassionate ground within a period of two months. Respondent No. 3 without applying his mind and considering the fact passed order dated 02.06.2001 (Annexure A-7). The applicant was constrained to file OA No. 845/01 before this Tribunal. After exchange of

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pleadings the matter was heard. Vide judgment and order dated 02.04.2004 the OA was allowed and the order dated 02.06.2001 was quashed. The case was remanded back to the respondents with a direction to pass reasoned and speaking order to the claim made by the applicant within a period of three months (Annexure A-8). Alongwith certified copy of the judgment and order dated 02.04.2008 the representation was submitted by the applicant to the Competent Authority. The claim of the applicant was rejected by getting new ground of securing 60% marks in the quantitative assessment table by the applicant. It is also alleged by the applicant that there have been circular from time to time with regard to appointment on compassionate grounds issued by the Army Headquarters. The circular mentions Ministry of Defence letter dated 09.03.2001 whereby revised merit points have been evaluated on 100 point's scale. It is alleged by the applicant that going by the revised points estimate as provided in the circular dated 09.03.2001, it can be demonstrated that the marks obtained by the applicant would come to about 65% which is more than 60%.

3. The respondents have filed reply and submitted that the case for compassionate appointment was considered by the Board of Officers at Dte Gen of EME Army Headquarters in the light of instruction issued by DOP & T OM dated 09.10.1998. The following aspects

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to assess the economic condition of the deceased family and suitability of the case for compassionate grounds appointment of the family of deceased Government servant were examined by the Board of Officers as per the Government of India's instruction referred above on the subject and on the basis of supporting documents submitted by the candidate duly verified by Civil Authorities : -

- [a] Size of the family including ages of children of deceased Government servant.
- [b] Amount in terms of unmarried daughters etc.
- [c] Liabilities in terms of unmarried daughters etc.
- [d] Earning members (s) supporting/non supporting of the family
- [e] Moveable/immovable property and income thereof.

4. As per existing order on the subject only 5% of the total vacancies are to be filled up by compassionate appointment and thus 95% of the cases which were received from various units for compassionate appointment are to be rejected. Hence compassionate appointment are offered to most deserving cases whose economic conditions are assessed as extremely acute on the basis of assets and liabilities of the families of deceased employed at the time of death.

5. In view of the circumstances explained above and due to only limit of 5% vacancies reserved for

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compassionate appointment the board did not find the instant case deserving and hence rejected, which was conveyed to the petitioner through speaking order vide letter No. 20313/AKS/ENI dated 16.12.2000. The applicant filed as Writ Petition No. 7835 of 2001 in the Hon'ble High Court. The Hon'ble High Court vide judgment dated 12.05.2001 disposed of the Writ Petition with a direction to the respondents to consider and dispose the application of the applicant. The judgment was forwarded to Army Headquarters vide this unit letter No. 21308/AKS/LC dated 11.04.2001. Army Headquarters after considering his case directed this Unit to issue reasoned speaking order vide their letter No. B/03/118/652/EME Civ-2 dated 30.04.2001. Accordingly, a reasoned and speaking order was issued to the applicant vide this unit letter NO. 21308/AKS/LC dated 07.06.2001. The applicant again filed an OA No. 845 of 2001 before this Tribunal. The Tribunal vide its judgment and order dated 02.04.2004 directed the respondents to remit back the matter to the authorities and to pass a reasoned and speaking order. The judgment was forwarded to Dte Gen of EME vide this unit letter No. 21308/AKS/LC dated 07.05.2004 for their decision. Army Headquarters vide their letter No. B/03428/697/EME Civ-2 dated 05.07.2004 asked the respondents this unit to issue speaking order. Accordingly, based on the judgment dated 02.04.2004 and direction thereof speaking order

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was issued to the applicant vide this unit letter No. 21308/AKS/LC dated 12.07.2004.

6. The respondents have clearly submitted in their reply that the contention of the applicant that his name has been placed at 98 position in the waiting list and he would have to wait for offer at his turn is a wrong assumption of the individual. His name has been registered at Sl. No. 98 for consideration by the Board of Officers to adjudge his employment proposal amongst other such like cases. It is submitted that a large no of employment proposal for compassionate appointment cases are being received in Army Headquarters from various units, where only 5% quota is reserved for the purpose of compassionate grounds appointments as per the existing rules. To over come this situation, a Board of Officers assemble at Army Headquarters to examine all such cases to select the cases of acute financial distress, moveable/immovable property, size of the family and condition and other liabilities on the basis of information/documents submitted by the individual. The applicant's case could not find any merits within 5% quota and hence rejected.

7. The applicant has filed rejoinder affidavit reiterating the facts as contained in the OA.

[Signature]

8. Learned counsel for the applicant vehemently argued that the Provident Fund, Gratuity, family pension and other retrial benefits granted to the deceased employee cannot be considered for determination of entitlement of a particular case nor it can be a ground for ~~furnish~~ for rejecting the compassionate appointment.

9. Shri S. Mandhyan learned counsel for the applicant would further contend that the scheme made by the respondents is ultra virus and arbitrary. In support of his argument reliance has been placed on the decision of Hon'ble Allahabad High Court rendered in **2002 (3) ESC 505 : Dhiraj Kumar Dixit Vs. The General Manager (Personnel), UCO Bank, Calcutta and others.** Learned counsel for the applicant also placed reliance on the decision of Hon'ble Allahabad High Court rendered in **2001 (2) ESC 876 : State Bank of India and others Vs. Ram Piyarey Adult** wherein a Division Bench of Hon'ble High Court has held that the receipt of family pension by the widow and a sum of Rs. 1.42 lacs paid to widow after deducting the loan cannot be taken to be a good ground for rejecting the case for appointment on compassionate ground. Further reliance has been placed on **2000 (3) ESC 1618 (SC) : Balbir Kaur and another Vs. Steel Authority of India Ltd. and others**, in this case the Hon'ble Supreme Court has held that by mere granting of family pension and retrial dues to the widow of the deceased

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employee, the claim of the applicant for compassionate appointment cannot be denied.

10. Sri Tej Prakash learned counsel for the respondents vehemently argued that this Tribunal or Hon'ble High Court while considering appointment on compassionate ground cannot go behind the scheme framed by the respondents for giving appointment on compassionate ground and no direction can be issued directly to make appointment forbidden by scheme framed by the respondents. In support of his contention reliance has been placed on decision of Hon'ble Supreme Court in *JT 1994 (2) SC 183 : Life Insurance Corporation of India Vs. Mrs. Asha Ram Chandra Ambedkar*. Learned counsel for the respondents further argued that the object of providing compassionate appointment is not to give member of the said family a post nor mere death of the employee in harness could entitle his family to such source of livelihood. Government or Public Sector authority has to examine the financial condition of the family of the deceased and it is only, if it is, satisfied that but for the provision of employment the family will not be able to meet crisis that a job has to be offered to the eligible family members.

11. Learned counsel for the respondents has also submitted that the Court/Tribunal cannot confer benediction impelled by sympathetic considerations to

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make appointment on compassionate ground when the regulation framed in respect thereof do not cover and contemplate such appointment. Reliance has been placed on the decision of ***Sushma Gosain vs. Union of India : (1989) 4 SCC 468*** that there should not be any delay in compassionate appointment. The sole logic behind such appointment is to mitigate hardship due to the death of the bread earner in the family, if the applicant is minor, unless rules specified that no such latitude has to be given. Learned counsel for the respondents would further contend that the deceased employee died on 25.06.1986 and the family member of the deceased have survived for 12 years. At such belated stage the applicant is not entitled for compassionate appointment. In order to support this plea. Reliance has been placed on ***2005 (7) SCC 772*** :

Commissioner of Public Institution Vs. K.K. Vishwnath, the Hon'ble Supreme Court has held that once it is proved that inspite of death of sole breadwinner the family survived for a long no appointment on compassionate ground could be ordered. It has also been argued that the administrative discretion of limiting or ceiling of 55 of vacancies is purely administrative discretion and it is not open to judicial review. In support of his argument ***2002 SCC (L&S) 1111 : Union of India and other Vs. Joginder Sharma*** has been relied upon by the respondents. Learned counsel for the respondents also submitted that compassionate appointment is exemption to general

rules, normally employment in the Government or Public Sector should be open to all eligible candidates who can come forward to apply and compete with each other. This general rule should be departed only in compelling circumstances such as sole breadwinner and likelihood of the family suffering because of set back. Once it is provided that **inspite of death of breadwinner the family survived for several years**, there is no necessity to say good bye to the normal rule of appointment and show favour to one at the cost, save others ignoring the mandate of Article 14 of the Constitution of India.

12. I have given my anxious thought to the pleas raised by the parties counsel and in my considered view the arguments advanced by Shri S. Mandhyan that pensionary benefits and retrial dues should not be taken into account while considering the case of the applicant for appointment on compassionate ground deserves to be rejected. I am firmly of the view that the finding of the statutory authority regarding entitlement of the applicant to compassionate appointment is not open to judicial review. The finding arrived by the competent authority on appreciation of full facts should not be disturbed by the Court. [2006 (7) SCC 350 *Union Bank of India Vs. M.T. Latheesh*].



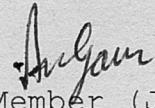
13. I have also gone through the decision rendered by Hon'ble Supreme Court in 2007 (1) SCC (L&S) 668 : **National Institute of Technology Vs. Neeraj Kumar Singh** wherein the Hon'ble Apex Court has clearly observed that compassionate appointment can only be granted under the scheme to widow or child and compassionate appointment cannot be granted after a long lapse of the death of the employee. In the judgment of Hon'ble Supreme Court in JT 2007 (3) SC 398 : **State Bank Of India Vs. Som Vir Singh** it has been held that financial position of the family of the deceased employee did not warrant compassionate appointment. The Hon'ble Supreme Court set aside the order of Hon'ble High Court and held that High Court has not decided that what would be the reasonable income.

14. I have also considered the pleas taken in the counter affidavit filed by the respondents and in my considered view the Board after keeping in view the policy, issued by Government of India, DOP & T examined the case of the applicant, for compassionate appointment and his case was not found to be one of the deserving cases whose economic condition are not extreme acute, his case has rightly been rejected by the Competent Authority. The case of the applicant was also rejected during December 2000 and as such the argument of learned counsel for the applicant that his case should have been considered on the basis of

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revised merit point of 100 issued during March 2001 is not tenable in law. The name of the applicant was kept at Sl. No. 98 for consideration only and not for appointment in waiting list. At no point of time the applicant was ever informed that his case for appointment has been considered and he will be given appointment later.

15. In my considered view the applicant has failed to make out any case warranting interference. The OA is accordingly dismissed. No cost.


Member (J)

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