

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD**

(THIS THE 22 DAY OF 11 2009)

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

Original Application No.1211 of 2005

(U/S 19, Administrative Tribunal Act, 1985)

1. Smt. Angoori Devi wife of late Sri jai Prakash Sonkar.
2. Anuj Kumar son of Late Sri Jai Prakash Sonkar.

Both resident of Village and Post Office Dharmangadpur, Police Station Sachindi, District Kanpur Nagar. At present residence of 10/316 Khalasi Line, district Kanpur Nagar.

..... *Applicant*

By Advocate : Shri Pradeep Chandra

Versus

1. Union of India through Secretary Ministry of Defence, New Delhi.
2. Chairman Ordnance Factory Board, Calcutta (Now Kolkatta).
3. Senior General manager, ordinance Factory Kanpur, Kalpi Road, Kanpur

..... *Respondents*

By Advocate : Shri S. C. Mishra

ORDER

(Delivered by Hon'ble Mr. A.K. Gaur, J.M.)

By means of this O.A. the applicants have prayed for following main relief/s :-

- i. *to issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 17.05.2005 and 31.01.2006 (Annexure-5 and 2 to this application) passed/issued by the respondent No. 3.*
- ii. *to issue another writ, order or direction in the nature of mandamus directing the respondents not to give effect to the impugned orders/letters dated 17.05.2005 and 31.01.2006 (Annexure-5 and 2 to this application) passed/issued by the respondent No. 3.*

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iii. issue a writ, order or direction in the nature of mandamus directing the respondent no. 3 to appoint the petitioner no. either in group 'c' or in Group 'D' on compassionate ground."

2. The factual matrix of the case is that Late Jai Prakash Sonkar husband of Smt. Angoori Devi (applicant no. 1) and father of Anuj Kumar (applicant no. 2) died on 19.06.2003 leaving behind 7 family members which are as under:-

- i. Suhil Kumar (Married son)
- ii. Vinod Kumar (Married son)
- iii. Ashok Kumar.
- iv. Anuj Kumar.
- v. Smt. Munni Devi.
- vi. Smt. Rani Devi.
- vii. Smt. Kiran Devi [Judicial separated].

3. The applicant No. 1 made a representation dated 08.07.2003 to the respondent No. 3 for the appointment in favour of Anuj Kumar, the applicant No. 2/ Annexure-1 to the Original Application. According to the applicant, respondent No. 3 vide order dated 31.01.2005 /Annexure-2 of O.A informed the applicant that her request for grant of compassionate appointment in favour of her son was placed before the Board of Officers on 08.01.2005 and 06.04.2005 but could not be recommended due to more deserving cases and limited number of vacancies. Aggrieved the applicant No. 1 sent another representation dated 08.03.2005 to the respondent No. 3 requesting therein to consider the claim for compassionate appointment in favour of applicant No. 2 either in group 'C' or in Group 'D'. As the respondents did not pay any heed to the said representation, the applicant No. 1 sent a another representation/reminder dated 28.03.2005 to the respondent No. 3 (Annexure-4 to the O.A.) giving all the details and facts. The grievance of the applicants is that despite being given full facts and family circumstances in the representation, the Respondent No. 3 rejected the request of the applicant No.1 vide order dated 17.05.2005 /Annexure A-

5 to the Original Application on the same ground as stated in the order dated 31.01.2005 . Learned counsel for the applicant would contend that the respondents have totally failed to take into account the relevant rules and instructions regarding compassionate appointment and rejected the claim of the applicants in a most casual and arbitrary manner.

4. On notice, the respondents have filed Counter Affidavit. Learned counsel for the respondents invited our attention to para 8(iii) of relief clause and submitted that the applicants are seeking direction to the respondentn No. 3 to appoint the applicant No. 2 on compassionate grounds whereas, as per Hon'ble Supreme Court's decision rendered in the case of **LIC Vs. Mrs. Asha Ram Chandra Ambekar & Ors. – JT 1994(2) SC 183**, the High Court and Administrative Tribunals cannot give direction for appointment of a person on compassionate grounds but can merely direct for consideration of the claim on such an application.

5. Learned counsel for the applicants would further contend that while considering cases for compassionate appointment merit of the cases were conveniently decided by allotting points to the applicants based on various attributes as identified in the annexure to the MOD ID No. 271/93/D(Lab) dated 02.11.1993. These points were revised in the light of Fifth Pay Commission recommendations. The revised points based on a 100 points scale as indicated in DOP&T OM No. 14014/6/94-Esttt (D) dated 09.10.1998 and on the basis of suggestions/opinion from various Head Quarters in respect to MOD ID 824/D(Lab)/99 dated 12.07.1999 have been considered, received vide Ministry of Defence ID No. 19(4)/824-99/1998-D(Lab) dated 09.03.2001/ Annexure CA-1.

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6. Learned counsel for the respondents further submitted that as per the provision of the aforesaid Guidelines/Instructions in cases of death-in-harness, compassionate appointment can be made in Group 'C' and Group 'D' posts upto a maximum of 5% vacancies falling under direct recruitment quota within 3 years in accordance with the prescribed procedure. A duly constituted Board of Officers considers every case for offer/grant of compassionate appointment. There is a scientific method for assessing pecuniary conditions of a deceased employees, which included prescribed points for family pension, terminal benefits, monthly income of earning member(s), and income from movable/immovable property, number of dependents, number of unmarried daughters, number of minor children and left over service. Learned counsel for the respondents placed reliance on judgment of Apex Court in **Umesh Kumar Nagpal Vs. State of Haryana and others - JT 1994(3) SC 525** and submitted that appointment on compassionate grounds can be considered only if the family is in indigent circumstances and not as a matter of right, which can be executed at any time in future. In the said judgment, Hon'ble Apex Court has further held that the compassionate appointment cannot be granted after lapse of a reasonable period.

7. Learned counsel for the Respondents further placed reliance on a decision rendered by Hon'ble Supreme Court in the case of State of U.P. Vs. Parasnath [1998 SCC (L&S) 570], wherein it has been held that the appointment on compassionate ground is not a source of recruitment but merely an exception to the recruitment regarding appointments being made on open invitation of application on merits, the basic intention being that, on the death of the employee concerned, his family is not deprived of the means of livelihood. The objective is to enable the family to get over sudden financial crisis. Learned counsel for the respondent

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submitted that as per record Smt. Angoori Devi widow of the deceased was paid an amount of Rs. 4,39,876/- as terminal benefits, beside family pension at the rate of Rs. 2750/- + DR per month.

8. Learned counsel for the respondents would contend that the case of the applicant was placed before the Board Of Officers in quarter ending December 2004, March 2005 and June 2005 but their case was not found fit for giving compassionate appointment. The applicant was awarded 38 marks and there were several other cases, which had scored much more marks.

9. No Rejoinder Affidavit has been filed by the applicant denying the averments contained in Counter reply filed by the respondents.

10. When the matter was taken up on 15.10.2009, none was present for either side. As the matter pertains to the years 2005, the court was reluctant to adjourn such old matters and the case was reserved for orders with direction to counsel for both sides to file their Written Arguments within a week but they did not.

11. Having gone through the pleadings on record, I am firmly of the opinion that in view of the decision rendered by Hon'ble Supreme Court in the case of **LIC Vs. Asha Ram Chandra Ambekar (Supra)**, this Tribunal cannot issue direction to the respondents to appoint the applicant on compassionate grounds, as claimed by the applicant in para 8(iii) of O.A and this prayer is rejected.

12. So far as the order dated 31.01.2005 and 17.05.2005 are concerned, a bare perusal of these two orders clearly reveal that the

request for appointment on compassionate grounds in favour of applicant No. 1 was never rejected but was duly considered by the Board of Officer alongwith other candidates in which due to more deserving cases and limited number of vacancies, the applicant No. 2 could not be recommended for being appointed on compassionate grounds. In the said orders it has further been indicated that their representations will again be placed before the Board of Officers/Selection Committee for reconsideration in accordance with rules. In the order dated 31.01.2005, Smt. Angoori Devi/applicant No. 2 was also given liberty to prefer an appeal before the Director General, Ordinance Factory Board, Kolkatta within two months, if not satisfied with the said order but instead of filing appeal, she filed the instant O.A.

13. Having given my anxious thought to the facts and circumstances of the case and the pleas advanced by the either sides, I hereby direct the applicants to file a certified copy of this order alongwith copy of appeal to the competent authority within one month from the date of receipt of certified copy of the order. If such an appeal is filed within stipulated period of time, the competent authority shall consider and decide the same by a reasoned and speaking order meeting all the contentions raised therein within a period of three months on receipt of certified copy of the order (as contemplated above) and communicate the decision to the applicants forthwith.

14. With the aforesaid directions, the O.A is disposed of finally with no order as to costs.

Anjan
Member-J

/Anand/