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**CENTRAL ADMINISTRATIVE TRIBUNAL,**  
**ALLAHABAD BENCH,**  
**ALLAHABAD**

**Original Application No.1405 of 2005**

**Allahabad, this the 6<sup>th</sup> day of December, 2006.**

**Hon'ble Dr.G.C.Srivastava,Vice Chairman**

Pawan Kumar s/o late Sri Ram Kishan, Aged about 40 years, r/o 2/313, Nawab Gang, Failoo Kubhar Ka Hata, Kanpur, District-Kanpur Nagar.

**-Applicants**

(By Advocate – Shri O.P.Gupta)

**V E R S U S**

1. Union of India through Secretary, Ministry of Urban Development, Govt. of India, Nirman Bhawan, New Delhi.

2. The Director General of Works, Central Public Works Department, Nirman Bhawan, New Delhi.

3. The Superintending Engineer (Electrical Centre), Co-Ordination Circle, C.P.W.D.East Block(1), Level-7, R.K.Puram, New Delhi.

4. The Chief Engineer (North Region-2), C.P.W.D. Kendirya Bhawan, H-Sector, 3<sup>rd</sup> Floor, Aligang Lucknow.

**-Respondents**

(By Advocate – Shri R.K.Srivastava)

**O R D E R**

This Original Application has been filed seeking the following main relief :-

“8....to direct the respondents to provide appointment to the applicant on compassionate grounds, as earliest, on any



available post and at any place in any of the department of the Govt. of India".

2. The undisputed facts of the case are that the father of the applicant, while working as Rajgir, died in harness on 15-6-1999 leaving behind an old widow and five children besides a daughter-in-law and two grandsons. The applicant being one of the sons of the deceased employee applied for appointment on compassionate grounds, which was approved vide order dated 16-04-2001 (annexure A-1). The grievance of the applicant is that despite the approval of his case, he has not yet been given an appointment. On his representation, he was informed on 10-02-2003 that he would be appointed as and when a vacancy is available under the 5% quota for appointment on compassionate grounds, but till date no appointment has been given. The applicant has prayed that if no vacancy is available in the department in which his father served, he may be given appointment on any available post, at any place, in any of the departments of the Govt. of India.

3. In their counter reply, the respondents have stated that there has been no direct recruitment for the post of Beldar in the circle or division offices of the respondents and since the maximum time, a person's name can be kept under consideration for offering appointment on compassionate grounds, is three years, the name of the applicant, having been approved for compassionate appointment in 2001, can no longer be considered for appointment.

4. I have heard the learned counsel of both the parties and have gone through their pleadings.

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5. It is correct that if sufficient number of vacancies are not available in any particular office to accommodate the persons in the waiting list for compassionate appointment, it is open to the department concerned to take up the matter with other departments for such appointment, but it is not a mandatory provision and generally in very exceptional cases such a request is made and very rarely such a request is accepted by any other department. The learned counsel for the applicant has cited the case of **Umesh Kumar Nagpal Vs. State of Haryana and others**, [(1994) 4 SCC 138=1994 SCC (L&S)930] in support of the applicant's case. As mentioned in the OA, the apex court has held that the object of compassionate appointment is to enable the penurious family of the deceased employee to tide over the sudden financial crises. But at the same time it has also been observed by the apex court that a job on compassionate grounds cannot be offered as a matter of course. In the instant case, the applicant's father was due to retire on 30.6.1999 but died two weeks before that on 15.6.1999. The element of suddenness so far as monetary considerations are concerned are absent in this case. Nevertheless, since the respondents found the case fit for giving appointment on compassionate grounds, this issue is not very relevant now.

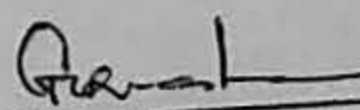
6. The respondents have clearly stated that there has been no direct recruitment of Beldars during the period when the applicant's name was kept in the waiting list for appointment on compassionate grounds. Although the applicant has furnished statement giving details of the vacancies that arose during this period, it has also been admitted by the applicant that these vacancies have not been filled up by the respondents as they have given this work on contract. In view of this fact, there is no reason

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to disbelieve the statement of the respondents that no direct recruitment in the relevant category has taken place during this period. Accordingly, the question of filling up of 5% of the vacancies from the waiting list of persons approved for compassionate appointment, does not arise. It is a well settled principle that compassionate appointment can be made only if a vacancy is available (see **Hindustan Aeronautics Ltd. Vs. A.Radhika Thirumalai (Smt)** [1996 SCC (L&S) 1427]).

7. So far as appointment in any other department is concerned, it has already been observed in para 5 above that it is only discretionary on the part of the employer of a deceased-employee to approach any other department for such appointment. In the instant case, there have been no compelling circumstances which would have required the respondents to approach other departments of the Govt. of India for seeking appointment for the applicant.

8. In view of the above discussions, I do not find any merit in this OA and the same is accordingly dismissed. No costs.

  
(Dr.G.C.Srivastava)  
Vice Chairman

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