

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated : This the 21st day of October 2008.

Original Application No. 1514 of 2005

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

1. Sumit Kumar Goel, S/o late Rajendra Kumar Goel
2. Smt. Sumanlata Goel, Wife of late Rajendra Kumar Goel

Both residents of House No. 347, Yojana No. 2
 Avas Vikas Colony, Jhunsi, Allahabad.

... Applicants

By Adv: Sri S. Lal

V E R S U S

Secretary Ministry of Defence, *Concurred*
Anjani S. I. 01

1. Union of India through ~~General Manager, North Central Railway, Allahabad~~, New Delhi.
2. ~~Controller General of Defence Accounts, West Block-V, B/~~
~~Divisional Railway Manager, North Central~~
~~Railway, Jhansi~~ R.K. Puram, New Delhi - 66.
3. ~~Principal Controller of Defence Accounts (Pension)~~
~~Dropadi Ghat, New Delhi~~ ... Respondents

By Adv: Sri ~~S. Agnihotri~~ P.D. Tripathi

O R D E R

Heard Sri S. Lal learned counsel for the applicant and Sri D.N. Mishra brief holder of Sri P.D. Tripathi learned counsel for the respondents.

2. The applicant has filed this OA for the following main reliefs:-

- "a. To issue an order or direction setting aside the impugned order dated 12.7.2005 issued by the Assistant Comptroller of Defence Accounts (Admn) working in the office of Respondent No. 3.
- b. To issue an order or direction commanding the respondents to consider the case of applicant No. 1 for compassionate appointment afresh in accordance with law and offer him appointment on a suitable post."

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2. The application given by the applicant for compassionate appointment was rejected and the decision was communicated vide letter dated 08.10.2004 issued by respondent No. 2. After receiving the aforesaid letter the applicant preferred appeal before respondent No. 2 mentioning therein the details of family liabilities and the condition of the family etc on 11.01.2005. The representation of the applicant was again rejected by respondent No. 2. According to the applicant the office of respondent has acted in a most unreasonable manner while considering the case of the applicant and have rejected the case of the applicant in a most casual and perfunctory manner. Learned counsel for the applicant submitted that in view of the decision rendered by Hon'ble Patna High Court in case of **Rajesh Kumar Pandey Vs. Union of India and others : 2004 (2) ATJ 243** the respondents authority must make efforts for giving appointment and find the suitable job/vacancy for the applicant and issue order in his favour. Learned counsel for the applicant would further contend that in view of **2005 SCC (L&S) 590 : Govind Prakash Verma Vs. Life Insurance Corporation of India and others** the compassionate appointment cannot be refused on the ground that any member of the family had received certain pecuniary benefits and it is wholly irrelevant to take into account the amount which was being paid to the applicant as family pension or retrial benefits. In the facts and circumstances of the case

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the respondents were directed to re-consider the claim of the applicant for compassionate appointment.

3. Sri S. Lal, learned counsel for the applicant has also placed reliance on the decision given by this Tribunal in **2006 (1) ATJ 246 : Neeraj Updhayaya Vs. Union of India and others.**

4. Sri D.N. Mishra brief holder of Sri P.D. Tripathi, learned counsel for the respondents submitted that this Tribunal cannot confer benediction impelled by the sympathetic consideration. He has also contended that all the cases cited by the learned counsel for the applicant has been considered by the Hon'ble Supreme Court in several decisions and their Lordship have clearly held that once it is approved that inspite of death of breadwinner, if the family survived, no appointment can be granted. In support of this contention learned counsel for the applicant relied upon **2005 (7) SCC 772 Commissioner of Punjab Vs. K.R. Vishwanathan.** Learned counsel for the respondents has also placed reliance on the decision of **2006 (7) SCC 350 Union Bank of India Vs. M.T. Latheesh** and **2002 SCC (L&S) 1111 : Union of India and other Vs. Joginder Sharma** in order to buttress the contention that administrative decision of limiting or ceiling of 5% vacancies is purely administrative discretion, the Tribunal or Hon'ble High Court has no power to review the same. Learned counsel for the respondents has placed reliance on **2006 (5) SCC 766 :**

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State of J & K Vs. Sajad Ahmad Meer and submitted that the compassionate appointment is an exception to general rule. 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 proved 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 of several others ignoring the mandate of Article 14 of the Constitution of India. It is also contended by the learned counsel for the respondents that the financial condition of the applicant can also be looked into by the competent authority while considering the case. He further submitted that decisions rendered in Govind Prakash Verma's case (supra) and Neeraj Kumar Updhayaya's case (supra) decided by Hon'ble Supreme Court and this Tribunal is no more good law in view of the decision rendered by the Hon'ble Supreme Court in case of **JT 2007 (3) SC 398 : State Bank Of India Vs. Som Vir Singh.** The Hon'ble Supreme Court held that High Court erred in deciding that what would be reasonable income and the competent authority has rightly held that financial position of the family of the deceased employee did not warrant compassionate appointment.

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5. Having heard counsel for the parties at length I am firmly of the view that no good ground exists in this, OA which is accordingly dismissed. No cost.

A.K. Gaur
(A.K. Gaur)
Member (J)

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