

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 22nd day of July 2009

Original Application No. 370 of 2005

Hon'ble Mr. S.N. Shukla, Member (A)

Ankesh Kumar Verma, S/o late Sri Ram Das Verma, R/o 357/4 G, Behind State Bank of India, Civil Lines, Jhansi.

Applicant

By Adv: Shri V.S. Kushwaha and Sri B.N. Singh

V E R S U S

1. Union of India through its Secretary, Ministry of Personnel Public Grievances and Pension, New Delhi.
2. Managing Director, Indian Grassland and Fodder Research Institute, Krishi Bhawan, New Delhi.
3. Director Indian Grassland and Fodder Research Institute, Gwalior Road, Jhansi.

Respondents

By Adv: Shri B.B. Sirohi

O R D E R

This OA has been filed seeking the following reliefs:

- "i. to issue a writ order or direction in the nature of certiorari quashing the order dated 4.12.2004 passed by respondent No. 3.
- ii. to issue a writ order or direction in the nature of mandamus directing the respondent No. 3 to appoint the applicant on any suitable post on compassionate ground.
- iii. to issue any other suitable writ order or direction in the facts and circumstances of the case which this Hon'ble Court/Tribunal may deem fit and proper.
- iv. to award cost of petition to the petitioner."

2. The brief facts of the case are that the applicant is the son of the deceased employee namely Sri Ram Das Verma who was employed in regular and

substantive category. On 10.06.1994 he went suddenly missing never to be found and eventually declared "Missing believed to be dead" by an order of the competent Court.

3. The deceased person was survived by his widow (alleged to be living separately), one son Sri Ankesh Kumar Verma (the applicant), two unmarried daughters namely Km. Kalpana and Km. Archana living with their brother (the applicant). It is also alleged that the widow of the deceased namely Smt. Chandra Kanta Verma lived separately. The applicant submitted an application dated 02.05.1998 followed by an application dated 13.11.1998 seeking an appointment in the Govt. on compassionate grounds. Yet another application was filed on 14.01.1999. Thereafter, the applicant filed an OA No. 1118 of 2003 : Ankesh Kumar Verma Vs Union of India and others. In the said OA the following order was passed:

"3. In view of the above facts and circumstances, it would be expedient in the interest of justice to dispose of this OA with a direction to the competent authority to consider the applicant's claim for compassionate appointment in accordance with law on merits and if his father died in harness, provided, ofcourse, that applicant's father would not have attained the age of superannuation within 7 years of his disappearance. With these observations, OA is disposed of at the admission stage."

4. In pursuance of the order of this Tribunal the impugned order dated 04/06/12.2004 was passed and is reproduced as under:

"ORDER

This is in compliance of the Hon'ble Central Administrative Tribunal, Allahabad judgment dated 27th August 2004 passed in OA 118 of 2003 Ankesh Kumar Verma Vs. Union of India and others directing the Competent Authority to consider the applicant's claim for appointment in accordance with law and merits as if his father died in harness, provided of course, that applicant's father would not have attained the

age of superannuation within 7 years of his disappearance.

Shri Ankesh Kumar Verma, the son of Shri R.D. Verma (the missing employee) had applied for appointment on compassionate grounds in the year 1998 upon a Group 'C' post. Shri R.D. Verma, the father of Shri Ankesh Kumar Verma was working in the Institute upon the post of Technical. He went missing with effect from 10.06.1994 and the family members of the missing in the concerned Police Station and because he was not heard of by those who would have heard about him, for more than seven years he was declared dead by the court of Civil Judge, Jhansi vide its Judgment dated 28.10.2002 in a suit filed by the members of his family.

The application of the said Shri Ankesh Kumar Verma has been considered by this Office in accordance with the instructions contained in the circulars issued by the Department of Personnel and Training, Government of India from time to time laying down the principles to be followed while making appointments on compassionate grounds of the dependents of the deceased including missing employees, while considering the application of Shri Ankesh Kumar Verma, it was also taken into account that only 5% of the vacancies reserved for direct recruits are to be filled by dependents of the deceased or missing employees on compassionate grounds. Out of the eight persons whose applications were to be considered for appointment on compassionate grounds in Group 'C' & 'D' posts, the name of Shri Ankesh Kumar Verma stood at serial number 5 and because there was no vacancy available in this quota, none of the persons who had applied for appointment on compassionate grounds could be appointed.

That the position as it exists today is that there is no vacancy available in the quota reserved for appointment on compassionate grounds. Besides this the following facts have also been taken into consideration.

That the family of Shri R.D. Verma (missing employee) consists of his wife Smt. Chandra Kanta who is at present working as a Head mistress in the Primary School run and maintained by Zila Panchayat, Jhansi and is getting about Rs. 8000/- per month as salary. The family is thus has an earning member to support it.

That the family has already been paid a sum of Rs. 18,962=00 on account of Leave encashment. The wife of Late Shri R.D. Sharma is entitled to pension (family pension) at the following rates:

- i) Rs. 900=00 per month from 11.6.94 to 31.12.1995
- ii) Rs. 3000=00 per month from 1.1.1996 to 10.6.2001
- iii) Rs. 1800=00 per month from 11.6.2001 onwards alongwith arrears.
- iv) Rs. 30,000=00 on account of G.S.L.I. (Proposed)
- v) GPF as admissible.

The payment of pension alongwith arrears and DCRG is under active process and is likely to be made soon, subject to approval of appropriate authority.

From the facts narrated above it can not, therefore, be said that the economic condition of the

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family is bad or that the family is living in penury. One of the two daughters of the family is married.

That the object of making appointments on compassionate grounds is to be rendered timely assistance to the dependants of a deceased or missing employee of an establishment and the same can not be claimed as a matter of right. The family of the said Shri R.D. Verma (missing employee) has been smoothly pulling on for the last about ten years.

Looking to the facts and circumstances mentioned above I have come to the conclusion that the economic condition of the family of the missing employee is not bad and that his case is not covered by the instructions issued from time to time by D.O.P & T Govt. of India and also because there is no post available upon which the applicant Shri Ankesh Kumar Verma could be offered appointment on compassionate grounds, his application for appointment on compassionate grounds is, therefore, rejected."

5. The main grounds for seeking the relief are as under:

i. The family of the missing person has no source of income and is in a distressful condition.

ii. The mother of the applicant lives separately and she was living separately even during the life time of the applicant's father and therefore, any income earned by her is of no assistance to the family.

iii. The Hon'ble Supreme Court in case of Balbir and other Vs. Steel authority and others has held that the quantum of terminal benefits cannot be counted for assessing the financial condition in rejecting the application for compassionate appointment. A similar proposition has been upheld by the Hon'ble Supreme court in the case of Govind

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Prasad Verma Vs. Life Insurance Corporation
of India.

6. In the counter affidavit the contents of impugned order are reiterated. It was also stated that quota for compassionate appointment is 5% of vacancies under direct recruitment according to the scheme. For last several years there is a ban on creation of posts. Further, 10% cut is also being exercised by the Government thereby leaving no posts under direct recruitment. Accordingly vacancies for compassionate appointment are not available. Photocopies of the notification of the scheme for compassionate appointment and the notification dated 25.08.1999 by which 10% cut of the existing vacancies has been exercised were placed on at annexure 1 and 2 to the CA.

7. The respondents in their Counter Affidavit have also stated that as per records, the divorce petition was dismissed in default on 07.03.1998 from the family Court Jhansi and that whatever may have been the reasons for living separately, if at all, such arrangement is meaningless without a formal divorce.

8. In the rejoinder affidavit it is averred that the stand taken by the respondents regarding the applicant's position in the list of applicant's and there being no vacancy available, is prima-facie factually incorrect. In the rejoinder affidavit the

applicant has mentioned the following names as having been given appointments on compassionate grounds: -

- a. Sri Mayank Litooria : was appointed in Jhansi.
- b. Ms. Anita Guda Mary : was appointed as clerk in the Regional Research Station IGFRI, University of Agriculture Service campus Karnataka.
- c. Sri Sanjai Gayakwan : was appointed as Class IV in 1998.
- d. Ms. Ramawati, Sri Kamal and Sri Raj Kumar were also appointed as Class IV in IGFRI on compassionate grounds.

9. In the written submissions of the applicant a reference has been made to the following provisions of memorandum dated 09.10.1998:

- e. Employment under the scheme is not confined to the Ministry/Department/Office in which deceased/medically retired Government servant had been working. Such an appointment can be given anywhere under the Government of India depending upon availability of a suitable vacancy meant for the purpose of compassionate appointment.
- f. If sufficient vacancies are not available in any particular office to accommodate the persons in the waiting list for compassionate appointment, it is open to the administrative Ministry/Department/Office to take up the matter with other Ministries/Department/Offices of the Government of India to provide at any early date appointment on compassionate grounds to those in the waiting list."

10. It is submitted by the respondents' counsel that all the persons named in para 8 above were appointed period to the year 1998. The ban on filling up of vacancies and 10% cut on existing vacancy was imposed by Government of India vide notification dated 05.08.1999 and adopted by ICAR on 25.08.1999 (Annexure

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2 to the OA). The applicant seems to have misdirected in this regard.

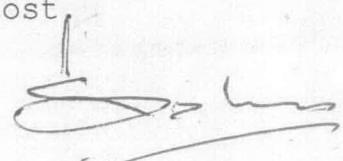
11. This Tribunal has perused the pleadings on record and considered the arguments advanced by the parties counsels. The respondents have clearly stated that the applicant was at number 5 out of a total of 8 candidates seeking compassionate appointment, but none of them could be accommodated due to lack of vacancies. Further, post 1995 there was a 10% reduction in the existing vacancies thereby leaving no scope of appointment of any of the waitlisted candidates. For this single reason alone the claim for appointment on compassionate grounds can not be sustained.

12. A reference also needs to be made to the observations of the Hon'ble Supreme Court in the case of **Umesh Kumar Nagpal Vs. State of Haryana and others** [JT 1994 (3) SC 525] the Hon'ble Court has held that whole object for granting compassionate appointment is to enable the family to tide over the sudden crises and to give relief to the family of the deceased from financial destitution and to help it to get over the emergency. In the instant case it is seen that the father of the applicant went missing in the year 1994 when the applicant was approximately 23 years old. At this stage it is difficult to fathom that the family continues to be in the financial destitution for a period as long as 15 years. On grounds of destitution

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also the applicant has failed to make out a sustainable case.

13. For the reasons as discussed above, the OA, stands dismissed. No order to the cost.



Member (A)

/pc/