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Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH,
ALLAHABAD**

ORIGINAL APPLICATION NO. 411 OF 2005

ALLAHABAD THIS THE 28th DAY OF NOVEMBER, 2007

HON'BLE MR. SHAILENDRA PANDEY, MEMBER-A

Mohd. Sharif, aged about 29 years, S/o late Shri Gulam Rasool, R/o Village Rajgarh near Masjid PO 33 PAC Battalian District Jhansi.

.....Applicant

(By Advocate Shri R.K. Nigam)

V E R S U S

1. Union of India through Secretary, Ministry of Defence, Government of India, New Delhi.
2. Chief Engineer HQ, Central Command, Lucknow.
3. Commander Works Engineer, Lalitpur Road, near Lascala, Jhansi.

.....Respondents

(By Advocate: Sri S. Singh)

Through this O.A, the applicant one Sri Mohd. Sharif, son of Gulam Rasool, who died in harness on 5.9.1995 while working as Mate under the Garrison Engineer, MES, Jhansi, has sought intervention of this Tribunal to direct the respondents to expedite the process of his compassionate appointment in pursuance of a sanction already granted on 10.11.1999. Vide this sanction, the approval of the Chief Engineer Headquarters, Central Command was given for employment (alongwith others) of the applicant against the existing vacancies as

'Mazdoor' subject to it being ensured that he is eligible as per the Recruitment Rules and that no senior is left behind. The applicant was informed vide letter dated 13.6.2000 that his name stands at sl. No. 28 in the merit list of Mazdoors followed by letter dated 26.9.2000 in which it was stated that his name in the merit list of Mazdoors stood at sl. No. 29. The applicant's grievance is that although several years have elapsed, he has not finally received the compassionate appointment and was informed vide Chief Engineer, Lucknow's letter dated June, 2002 that his case for compassionate appointment has been considered by the Board of Officers held at Lucknow based on the instructions issued by the Ministry of Defence, but was rejected due to "non-availability of sufficient vacancies within the 5% quota available" as per the scheme of compassionate appointments. The applicant's counsel has argued that once the applicant had been offered compassionate appointment by the respondents, they are 'estopped' from reversing their stand and now denying him compassionate appointment, and ~~when~~ ^{that the} sanction issued earlier had created a civil right, which cannot be taken away without show cause notice.


2. The respondents' counsel has pointed out that the claim of the applicant was rejected because of the non-availability of sufficient number of vacancies, and that the sanction letter issued by the Chief Engineer was a merely sanction allowing

the applicant's case to be considered subject to other regulations in force and did not confer any right of compassionate appointment. He has also referred to the decision of Hon'ble Supreme Court in the case of Umesh Kumar Nagpal Vs. State of Haryana and others (JT 1994 (3) SC 525) where it has been held that "offering appointment on compassionate ground as a matter of course irrespective of the financial condition of the family of the deceased or medically retired Govt. servant is legally impermissible and compassionate appointment cannot be granted after lapse of a reasonable period and it is not a vested right which can be exercised at any time in future." He has also stated that the case of the applicant was duly considered by the Board of Officers at Headquarters after taking into account the various parameters prescribed and that due to more deserving cases and limited number of vacancies, the case of the applicant could not be finally recommended for appointment on compassionate grounds.

3. I have heard both the counsels and have gone through the material available on record and pleadings in this case and am in agreement with the view that the letter dated 10.11.1999, namely, sanction of the competent authority in this case, was merely an enabling letter and not an order to appoint the applicant on compassionate grounds. Infact, it was clearly laid down in para 4 of the letter that before appointment, it should be ensured

that the candidate for whom sanction for appointment on compassionate appointment was accorded should be eligible as per Recruitment Rules and that no senior to them was left behind.

4. In view of the above, the O.A. fails and is dismissed accordingly. No costs.


MEMBER-A

GIRISH/-