

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD**

(THIS THE 17 DAY OF 7 2009)

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

Original Application No.1053 of 2005

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

Smt. Asha Mishra wife of Late Sri Santosh Kumar Mishra Resident of 104
A/244A P, Road Rambag Kanpur Nagar.

..... *Applicant*

Versus

1. Union of India through Secretary Ministry of Information and Broadcasting India Government New Delhi.
2. Director General, Prasar Bharti (Broadcasting Corporation of India) Doordarshan Bhawan New Delhi.
3. Deputy Director (Administration) Prasar Bharti (Broadcasting Corporation of India) Doordarshan, Doordarshan Bhawan New Delhi.
4. Additional Director General (Administration) Doordarshan Maha Nideshalaya Coper Nicus Marg New Delhi.

..... *Respondents*

Present for Applicant : *Shri B.D. Shukla*

Present for Respondents : *Shri S.C. Mishra*
Shri R.C. Shukla
Shri Anil Dwivedi

O R D E R

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

By means of the this Original Application the applicant has claimed for quashing the order dated 25.05.2005 passed by the Respondent No.3 and also for reconsideration of his case for appointment on compassionate ground.

2. Brief facts of the case are that the husband of the applicant died on 14.08.1998 at Kanpur, the deceased had left the applicant and two minor sons Prakhar and Shikhar behind him. Photocopy of the Death

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Certificate is being filed as Annexure A-2. The applicant is a graduate from Chhatrapati Shahu Ji Maharaj University, Kanpur. After receiving the Bio-data of the applicant, the Competent Authority intimated the applicant that the Competent Authority had approved the compassionate appointment of applicant for the post of LDC Group 'C' and her name has been included in the pending list of the cases meant for compassionate appointment. The applicant was clearly informed that she will be offered appointment when her case will be matured depending upon the vacancies which will be available in future against 5% quota prescribed for compassionate appointment. The applicant wanted to know the position of her case and as such she sent reminder and officially contacted the respondents on 10.3.2005 and 13.4.2005 and requested for appointment on compassionate ground. The sons of the applicant are taking education in Colleges and their Education and maintenance could not be afforded by the meager sum of the family pension. The respondents vide letter dated 25.5.2005 (Annexure A-1) intimated the applicant that appointment could not be given to her due to non availability of vacancies and her name has also been deleted from the waiting list.

3. Denying the claim of the applicant, respondents filed their counter reply and submitted that the applicant was clearly intimated of the Directorate's decision on compassionate appointment that the cases which were approved in principle for appointment on compassionate grounds, but there appointment could not be offered, due to non-availability of 5% vacancies of direct recruitment quota within three years of the death of the concerned employee, the names of the candidates have been deleted from the waiting list as per DPO&T's

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instructions dated 5.5.2003. According to the respondents compassionate appointment can be offered and made up to a maximum of 5% of vacancies falling under direct recruitment quota in any group 'C' and 'D' post that arise within three years. While considering the case of one individual other factors such as terminal benefit, other source of income, number of dependents, assets movable and immovable property, disability if any, are also taken into account in order to judge the merit of the case. The committee after a careful analysis of the case of the applicant recommended for closing the case of the applicant along with other similarly situated persons being more than three years old. The sole criteria for non considering the case of the applicant for appointment on compassionate ground is the DPO&T's instruction dated 5.5.2003 under which the name of any dependant of the deceased Government servant cannot be kept in the waiting list for more than three years, if compassionate appointment is not possible to be offered due to non-availability of vacancies within 5% quota for direct recruitment fixed by DOP&T. The limit of 5% of the direct recruitment vacancies on compassionate appointment has been fixed in pursuance of the order of Apex Court in **U.K. Nagpal's case reported in JT 1994 (3) SC 525.**

4. In the Rejoinder Reply filed by the applicant the facts enumerated in the Original Application has been reiterated.
5. Respondents have also filed Supplementary Counter Affidavit wherein nothing new has been added.
6. I have heard Shri B.D. Shukla, learned counsel for the applicant and Shri R.C. Shukla, S.C. Mishra and Anil Dwivedi, learned counsels for the respondents and perused the written arguments filed by both the parties. ✓

7. It has been contended by the learned counsel for the applicant that the instruction issued by the DPO&T dated 5.5.2003 is not valid. The validity of the said instruction has already been challenged before the Division Bench of Allahabad High Court in *Civil Misc. Writ Petition No.2412 of 2008 Hari Ram Vs. Food Corporation of India & Ors.* Learned counsel for the applicant would contend that respondents have no authority to delete the name of candidate from waiting list after the expiry of 3 years. Learned counsel for the applicant would further contend that this point is no longer res-integra after the decision rendered by Hon'ble Allahabad High Court in Hari Ram's case (supra). The Hon'ble High Court has clearly held that the DOP&T's instruction dated 5.5.2003 is arbitrary and violative of Article 14 and 16 of the Constitution of India.

8. Learned counsel for the respondents on the other hand placed reliance on the decision rendered in **JT 1996(5) SC 319 (Himachal Road Transport Corporation Vs. Dinesh Kumar)** and **JT 1996 (9) SC 97 (Hindustan Aeronautics Ltd. Vs. A. Radhika Thirumalai** and submitted that the appointment on compassionate ground can be made only if a vacancy is available for that purpose. Learned counsel for the respondents would further contend that the Court can not give direction for appointment of a person on compassionate ground but can merely direct consideration of the claim for such an appointment, in order to buttress this contention **JT 1994 (2) SC 183 (Life Insurance Corporation of India Vs. Mrs. Asha Ram Chandra Ambekar & Ors.)** has been relied upon.

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9. I have also carefully gone through the policy of Government of India, Ministry of Personnel, Public Grievances and Pension, Department of Personnel and Training vide memo dated 5.5.2003 has clearly observed as follows:-

"If compassionate appointment to genuine and deserving cases as per the guidelines is not possible in the first year due to non-availability of regular vacancy the prescribed committee may review such cases to evaluate the financial conditions of the family to arrive at a decision as to whether a particular case warrants extension by one more year, for consideration for compassionate appointment by the Committee subject to availability of clear vacancy within a prescribed 5% quota. If on scrutiny by the Committee, a case is considered to be deserving the name of such a person can be continued for one more year."

A perusal of the aforesaid instruction clearly indicates that maximum time for which a person can be kept under consideration for compassionate appointment is three years. The Prescribed Committee reviewed and certified the penurious condition at the end of first and second year and found that after three years compassionate appointment is not possible and closed the case.

11. Learned counsel for the applicant further argued that the order rejecting the claim for compassionate appointment is wholly illegal, arbitrary and suffers from legal *mala fide*. A high power committee verified that the family is living in penury with almost no source of income and had strongly recommended for appointment for the survival of the family. Vide letter dated 7/8-12-1999 it is clearly observed that:-

"The Competent Authority has approved the compassionate appointment of Smt. Asha Mishra, wife of late Shri Santosh Kumar to the post of LDC, Group 'C' in Doordarshan. Her name has been included in the pending list of Compassionate cases and will be offered appointment when her case matures depending upon the which may become available in future against 5% quota prescribed for compassionate appointment."

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12. It is seen from the record that the claim was rejected mechanically on the technical grounds that since for three years the vacancies were not available in 5% direct recruitment quota, her claim for appointment on compassionate ground cannot be considered after three years. The object of scheme is to help the family in financial distress instead of harassing him by adopting dilatory tactics, as in this case.

13. Learned counsel for the respondents submitted that instructions issued by the Government of India are binding on the respondents. These instructions have to be read along with instructions contained in Government of India, Ministry of Personnel and Training vide Memo No.14014 of 2002-Estt (I) dated 1.5.2003, which provides "*If compassionate appointment to genuine and observing case as per guidelines is not possible in the first year due to non-availability of regular vacancies, the Prescribed Committee may review such case to evaluate the financial condition of the family to arrive at decision as to whether particular case warrants extension by one more year for consideration for compassionate appointment by the committee subject to availability of clear vacancy within the prescribed 5% quota. If on scrutiny by the Committee, a case is considered to be deserving, the name of such person can be continued for consideration for one more year. The maximum time a person can be kept under consideration for offering compassionate appointment will be three years. The Prescribed Committee has reviewed and certified the penurious condition of the applicant at the end of fist and second year. After three years, if compassionate appointment is not possible to be offered to the applicant, his/her case will be finally closed and will not be considered again.*"

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14. Learned counsel for the respondents would further contend that Committee did find the condition of the family to be penurious but due to non-availability of the post the case of the applicant could not be considered and that case being more than three years old could not be considered as per instruction of Government of India and the case of the applicant for appointment on compassionate ground was rejected vide order dated 25.5.2005.

15. Learned counsel for the applicant has placed reliance on the decision reported in **1989 (4) SCC 468 (Smt. Susma Gosain & Ors. Vs. Union of India & Ors.)** in which the Supreme Court in the matter of appointment of the petitioner as clerk in the office of Director General, Border Road observed that, "*purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment, supernumerary post should be created to accommodate the applicant.*"

16. Learned counsel for the applicant also placed reliance on the decision reported in **Sanjay Kumar Vs. State of Bihar, 2000 (7) SCC 192**, the Supreme court relying upon Director of Education (Secondary) Vs. Pushpendra Kumar, (1998) 5 SCC 192 held that the compassionate appointment is intended to enable the family of the deceased employee to tide over sudden crisis resulting due to death of the bread earner, who has left the family in penury and without any means of livelihood. The applicant was minor, when he made his first application and was not

eligible for appointment. There cannot be reservation of a vacancy till such time such petitioner become major, after a number of years, unless there is some specific revisions. The very basis of compassionate appointment is to seek that family gets immediate relief.

17. Learned counsel for the applicant also stated that the prescription of 5% quota of the direct recruitment for compassionate appointment falls within the domain of the policy adopted by the Government of India. The Court will not ordinarily interfere with such policy unless it is wholly arbitrary and unreasonable. The policy is reasonable and adopted to balance with the rights of unemployed men and women and is thus not violative of Article 14 and 16 of the Constitution of India.

18. Learned counsel for the applicant vehemently argued that the Hon'ble High Court further held that the restriction of number of vacancies to be made available in 5% direct recruitment and then confining it to three years, makes the entire exercise of offering compassionate appointment a matter of chance, and thereby in ignorance of the object for which such appointment is offered, and makes the whole policy irrational.

19. Having given my thoughtful consideration to the pleas advanced by the parties counsel and perusal of the judgment rendered by Hon'ble High Court in Hari Ram's case (supra) I am of the considered view that the prescription of maximum period of three years after verification by the Prescribed Committee of the penurious condition of the dependents of the deceased is highly irrational and unreasonable. The compassionate appointment should not be kept in the realm of the chance and to

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become gaming exercise subject to the availability of vacancies and the maximum number of years. It must be based on human and sympathetic consideration to the family of the deceased employee. Each case should be reviewed on its merit and consideration should not be allowed to any number of years. If the family continues to be under financial distress, there should be no limit of maximum number of years for which an application may be considered.

20. In view of my aforesaid observations I hereby allow the Original Application and quash the instruction contained in office memorandum dated 5.5.2003 of the department of Personnel and Training, Ministry of Personnel, Public Grievances and Pension, Government of India fixing time limit of three years for offering compassionate appointment. The order dated 25.5.2005 (Annexure A-1) passed by the Respondent No.3 is quashed and set aside. Respondents are directed to consider the applicant's case for appointment afresh without considering the maximum limit of the number of years, for which consideration may be made, taking into account the financial condition in which the family is living. The respondents shall consider the matter afresh within a period of three month from the date of receipt of copy of this order is produced before them.

Member-A

//Sushil//

Am J
Member-J