

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL      ALLAHABAD BENCH  
ALLAHABAD.

Allanabad this the 27<sup>th</sup> day of Feb. 1998.

Original Application no. 1060 of 1992.

Hon'ble Mr. D.S. Baweja, Administrative Member.

Ajay Pal, S/o Late Shri Munna Lal, r/o village Mau cant,  
Post Office Basulia, District Shahjahanpur.

... Applicant

C/A Shri I.M. Kushwaha

Versus

1. Union of India, through Secretary Ministry of Defence,  
New Delhi.
2. Director General of Factory, Calcutta.
3. General Manager, Ordnance Clothing Factory, Shahjahanpur.

... Respondents.

C/R Shri A. Sthelekar

O R D E R

Hon'ble Mr. D.S. Baweja, Member-A.

This application has been filed making a prayer  
to direct the respondents to give appointment to the  
applicant on compassionate ground.

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2. The father of the applicant late Shri Munna Lal working while as tailor in the Ordinance Clothing Factory, Shahjahanpur died on 13.04.89. Deceased employee left behind his family comprising of a widow and three sons. The mother of the applicant i.e. widow made an application for seeking compassionate appointment for the applicant <sup>the</sup> who is youngest son. This request was rejected by the respondents as per order dated 03.04.90. Thereafter, the widow made another representation making <sup>the</sup> request for compassionate appointment for herself. This request was also rejected as per order dated 06.06.90. Thereafter, the applicant again represented on 14.06.92 requesting appointment on compassionate ground for himself. However, the applicant did not get any response for this representation. Feeling aggrieved the present application has been filed on 30.07.92. The main ground advanced in support of the relief prayed for is that the applicant is entitled for compassionate appointment on the death of his father in terms of dying harness rules 1975. The applicant also contends that denial of the compassionate appointment by the respondents violates the principles of natural justice.

3. The respondents have filed counter reply. The respondents have submitted that the first request for compassionate appointment by widow for her third son i.e. the applicant in the present O.A. was rejected by competent authority as he was illiterate and not possessing the educational minimum/qualification as laid down even for the post of unskilled labour. Thereafter, the widow made request for compassionate appointment for herself <sup>which</sup> was also rejected on the same consideration of not having any educational qualification. The competent authority did not consider it

necessary to relax the educational qualification. The respondents further contend that even on the consideration of financial condition of the family, the compassionate appointment was not warranted. The respondents have stated that the widow was given terminal benefits of Rs. 59000/- and she is also in receipt of family pension of Rs. 555/- p.m. plus prescribed allowances. The family has also got their own house. The respondents have also submitted that the representation dated 13.06.92 of the applicant had been considered and replied as per letter dated 08.08.92., Copy of which has been brought on record. In view of these submissions, the respondents contend that the applicant has no case in his favour and the application deserves to be dismissed.

4. The applicants has filed rejoinder affidavit controverting the submissions of the respondents and reiterating the grounds taken in the O.A. The applicant has submitted that in view of what is held in the judgment of the Hon'ble Supreme Court in case of Sushma Gosain Vs. Union of India and others AIR 1989 SC 1976 and rule 6 of dying in harness rules, 1974, the applicant is entitled for compassionate appointment. Further illiteracy can not be a ground for denial of such appointment, as the applicant can be appointed on suitable job which does not require literacy.

5. I have heard Shri I.M. Kushwaha and Shri A. Shalekar learned counsel for the applicant and the respondents. The arguments advanced have been carefully considered and the material on record has been gone through.

6. The facts with regards to the representations made by the applicant and his mother for compassionate appointment and their rejection are admitted. The applicant has claimed that he is entitled for compassionate appointment on the death of his father ~~post~~ in terms of dying in harness rules as well as what is held by the <sup>Hon'ble</sup> Supreme Court in Sushma Gosain's case. It is noted that the applicant has referred to dying in harness Rules 1975 in the O.A. while in the R.A. he has referred to the same Rules as that of 1974. The applicant has not brought on record the relevant rules as ~~re~~ applicable to this case. In the absence of the rules, it is difficult to appreciate the submission made by the applicant. I have carefully gone through the judgment of the Hon'ble Supreme Court in the case of Sushma Gosain. What is held in this case, the Hon'ble Supreme Court ~~in this case~~ has not laid down <sup>the law</sup> that the compassionate appointment is to be allowed as a matter of <sup>Hon'ble</sup> course. In fact in the subsequent judgments of the Supreme Court, in the case of Umesh Kumar Nagpal Vs. State of Haryana and others 1994 SCC(L&S) 930 and Hindustan Aeronautics Ltd. Vs. A Radhika Thirumalai 1996 SCC (L&S) 1427, their lordships of the Hon'ble Supreme Court have observed that the decision of ~~the~~ Sushma Gosain has been misinterpreted to the point of distortion. In this connection it will be relevant to extract para 7 of the judgment in case of Hindustan Aeronautics Ltd:-

" In Umesh Kumar Nagpal it has been indicated that the decision of Sushma Gosain has been misinterpreted to the point of distortion and that the decision does not justify compassionate appointment as a matter of course. The observation on which reliance has been placed by the learned single judge in Sushma Gosain have to be read in the light of the facts of that particular case.

In that case the appellant, Smt. Gushma Gosain, after the death of her husband, who was working as storekeeper in the Department of Director General Border Road, sought appointment as Lower Division Clerk on compassionate grounds. In January 1983 she was called for the written test and later on for interview and had passed the trade test. She was, however not appointed till January 1985 when a ban was imposed on appointment of ladies in the said Department. Having regard to these facts this Court has observed (SCC p. 470, para 8)

"....Sushma Gosain made an application for appointment as Lower Division Clerk as far back in November 1982. She had then a right to have her case considered for appointment on compassionate ground under the aforesaid government memorandum. In 1983, she passed the trade test and the interview conducted by the DGBR. There is absolutely no reason to make her wait till 1985 when the ban on appointment of ladies was imposed. The denial of appointment is patently arbitrary and cannot be supported in any view of the matter."

From the above, it would be seen that Sushma Gosain's case does not lay down a law for/compassionate appointment as matter of course. This judgment, therefore, does not come to the rescue of the applicant. Hon'ble Supreme Court in several recent judgments has elaborated the object of granting compassionate appointment. In the judgment of Umesh Kumar Nagpal Vs. State of Haryana, the Hon'ble Supreme Court has laid down as under:-

"....The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post held by the deceased. What is further, mere death of an employee in harness does not entitle his

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to such bource of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family.\*

7. In the judgment of the Hon'ble Supreme Court in the case of LIC of India Vs. Asha Ramchandra Ambekar 1994 SCC (L&S) 737, their lordship have laid down that appointment on compassionate grounds has to be given in accordance with the relevant rules and guidelines that have been framed by the authority concerned and no person can claim appointment on compassionate grounds in disregard of such rule or such guidelines.

8. Keeping in view what is laid down by the Hon'ble Supreme Court in the above referred judgments, the matter will be examined to see whether there is any infirmity in the rejection of the request for compassionate appointment by the respondents. The respondents have submitted that the request for compassionate appointment both for the applicant as well as the mother had been rejected by the competant authority as they did not meet with the minimum educational qualification laid down even for the unskilled labour. The applicant has rebutted this stating that the applicant could be appointed on a suitable job where literacy is not required. However, the applicant has not indicated any job in the cadre which does not require literacy. During arguements, the learned counsel for the applicant pleaded that the respondents have not brought any rules on record to show the minimum educational qualification laid down for unskilled labour. This plea of

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the applicant is not tenable. If the applicant controverts the submission of the respondents, this ~~this~~ can not be a simple denial but he has to come out with documentary evidence to support his contention to prove that the respondents have not come up with the correct position. In the absence of any material brought on record by the applicant, <sup>reason</sup> I have no occasion to question the submission of the respondents with regard to the educational qualification requirements. The respondents have also submitted that the competent authority did not relax the educational qualification. This shows that the rules provide for relaxation of the educational qualification if required. Relaxation is within the jurisdiction of the authority concerned. This relaxation may be allowed by him in case he considered that the case is deserving for providing compassionate appointment keeping in view the indigent condition of the family. In the present case, the respondents have also contended that the family is not in the indigent condition, considering the terminal benefits received by the widow, family pension and owing of house. It is also noted that the applicant is third son where as the two elder sons are already employed. Keeping these facts in view, I am unable to persuade myself to find any infirmity in the assessment of the competent authority with regard to indigent condition of the family for compassionate appointment. As brought earlier in the judgment of the Umesh Kumar Nagpal, the competent authority has to examine financial condition of the family of the deceased, and on his satisfaction that the family needs help to tide over the crisis, the compassionate appointment may be warranted. In the present case, I find that the competent authority has applied his mind and has come to the conclusion that financial condition

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of the family does not warrant any compassionate appointment to tide over crisis arising out of the death of the father of the applicant. In view of this, no judicial interference is called for giving any direction to the respondents to consider the case of the applicant for compassionate appointment.

9. In the light of the above, the application is devoid of merits and the same deserves to be dismissed and is accordingly dismissed.

10. There shall be no order as to costs.

*S. R. N. G.*  
Member-A

/pc/