

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 18TH DAY OF AUGUST, 1998

Original Application No. 1034 of 1995

HON.MR.D.C.VERMA, MEMBER(J)

Smt.Anita Saxena, Wife of Late  
Sri Munish Chandra Saxena,  
R/o Takaitganj Budaun

... . Applicant

(By Adv: Sri Om Prakash)

Versus

1. Union of India, Ministry of Defence, New Delhi through its Secretary
2. Engineer-in-Chief, Brand Army Head Quarter, New Delhi.
3. Chief Engineer, Head Quarter Command, Lucknow.
4. Garrison Engineer, M.E.S. Shahjahanpur

(By Adv.Sri Vikram Gulati) ... . Respondents

O R D E R(Oral)

HON.MR.D.C.VERMA, MEMBER(J)

By this OA the applicant has sought direction against the respondents to appoint her on compassionate ground under dying in harness rules.

2. The applicant's case is that her husband Munish Chandra Saxena <sup>who</sup> was working in the office of Garrison Engineer,M.E.S Shahjahanpur expired, on 9.2.89, while in service. The applicant sent an application on 16.3.89(Copy Annexure I) for giving appointment on a suitable post commensurate with her qualification. Vide letter dated 20.6.89 (Copy Annexure 4) the respondents asked the applicant to furnish details. The required details were submitted by the applicant. The applicant by sending her application requested for appointment on the post of LDC. The name of the applicant was considered and brought on the waiting list

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at sl.no.50. Even vide Annexure No.1 dated 15.12.93 filed with the counter affidavit, the applicant was not given any appointment hence she filed the present OA.

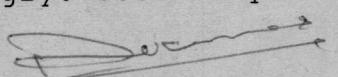
3. The respondents were contested the claim of the applicant and have stated that as per the prevailing rules only  $4\frac{1}{4}\%$  of available vacancies were permissible for considering appointment on compassionate grounds. Since the number of vacancy occurring each year is very limited and there were 53 numbers of similarly placed persons cases, already waiting appointment on compassionate ground for the post of LDC it was not possible to give appointment to the applicant who stood at sl.no.50. The respondents further submitted that father of late employee Munish Chandra Saxena filed a civil suit no.186/89 in the court of Civil Judge Badaun challenging the marriage of the applicant with late Munish Chandra Saxena. The civil Judge Badaun vide order dated 4.2.91 granted interim injunction restraining Smt. Anita Saxena, the applicant from withdrawing the family pension. Since the legal heirship was also disputed, the case of the applicant was held in abeyance by the respondents till the issue is decided by the civil court. The applicant filed writ petition no.4446/94 before the High court and the same is still pending.

4. During the course of argument learned counsel for the applicant informed that the writ petition no.4446/94 has been dismissed for default. Copy of the order of the Hon'ble High court has not been filed. Even if the submission of the learned counsel is accepted, the interim injunction order issued by the court of Civil Judge Badaun would stand in her way. The learned counsel for the applicant subsequently informed that even the civil suit filed before the court of civil Judge Badaun has been dismissed for default. Copy of such order has also not been filed nor there is any recital to that effect in the pleadings.

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5. The learned counsel for the respondents has submitted that there was long waiting list for the post of LDC the respondents vide their letter dated 13.9.96(Copy Annexure SA-1), to the supplementary rejoinder affidavit filed by the applicant had informed the applicant that if she is willing to accept a post in group 'D' as a mazdoor, she may forward willingness as per the proforma Appendix-A attached to the said letter. The willingness was not sent by the applicant. Learned counsel for the applicant has submitted that the applicant may be given chance to give the willingness for the post of group 'D' and the case of the applicant be thereafter considered by the respondents. Accordingly this OA is disposed of with a direction to the applicant to send her willingness for the post in group 'D' as a mazdoor, alongwith copy of the final order passed by the Hon'ble High court in the writ petition no.4446/94 and also of the civil suit no.186/89 of the court of Civil Judge Badaun to the respondents within a period of 15 days on receipt of copy of this order. The respondents shall after receipt of the aforesaid documents and willingness consider the case of the applicant for appointment on compassionate ground within a period of two months from the date of receipt of the willingness.

6. The OA is disposed of accordingly. Cost easy.

  
MEMBER(J)

Dated: 18.8.98

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