

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH,
ALLAHABAD**

ORIGINAL APPLICATION NO.1063 OF 1999

ALLAHABAD THIS THE 5th DAY OF JANUARY 2006

HON'BLE MR. K.B.S. RAJAN, MEMBER-J

1. Sudhir Kumar Varshney, aged about 23 years, S/o late Ravi Shanker Gupta, R/o 111/11, J.K. Colony, Jajmau, Kanpur.
2. Smt. Madhur Lata Gupta, aged about 56 years, W/o late Ravi Shanker Gupta, R/o 111/11, J.K. Colony, Jajmau, Kanpur.

Applicants.

By Advocate : Sri S.K. Misra.

V E R S U S

1. Union of India, through Ministry of Defence, Defence Headquarter, New Delhi.
2. Air Officer (Incharge Personnel), Air Head Quarter Vayu Bhawan, New Delhi.
3. Commanding Officer, 1/B.R.D. Air Force, Chakeri, Kanpur.

Respondents

By Advocate: Sri S. Singh

O R D E R

The Apex Court in one of the latest judgments in the case of **Govind Prakash**

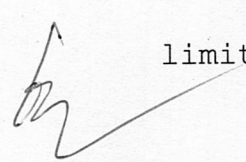
Verma v. LIC of India, (2005) 10 SCC 289 has held as under:-

"In our view it was wholly irrelevant for the departmental authorities and the learned Single Judge to take into consideration the amount which was being paid as family pension to the widow of the deceased (which amount, according to the appellant, has now been reduced to half) and other amounts paid on account of terminal benefits under the Rules. The scheme of compassionate appointment is over and above whatever is admissible to the legal representatives of the deceased employee as benefits

of service which one gets on the death of the employee. Therefore, compassionate appointment cannot be refused on the ground that any member of the family received the amounts admissible under the Rules. So far as the question of gainful employment of the elder brother is concerned, we find that it had been given out that he has been engaged in cultivation. We hardly find that it could be considered as gainful employment if the family owns a piece of land and one of the members of the family cultivates the field. This statement is said to have been contradicted when it is said that the elder brother had stated that he works as a painter. This would not necessarily be a contradiction much less leading to the inference drawn that he was gainfully employed somewhere as a painter. He might be working in his field and might casually be getting work as painter also. Nothing has been indicated in the enquiry report as to where he was employed as a regular painter. The other aspects, on which the officer was required to make enquiries, have been conveniently omitted and not a whisper is found in the report submitted by the officer. In the above circumstances, in our view, the orders passed by the High Court are not sustainable. The respondents have wrongly refused compassionate appointment to the appellant. The inference of gainful employment of the elder brother could not be acted upon. The terminal benefits received by the widow and the family pension could not be taken into account."

The case of the applicant is to be viewed in the light of the above mentioned dictum of the Apex Court.

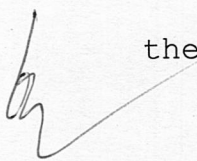
2. Facts Capsule: Father of applicant No. 1, while working as senior Chargeman in No. 1 BRD, Indian Air Force Chakeri, Kanpur, died on 12.12.1997 leaving behind his widow (applicant No. 2) and two sons, of whom, the elder is applicant No. 1. His qualification is diploma in Mechanical Engineering. The said applicant had applied for compassionate appointment under the provisions of Ministry of Personnel OM dated 09-10-1998 and the case of the applicant was rejected on the ground of "extremely limited number of vacancies" and that more



deserving candidates with acute indigent status only could be given the compassionate appointment. The applicant has challenged the same on various grounds including that persons who had been given similar terminal benefits were granted appointment and as such, the applicant has been discriminated.

3. Respondents have contested the OA. According to them, the applicant's case had been considered thrice and rejected for justifiable reasons. The precedence quoted by the applicant was not from the same unit of the IAF but from JDCP. In the counter, the respondents had stated that "huge payment" has been made to the family of the deceased. In addition, the family has been getting family pension of Rs 3,313/- since 13-12-1997. Rejoinder and supplementary counter have been exchanged.


4. Arguments were heard and documents perused. The counsel for the applicant has stated that there is absolutely no justification in rejecting the case of the applicant and no proper reason has also been given for rejection of his case and that the Respondents have not furnished the details of the person who had been granted the appointment




and as to how their cases were more deserving than that of the applicant. It has also been contended that the applicant's case has been singled out as similarly placed individuals have been given compassionate appointment. Para 9 of the rejoinder has been pressed into service with full force by the applicant. The same talks of as many as 15 candidates who were granted compassionate appointment.

5. Per contra, the respondents have relied upon para 8 of the supplementary counter as per which the appointments granted as contained in para 9 of the rejoinder affidavit have been made by JDPC, Air Headquarters and not by I BRD, Air Force.

6. The justification given by the respondents is hardly convincing. Air Headquarters is the Apex organisation of all the units of Air Force and if similarly situated persons have been granted compassionate appointment by the Air Headquarters, clue should have been taken from the same and the respondents should have followed suit. The Ministry of Defence is the Administrative Ministry for the Air Headquarters as well as the units where the applicant's father was serving. The policy on compassionate appointment as framed by the DOPT

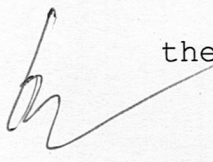


and implemented by the Ministry of Defence is applicable uniformly and there cannot be any different treatment to the subordinate offices coming under the JDCP and the office where the father of applicant No. 1 was serving. As such, discrimination would be writ large on the very face of the action on the part of the respondents if similarly circumscribed persons have been granted compassionate appointment and the applicant is left out and if the justification for such a treatment is said to be that those who were granted compassionate appointment were all granted by the Headquarters and the applicant is not entitled to the same as no such appointment was granted by the Unit! It would also be curious to note that the rejection of the case is at the level of ACSO, who is a Group B officer and the rejection does not contain even the fact whether the case had been rejected by the Competent authority. Again, while considering the case for such compassionate appointment, the dictum of the Apex Court in the case of Govind Prakash Verma (supra) should also be followed. It is evident that the respondents have mechanically and in a pedantic way considered the case.




7. The applicant has the onerous responsibility of looking after his widowed mother and also to provide education etc., of his minor brother. He is sufficiently educated and the respondents should have considered the case of the applicant though not sympathetically, at least within the provisions of the Rules. The absence of the details of compassionate appointment granted disabled the Tribunal in comparing as to how the other cases are more deserving.

8. In view of the above, **the OA is allowed.** Orders impugned i.e. order dated 06-01-1999 and 13-05-1999 are hereby quashed and set aside. Respondents are directed to have a re-look in the case of the applicants, consider the case in the light of the judgment of the Apex Court in the case of Govind Prakash Verma (Supra) and also compare the case of the applicant with the precedents cited by the applicant. Ministry of Defence which is the administrative Ministry shall call for the records of those who were granted the compassionate appointments (both by JDCP as well as in the I BRD Air Force) and analyse and compare the same with the case of the applicant and if similarly situated placed persons were granted compassionate appointment, the applicant's case should also be considered



for such appointment - no matter in whichever grade vacancy exists. In case the precedents quoted by the applicant are not similar, then the same should be duly explained to the applicant.

9. The above drill be completed by the Ministry of Defence and if the applicant is entitled to compassionate appointment necessary orders should be passed by the Ministry to the concerned authorities in the Air Force for issue of due appointment order, subject, of course, fulfillment of other requirements. Age relaxation is admissible to the applicant as he had been fighting this case since 1999. A period of six months is calendared to complete the above exercise. No cost.



MEMBER-J

GIRISH/-