

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated : This the 20th day of April 2005.

Original Application no. 1253 of 2002.

Hon'ble Mr. K.B.S. Rajan, Member (J)

Jeewal Lal,
S/o Sri Bhagwan Das,
R/o 17/70 Maithan B.P. Oil
Near Tail Mill,
Agra

.....Applicant

By Adv : Sri P. Srivastava

VERSUS

1. Union of India through the Secretary,
Ministry of Defence,
New Delhi.
2. Chief Engineer,
Air force Bamrauli,
Allahabad.
3. The Garrison Engineer,
Air Force Kheria,
Agra

... Respondents

By Adv : Sri P.D. Tripathi.

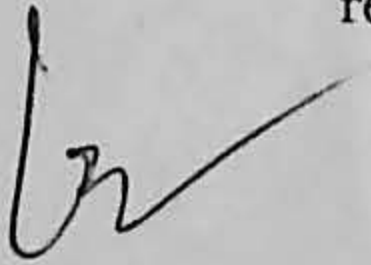
ORDER

The case relates to grant of compassionate appointment to the applicant whose father breathed his last in January, 1992 and the applicant's application for compassionate appointment made in 1993 could not find favour with the respondents, the latter having rejected the application vide order dated 27th March, 2002, impugned herein. Hence the application.



2. The father of the applicant was employed as Chowkidar in the office of Garrison Engineer, Kheria, Agra. He died in January 1992 leaving behind his widow, three daughters and one son, who is the applicant herein. Application was made for compassionate appointment in 1993. The respondents had in 1993 asked the mother and the applicant to the office in connection with the said application for compassionate appointment. However, no final offer was ever made by the respondents. Again in 1998 letters were received from the respondents in this regard one at the beginning of the year and another at the end of the year. In 2000 also a communication was received from the respondents to the effect that the name of the applicant for consideration for compassionate appointment stood at serial No. 22. However, finally, vide the impugned order the respondents have stated that on the basis of the current order on the subject (that such appointment is restricted to 5% of the vacancies in the D.R. quota in the Group C and D posts) there being no vacancies, and that the family of the deceased govt. servant received Rs 96,474/- and due to the fact there are more deserving cases, rejected the application. The respondents have also taken into account that the income of the applicant is Rs 900/-

3. The parties were heard. The learned counsel vehemently argued that since the applicant's father died in 1992 and the application was made in 1993, the respondents ought to have applied the rules that were in force during that period. Since the ceiling of 5% of the D.R. vacancies was introduced only recently, the same is not applicable to the case of the applicant.



In this regard, the applicant relies upon the following judgments:-

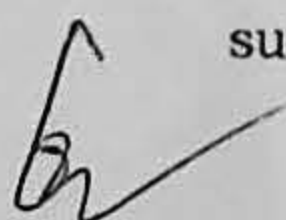
- (a) AIR 1972 SC 2175 – St. of Andhra Pradesh vs T. Ramakrishna Rao and others
- (b) 2004 (1) ATJ 54 – Kishan Das vs U.O.I and others (CAT Jabalpur)
- (c) 1998 SCC (S&S) 1694 – K. Kuppusamy and Anr vs State of Tamil Nadu & Ors.

4. On the other hand, the Respondents have relied upon the following judgments:-

- (a) AIR 1996 SC 2226 – Himachal Road Transport Corporation vs Dinesh Kumar
- (b) Hindustan Aeronautics Ltd vs Radhika Thirumalai AIR 1997 SC 123 wherein it has been held that compassionate appointment could be considered only when vacancy exists.
- (c) Umesh Kumar Nagpal vs State of Haryana 1994 SCC (L&S) 930

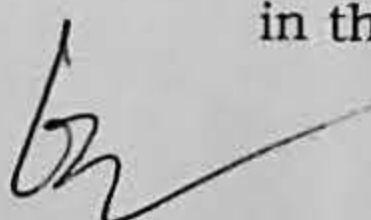
5. First the question as to which provision should apply – the one in extant at the time of application or at the time when the application was considered. The respondents have annexed the current orders on the subject in which the ceiling as to number of posts that can be filled up has been prescribed. The applicant could not produce any orders as applicable in 1993.

6. There is no statutory rules on compassionate appointment. Only executive instructions and orders exist. However, as held in the case of *Nagpur Improvement Trust v. Yadaorao Jagannath Kumbhare*, (1999) 8 SCC 99, at page 103 : the general principle of service jurisprudence is that in the absence of any statutory rules governing the service conditions of the employees, the executive instructions and/or decisions taken administratively would operate in the field and appointments/promotions can be made in accordance with such executive instructions/administrative directions. Thus,



the executive instructions on the subject hold the field and whatever terms are applicable to the rules, shall equally apply to executive instructions. The decision in the case of T. Swami Das (supra) which directly deals with the exact question of law as in this case, would therefore be pressed into service.


7. The respondents have advised the applicant to report to the office in connection with the compassionate appointment in 1993 itself and as late in 2000 informed the applicant that his case for consideration is at serial 22. This means that the respondents have taken due care to consider the application of the applicant in accordance with the seniority of such applications. Had there been any vacancy in 1993 or thereafter to cover the applicant's case, then obviously the application would have been considered and decision taken accordingly. Since no such vacancy existed then the case was kept alive till 2000 and thereafter. It was in 2002 that the case of the applicant could be taken up for consideration in its turn and the respondents had not only seen the vacancy position restricted to 5% of the D.R. quota in Group C and D but also had a comparable position vis-à-vis others. As more deserving cases were available, the case of the applicant has been rejected. Till the new instructions came into force, the old instructions did prevail and the case of the applicant was certainly taken in 1993 and later in 1998 as could be seen from the communications annexed by the applicant, and non appointment in those years only meant that the applicant could not be appointed as there were no vacancies. It has been held in the case of *Orissa SEB v. Raj Kumari Panda*, 1999 SCC (L&S)



729 that *Compassionate employment is to be given to the parties satisfying the requirements only if there are vacancies and not otherwise.*" Likewise, in the case of *Hindustan Aeronautics Ltd vs Radhika Thirumalai* AIR 1997 SC 123 it has been held that compassionate appointment could be considered only when vacancy exists.

8. However, in view of the decision of the Division Bench in the case of 2004 (1) ATJ 54 – *Kishan Das vs U.O.I and others* (CAT Jabalpur) wherein the question that came up for consideration is identical, it would be appropriate to direct the respondents to peruse the records relating to compassionate appointments for the year 1993 onwards to see whether there were any vacancies and whether the applicant could have been covered within the vacancy position and if so, the applicant be considered for compassionate appointment in the next available vacancy. In case the case could not be covered in the past years, details thereof (such as year-wise vacancies and number of candidates appointed) be intimated to the applicant. This exercise shall be conducted within a period of four months from the date of communication of this order.

9. There shall be no order as to cost.


MEMBER-J

GIRISH/-