

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO. 1394 OF 2002

ALLAHABAD THIS THE 23rd DAY OF *July*, 2004

HON'BLE MRS. MEERA CHHIBBER, MEMBER-J

1. Smt. Sunderi Devi, adult, widow of Lok Nath, R/o C/o M.P. Vikal, House No.4/26, Usmanpur Colony, Kanpur.
2. Rajen Kumar, adult, son of Late Lok Nath, R/o C/o Sri M.P. Vikal, House No.4/26, Usmanpur Colony, Kanpur.

.....Petitioners/
Applicant

(By Advocate Sri Krishna Lal)
Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi.
2. The Chief Engineer, Hor. Eastern Command, Engineers Branch, Fort William, Kolkata/Shillong Zone.
3. The Garrison Engineer, 868, Engineering Works Section, C/o 99 A.P.O.

.....Respondents

(By Advocate Sri R.K. JEWARI)

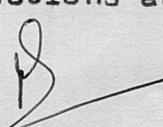
O R D E R

By this O.A. applicants have sought a direction to the respondent no.2 to consider the case of applicant no.2 for compassionate appointment and to appoint him.



2. It is submitted by applicants that applicant no.1 is the widow of late Lok Nath while applicant no.2 is the son of applicant no.1 and deceased employee. Applicant no.1 has stated ^{that} her husband died on 06.12.1990 in harness leaving behind his widow, four sons aged about 32,25,21 and 18 years and one daughter of 27 years. Since none of the members were employed and they didn't have any landed property, applicant no.1 gave a representation on 10.12.1990 to give compassionate appointment to applicant no.2. Thereafter respondents kept asking the applicant to give certain documents which were submitted by the applicant. Respondents, however, kept demanding the same documents which were already submitted by him.

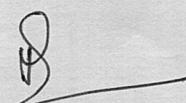
3. Ultimately vide letter dated 13.03.1995 applicant no.1 was informed that her son was at serial no. 138 of the waiting list. His case will be considered on his turn (page 31) subject to release of vacancies. Thereafter no order was passed, so applicant filed O.A. No.358/00. Respondents stated in their CA that the case of applicant no.2 is under consideration. The O.A. was disposed of on 30.01.2002 by giving direction to the respondents to decide the case of applicant with a speaking and reasoned order. The respondents passed order dated 20.05.2002 stating therein that the case was put up before the Board of Officers who didn't find it a deserving case for compassionate appointment. This has also been intimated vide CE letter dated 28.01.2002. In the letter dated 09.08.2002 it was stated that waiting list had to be dispensed with and all such cases were reviewed on merits, based on yardstick formulated by Department Of Personnel and Training instructions and other Government orders.



Since her case didn't fulfill all the requirements as laid down by Government orders, the same was rejected (Page 18 and 19 respectively).

4. The basic argument advanced by applicant's counsel was that though she had applied for compassionate appointment in 1990 itself ~~but in the order dated 22.10.98~~ but by their letter dated 23.10.1996 respondents showed ~~deliberately~~ ^{deliberately} applicant ~~stay w.e.f. 12.04.1993 in the stay list this they~~ ~~deliberately~~ ^{by} ~~stay~~ wrong withholding the documents intentionally/to delay the matter. In the same letter it was also mentioned that individuals falling in the list upto 30.06.1992 have already been covered , rest will be considered after more vacancies are received (Page 28).

5. Respondents on the other hand, have submitted that the appointment on compassionate grounds cannot be claimed as a matter of right and it can be granted only if the family of the deceased, according to the scheme, for compassionate appointment, is found in indigent condition and if the post is available under the limited 5% quota of direct recruitment. That the case of the petitioners was considered in accordance with the revised Scheme for compassionate appointment by a Board of Officers and when it was not found in merit in comparison to other similar cases, the Board of Officers did not recommend their case for appointment and hence the same was rejected. On the question of delay they have explained that since the petitioners did not submit their documents hence the respondent no.3 sent letter asking the petitioners to submit the requisite documents. Applicants failed to



submit basic documents i.e. birth certificate and School certificate along with original application, therefore, in order to process the application, the respondent again requested to submit the relevant papers vide letter dated 26.02.1993, 14.05.1993 and 29.06.1993. It is stated that delay was caused due to the petitioners because of non submission of complete documents as per Standard Operating Procedure on the subject. The said documents were received on 25.08.1993 and sent to the Head Quarter 137 Works Engineer vide letter dated 06.12.1993 followed by letters dated 31.01.1994, 14.02.1994, 25.02.1994 and 17.03.1994. It is stated that the petitioners submitted the documents in piecemeal that too without complete supporting document which caused the delay in processing the case to the Higher Authority for its consideration. The allegation of castiesm levelled by the petitioner is totally false and emphatically denied. The application of the petitioners was processed only after the receipt of all the required documents. It is stated that the appointment on compassionate ground is not a vested right of the dependent of the deceased employee. The Hon'ble Supreme Court in its judgment reported in JT 1994 (3) SC 525 has also held that the appointment on compassionate ground can not be claimed as a matter of right.

6. Besides the above the Government of India modified the scheme for compassionate appointment vide memo dated 9.3.2001, Instructions and Supreme Court Judgements received vide HQ 137 WE. Letter dated 20.11.2001 which specify the criteria 1 to ascertain the economic status of the family of the time of the death of Government servant. Paragraph 4 of the said memo also discontinue the system of waiting list and the respondents are bound



to follow the instructions and the decisions of the Hon'ble Courts. The case of the petitioner was rejected after due consideration in accordance with Scheme and instructions on the subject. They have, thus, submitted that the O.A. may be dismissed.

7. I have heard both the counsel and perused the pleadings. Applicant's main grievance is against the letter dated 23.10.1996 (Page 24) but if they were aggrieved of the said letter, they ought to ^{have} challenged the same in 1996 or in 1997. Not having challenged that letter at appropriate stage, it is not open to the applicant to challenge the correctness of that letter by filing O.A. in the year 2002. In any case, respondents have clarified that applicant kept giving information in piecemeal that too without the supporting documents so they had to ask the applicant to submit the proper documents. They received the documents on 25.08.1993 and they were sent to the Head Quarter vide letters sent immediately thereafter. If the documents were given in 1993 naturally bare application without the relevant documents would be incomplete and it is wrong on the part of applicant to state that his ^{service is} stay should be counted from 1990.

8. In any case, this letter of 1996 has not been challenged by applicant even in the present O.A. also, therefore, the contention of applicant as far as letter dated 1996 is concerned, is rejected.

9. The law on the subject of compassionate appointment is well settled by now that no body can claim compassionate appointment as a matter of right nor as a line of succession



on the death of father or mother. On the contrary, compassionate appointment can be given only in exceptional circumstances where the family is in absolutely distressed condition. The deceased ~~was left~~ ^{leaves} behind liabilities and there is no source of income to support the family and unless they are given immediate assistance, family will not be able to survive.

10. It is in this background that we have to see the claim of applicant. It is correct initially applicant's case was kept on waiting list but subsequently waiting lists were scrapped and all the cases were directed to be reconsidered. Applicant's case was considered and rejected vide letter dated 28.01.2002 on the ground that deceased had died on 06.12.1990 leaving behind wife and major children.

11. They are getting Rs.1849/- as family pension so family is above poverty line. Moreover, since death had taken place 11 years back the need for immediate assistance is lacking.

12. In the O.A. applicant has given the details of her family as follows:-

<u>Sl.</u>	<u>Name</u>	<u>Relation</u>	<u>Age</u>
1.	Smt. Sundari Devi	Wife (Unemployed and uneducated)	52 years.
2.	Rajen Kumar (Petitioner no.2)	Son	32 "
3.	Sri Anand Kumar	Unemployed Son	25 "
4.	Sri Dilip Kumar	-do- son	21 "
5.	Sri Shanjay Kumar	-do- son	18 "
6.	Km. Maya	-do- daughter	27 "

which shows all the children were major and daughter is also not stated to be unmarried. Applicant no.2 was 32 ^{old 12} years which means in normal course he should have been settled and employed. Simply because he was ^{with} employed, it is no ground to get employment on compassionate grounds.

After all, a person only has right of consideration.

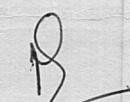
Applicant's case has been duly considered by the Board of Officers who found it was not a fit case. The question that next arises is whether court can sit on appeal over the decision taken by department. Answer is definitely No.

After all when department considers the applications for compassionate appointment they have all the details before them. They have to select the most deserving cases out of those cases that too within 5% of the vacancies meant for direct recruitment in a year. If there are candidates with worse conditions, definitely preference has to be given to those cases. In the process naturally other cases get eliminated and have to be rejected. Counsel for the applicant relied on (2003 All CJ 1604) and AIR 2000 SC 1596 Balbir Kaur Vs. SAIL but facts of both the cases are different and would not enhance the case of applicant. In compassionate appointment each case has to be decided on the given facts which differ in each case. In the case of Balbir Kaur, Hon'ble Supreme Court had held that the introduction of family benefit scheme which enabled the employee family to receive regular monthly payment equivalent to the basic pay together with dearness allowance last drawn till the normal date of superannuation of employee in lieu of deposition the lump sum provident fund and gravity amount with the employer can't be in any ^{way to} ~~equated~~ with benefit of compassionate appointment, therefore, introduction of family benefit scheme can't be a ground to refuse benefit of compassionate appointment whereas

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in the instant case, the death of employee had taken place 11 years back and Hon'ble Supreme Court has already held in 1996 (1)SCC301, 1997 (8)SCC85 and 1998 (2)SCC that if family could survive for long years without getting compassionate appointment, the need for compassionate appointment gets wiped out. Similarly it is also held by Hon'ble Supreme Court in J.W. 1994 (2) S.C. 183 that Tribunal cannot give direction to appoint a person on compassionate grounds. It can merely direct to re-consider the case that too if it is satisfied that the case has not been properly considered. It is also settled that no direction can be given to relax the limit of 5% J.T. 2002 (7) S.C. 4257. In the instant case applicant has not challenged any of the letters written by respondents to reject her case. They have merely sought a direction to the respondents to reconsider the applicant no.2 case to appoint him on compassionate grounds.

13. In view of the judgments as referred to above, this relief can't be granted. Since his case has already been considered, the O.A. is found to be devoid of merit. The same is accordingly dismissed with no order as to costs



Member-J

/Neelam/