

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH, ALLAHABAD.

Allahabad, this the 9th day of August, 2004.

QUORUM : HON. MR. JUSTICE S.R. SINGH, V.C.

HON. MR. D. R. TIWARI, A.M.

O.A. No. 209 of 2002

in

O.A. No. 1406/97 & 1404/2000

Basant Lal S/O Late Khuttee Lal, No.2, New Cantt., Rate  
Godam, Kanpur Road, Allahabad..... ....Applicant.

Counsel for applicant : Sri A.P.N. Giri.

Versus

1. Major V.K. Pandey, G.E. (Garrison Engineer), Engineer Park, D.P. Tandon Road, Allahabad.
2. T.K. Shah (Brigadier), Chief Engineer Headquarter, Bamrauli, District Allahabad.
3. Major General Rana S.K. Kapoor, Chief Engineer Headquarter Central Command, Lucknow..... .... Respondents.

Counsel for respondents : Sri S.K. Anwar.

ORDER (ORAL)

B-Y HON. MR. JUSTICE S.R. SINGH, V.C.

Heard Sri A.P.N. Giri, learned counsel for applicant and Km. Mamta Sharma holding brief of Sri S.K. Anwar, learned counsel for respondents.

2. O.A. No.1406/97 was instituted by the applicant for his grievance regarding denial of compassionate appointment. The said O.A. was disposed of vide order dated 23.4.99 with a direction to the respondents therein <sup>2c</sup> Respondent No.3, Central Command, Lucknow to reconsider the case of compassionate appointment of the applicant in the light of the decision taken in respect of persons referred to in the rejoinder affidavit by the applicant, within two months from the date of receipt of a copy of this order. Thereafter by letter dated 26.7.99, the applicant was informed that his case was reconsidered by a Board of Officers and he was placed at Sl.No.28 of the seniority roaster for the

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post of L.D.C. It was provided therein that appointment would be offered on his turn as and when the vacancy arises in the category of L.D.C. The applicant, it appears, filed another O.A. No.1404/00 which was disposed of by order dated 30.5.2002 with a direction to the respondents that respondents will inform the applicant as and when his turn at serial No.28 becomes due for appointment on compassionate ground, whereafter by letter dated 21.8.2002 (Annexure-6) a request was made to Hqrs. CWE(A/F), Bamrauli, Allahabad to pass a fresh speaking order keeping in view <sup>of</sup> court judgment of the Tribunal in O.A. No.1404/00. The competent authority thereafter passed a fresh speaking order dated 12.9.2002 holding that after due circumspection and consideration, in the light of the guidelines of DOP&T and various judgments of the Hon'ble Supreme Court, <sup>that</sup> the appointment on compassionate grounds is not a matter of right and after a balanced and objective assessment of the totality of the circumstances of the case including the decision of the Board of Officers at this HQ, the competent authority has rejected the employment assistance to Sh. Basant Lal S/O Late Khuti Lal, S/Wala on compassionate grounds due to non-availability of sufficient vacancy within 5% quota. Counsel for the applicant submits that the respondents were not justified in rejecting the employment assistance to the applicant on compassionate ground due to non-availability of sufficient vacancy within 5% quota <sup>in ~~uit~~</sup> instead the direction to respondents was to inform the applicant about his due turn at Sl.No.28 he was earlier placed in the merit list. Legality or otherwise of the order dated 12.9.2002 cannot be <sup>gone</sup> thrown into in this contempt petition. The applicant, if so advised, may challenge the legality of the order dated 12.9.2002 by means of a fresh O.A. in which he may make out a case that merit list once prepared would not lapse by <sup>lapse</sup> ~~influx~~ of time unless all the candidates placed in the

(P&G)

select list are offered appointment on compassionate ground on their due turn.

3. In view of the above discussion, the CCA is dismissed without prejudice to the right of the applicant to challenge the order dated 12.9.2002 if so advised, on original side.

No order as to costs.

*Dcma*

A.M.

*RDG*

V.C.

Asthana/