

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.**

ORIGINAL APPLICATION NO. 565 OF 2002.

ALLAHABAD THIS THE 4th DAY OF April 2008.

Hon'ble Mr. Justice Khem Karan, Vice Chairman.

Dinesh Kumar Misshra aged about 32 years, son of late Shri A.N Mishra, resident of 15/10, Karelabagh Colony, Allahabad.

.....Applicant

(By Advocate: Shri K.P Singh)

Versus.

1. Union of India through Director General, E.M.E Army Headquarter, New Delhi 110011.
2. Commandant, Headquarter Base Workshop, G.P. E.M.E. (Establishment) Meerut Cantt 250001.
3. Officer Commanding, 508 Army Base Workshop, Allahabad Fort.

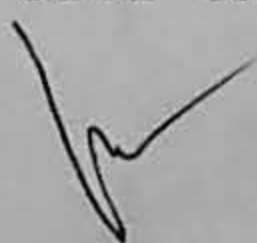
.....Respondents

(By Advocate: Shri Saumitra Singh)

O R D E R

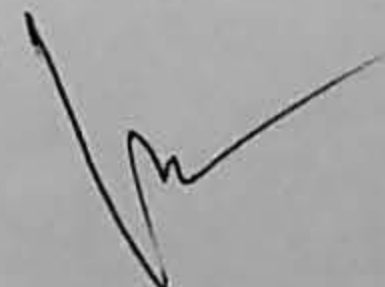
This OA was filed in May 2002, praying for directing the respondent NO. 3 to grant compassionate appointment to the applicant. During the pendency of this O.A, applicant moved one amendment application for challenging the order dated 10.12.2001, by which his request for compassionate appointment had been rejected and this amendment was allowed vide order dated 12.2.2008 subject to law of limitation.

2. In brief, the case of the applicant is that his father late Shri A.N Mishra was employed as Senior Chargeman in the office of respondent NO. 3 and while he was still in service that he died on 12.5.1999,




leaving behind him the applicant and others as disclosed in para 2 of the O.A. He says that though the family received a sum of Rs.2,62,378/- as gratuity and was also getting family pension @ Rs. 3025/- a month but the same were not sufficient enough considering the number of dependents and other factors, so mother gave one application on 1.7.1999 requesting the respondent NO.3 to give compassionate appointment to him. It is said that inspite of various reminders, no decision was being taken on application for compassionate appointment, so the O.A. was being filed.

3. The respondents filed reply saying that the case of the applicant for compassionate appointment was duly considered by the Board of Officers for four times, one in October 2000, second in March 2001, 3rd in June 2001 and 4th in September 2002 but the same could not found fit for such appointment and applicant was duly informed about this rejection vide letter dated 18.10.2001. It has been said that such appointments being restricted to 5% vacancies in a year, of Direct Recruitment no such appointment was possible. In para -10 of the reply, it is said that besides the family pension, family got Rs.2,63,538/- or so as D.C.R.G. amount, Rs.2,11,752 as G.P.F, Rs. 40,984 as C.G.E.I.S and Rs.37,002 as Leave encashment, so it cannot be said that the family was indigent. Reference to judgments as mentioned in para -7 has also been made, so as to say that applicant's case for compassionate appointment has rightly been rejected.



4. I have heard Shri K.P. Singh, learned counsel for the applicant and Shri Saumitra Singh, learned counsel for the respondents and have perused the entire material on record. Since the respondents have not taken plea that the O.A. is barred by law of limitation, so I need not touch that point in this O.A. The fact that the applicant's case was examined four time by the Board of Officers and the same could not be recommended for appointment is not in dispute. The fact that the family got the terminal benefits to the extent mentioned by the respondents, is also not in dispute. The fact that the mother of the applicant was getting family pension is also not in dispute.

5. What Shri K.P. Singh argues is that claim of the applicant could not have been rejected on the ground that vacancies for such appointment were limited to 5% of the Direct Recruitment. His contention is that the case of the applicant ought to have been examined in the light of the instructions existing in 1999 and not in the light of subsequent instructions limiting such consideration to 5% of the vacancies of Direct Recruitment. Learned counsel has cited decision dated 24.9.2004 of Jabalpur Bench in O.A. 157/04, Smt. Daropati Bai Rajak Vs. Union of India and others, decision dated 15.7.2004 of the same Bench in O.A. nO. 30 of 2003, Ritesh Kumar Gupta Vs. Union of India and others and decision dated 5.11.2007 in O.A. NO. 647/03, Yogesh Kumar Sharma Vs. Union of India and others, to support his argument that the request for compassionate appointment should be considered in accordance with the Rules/Guidelines existing at the time of death of employee concerned or at the time when request for such appointment is made.



6. Shri Saumitra Singh, learned counsel for the respondents has contended that provision restricting such appointments to 5% of the vacancies of direct recruitment, had come on 9.10.1998, much before the death of applicant's father on 12.5.1999, so the decisions cited above by Shri K.P Singh, do not advance the case of applicant. He has also argued that earlier to 9.10.1998, Hon'ble Supreme Court ruled in Umesh Kumar Nagpal Vs. Union of India, Judgment Today 1994 (3) Supreme Court page 525 and in several other cases that such appointment under Dying In Harness should not be treated to be a general mode of recruitment and should be limited to minimum of vacancies, meant for Direct Recruitment. He says that so from this point of view that rejection cannot be interfered with on the ground that the matter was considered, keeping in view restriction of 5% of vacancies.

7. I have considered the respective submissions and I am of the view that the order of rejection cannot be interfered with. Government of India had issued office memo dated 9.10.1998, giving the revised consolidated instruction for dealing with the matter relating to the compassionate appointment. Para 7 (b) of this scheme provides that compassionate appointment can be made upto the maximum 5% of the vacancies falling under Direct Recruitment Quota in any Group 'C' or Group 'D' post. In other words, restriction of 5% of the vacancies, had come prior to the death of applicant's father and so it cannot be said that respondents committed any mistake in rejecting the case on the ground that vacancies for



(25)

such appointments being limited to 5% only and there being other deserving cases, the case of the applicant could not be recommended. The law cited by Shri K.P. Singh does not apply to the facts of the case in hand.

8. Otherwise also, the reasons cited in the rejection order dated 10.12.2001 cannot be said to be irrelevant or extraneous for turning down the request of the applicant for compassionate appointment. The Board considered the matter four times but considering the amounts received by the family and other circumstances, the family was not found to be indigent one, so as to offer compassionate appointment. The O.A. appears to be devoid of merits and deserves to be dismissed. So it is accordingly dismissed.

No costs.

✓ (Signature)
04.4.08

Vice-Chairman

Manish/-