

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD

ORIGINAL APPLICATION NUMBER 838 OF 2002

ALLAHABAD, THIS THE 22<sup>nd</sup> DAY OF JULY, 2004

HON'BLE MRS. MEERA CHHIBBER, MEMBER(J)

Munni Devi (Smt.)  
aged about 37 years (D.O.B. Oct 1965),  
w/o Late Shri Ram Kishan,  
r/o 12, B.I., Bazar,  
Allahabad.

.....Applicant

(By Advocate : Shri K.K. Mishra)

V E R S U S

1. Union of India thorough Secretary,  
Ministry of Defence,  
New Delhi.
2. Chief Engineer (EIC(2),  
Head Quarter Command,  
Lucknow-2.
3. Chief Engineer,  
Lucknow Zone,  
Lucknow.-2
4. Commander Works Engineer,  
Allahabad.

.....Respondents

(By Advocate : Shri Anil Kumar) Sri Gyan Prakash

O R D E R

By this O.A. applicant has sought the following

reliefs:

- (i) This Hon'ble court may graciously be pleased to quash the impugned order dated 17.04.2002, passed on behalf of respondent No.3.
- (ii) to direct the respondent No.2 to consider the case of applicant for appointment on any post on compassionate ground giving her, preferential treatment.
- (iii) this Hon'ble Court further be pleased to pass such



Corrected vide  
Hon'ble court's  
order 2/9/04

Kalimullah  
SP(5) 3/9/04

other and/or further order as may be deemed necessary in the circumstances of the case.

(v) Award cost."

2. It is submitted by the applicant that her husband Late Shri Ram Kishan was working as Safaiwala with the respondents since 06.01.1988. He died on 20.06.1995 while in harness leaving behind his widow i.e. applicant, two minor sons and one minor daughter in a very distressed condition. Therefore, she gave an application but inspite of vacancy being available, she was not offered any appointment. Ultimately, her request was rejected vide letter dated 17.04.2002 on the ground that compassionate appointment cannot be granted after a lapse of reasonable period and it is not the vested right which can be exercised at any time in future.

3. Applicant has challenged this letter on the ground that the respondents have not explained why delay had taken place as it was totally due to their fault that lapse had taken place. She further submitted that none of the family members of the applicant is in service and Hon'ble Supreme Court has held in the case of SAIL & another Vs. Awadhesh Singh and Others reported in 2001 AWC Pg.1392 "memorandum of agreement for appointment on compassionate grounds had been evolved by the employer so that on the sudden death of an employee, his dependents would not be on the roads as destitutes and can maintain themselves if an appointment is given to any of the dependents of the deceased. She has further submitted that respondents are indulging in discrimination and are rejecting the application in a stereotyped type manner. She has further submitted that for compassionate appointment, availability of posts is not a condition, <sup>precedent, B</sup> as job can be offered against any posts and if job is not available, then supernumery post has to be created. She has further submitted that

B

pensionary benefits or getting the gratuity etc cannot be taken into consideration while rejecting her claim in view of the judgment given by Hon'ble Supreme Court in the case of Balbir Kaur Vs. SAIL. She has, thus, prayed that the O.A. may be allowed.

4. Respondents have opposed this O.A. and have submitted that impugned order dated 17.04.2002 was issued ~~and to~~ <sup>after B2</sup> examining the application of applicant as per the extent rules. They have submitted that family of the deceased employee is not in a distressed condition because they are getting family pension of Rs.1899.75/- apart from all the terminal benefits as admissible under the Central Government Rules. Appointment on compassionate grounds can only be given ~~only~~ to those cases, who meet all the Government regulations and whose names figure in the seniority list maintained by the Board of Officers at the Zonal level. Therefore, if there are more deserving cases than the applicant, her name cannot be recommended, <sup>by</sup> superceding <sup>deserving B2</sup> other cases. They have relied on JT 1996(5) Supreme Court Pg.3 judgment given in the case of HIMANCHAL ROAD TRANSPORT CORPORATION VS. DINESH KUMAR AND HINDUSTAN AERONAUTICS LTD. VS. SMT. A. RADHIKA to substantiate their contention that compassionate appointment can be given only if a vacancy is available for that purpose. Moreover, as per DOPT circular povertyline is drawn at income below Rs.1767/- per month for a family of five members. Whereas applicant is in receipt of family pension of Rs.1275/- per month + 49% dearness allowance which comes to Rs.1899.75, therefore, it cannot be said that applicant is below <sup>the</sup> poverty line. They have denied that

*B2*

any arbitrary or illegal orders have been passed by the respondents. They have submitted that since orders are passed on the basis of Government of India instructions, the orders cannot be said to be illegal. It is settled by now that only 5% of the total vacancies released for direct recruitment can be provided for deserving candidates that too within one year. Immediate relief by way of employment to the dependents cannot be given as a matter of routine. They have thus prayed that the O.A. may be dismissed.

5. I have heard both the counsel and perused the pleadings as well.

6. By the impugned order passed by the respondents <sup>it is B</sup> ~~stating~~ <sup>clear B</sup> ~~therein~~ that Board of Officers had considered the applicant's case along with other candidates but since there were more deserving cases and few vacancies <sup>were B</sup> available, her case does not deserve to be recommended for compassionate appointment. Therefore, her case has been rejected due to non-availability of sufficient vacancies within 5% quota.

7. It is now too well settled that compassionate appointment can be given only within 5% of the vacancies meant for direct recruitment in a year. It goes without saying that in a defence organisation, there are large number of persons and casualties are also much more <sup>than B</sup> in civil organisation. Therefore, the applications for compassionate appointment are also large in number. In these circumstances, naturally



dependent has to find out <sup>some P2</sup> ~~is~~ <sup>by P2</sup> method which the most deserving candidates may be recommended for grant of compassionate appointment. In this process naturally some of the cases do get eliminated because when vacancies are limited in number, all the persons cannot be given compassionate appointment.

8. Law on the subject is very clear that nobody can claim compassionate appointment as a matter of right or as a line of succession, <sup>a</sup> person only has a right of consideration, while evaluating different cases, if department comes to the conclusion that the case of applicant is not as deserving as other cases are, they naturally had to ~~be~~ recommend, only those cases which <sup>were P2</sup> ~~are~~ more deserving. In the instant case respondents have stated categorically that her case has been rejected due to non-availability of sufficient vacancies within 5% quota and by stating that her case has not been found to be one of those cases where the family is financial distress. Tribunal cannot sit in appeal over the recommendations made by the department for compassionate appointment. So long the case has been considered by the Board of Officers, Tribunal cannot interfere in the case. Hon'ble Supreme Court has held in the case of Union of India Vs. Joginder Sharma reported in JT 2002(7) S.C. 425 " it is not open to the Tribunal or court to compell the authority to grant any such relaxation over and above the limit of 5% ceiling and such directions cannot be sustained. The order passed by the Tribunal directing the respondents to consider relaxing the limit of 5% ceiling



was quashed and set aside by Hon'ble Supreme Court. It ~~is~~ also held by Hon'ble Supreme Court in the case of H.A.L. Vs. Smt. A. Radhika Dhirumallai that compassionate appointment can be made only if vacancy is available. If no vacancy is available, no duty is cast on the employer to appoint the dependent of an employee. The same view was taken by the Hon'ble Supreme Court in the case reported in JT 1996(5) 319 wherein it was further clarified that no post should be created to offer compassionate appointment. In the instant case since respondents have rejected the claim of applicant on the ground that number of vacancies was limited and there were more deserving candidates available, I do not think that Tribunal <sup>Cau B</sup> ~~can~~ pass any orders as claimed by the applicant. Applicant has submitted that for compassionate appointment it is not precondition that vacancies should be available that is absolutely a wrong notion and is contrary to the Supreme Court Rulings. Therefore, O.A. is found to be devoid of <sup>any</sup> ~~merit~~. The same is accordingly dismissed with no order as to costs.

Member (J)

shukla/-