

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

ORIGINAL APPLICATION NUMBER 922 OF 2002

ALLAHABAD, THIS THE 16th DAY OF December 2004

HON'BLE MR. S. C. CHAUBE, MEMBER (A)

Km. Sushma Pandey d/o Late Balram Pandey
resident of 439-H-I Buxi Khurd, Daraganj,
Allahabad.

.....Applicant

(By Advocate : Shri S.K. Mishra
Shri S. Agarwal)

V E R S U S

1. Union of India through the Secretary, Ministry of Defence, New Delhi.
2. The Controller General of Defence Accounts, West Block-5, R.K. Puram, New Delhi.
3. The Principal Controller of Defence Accounts, Headquarter ' G - Block, New Delhi.
4. The Senior Accounts Officer (Admn)
In the office of Principal Controller of Defence Accounts Headquarters ' G-Block ' New Delhi.

.....Respondents

(By Advocate : Shri N.C. Nishad)

O R D E R

The applicant has challenged the order dated 19.04.2002 denying her appointment on compassionate grounds for want of vacancy. Order dated 19.04.2002 of Senior Accounts Officer (Administration) Office of Principal Controller of Defence Accounts, Headquarter New Delhi.

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2. Briefly the fact are that applicant 's father late

Balram Pandey who were working as Accounts Officer in the office of Respondents expired on 14.04.1999 while in service. The applicant's mother submitted an application dated 12.10.2000 to respondent No.3 requesting for appointment of the applicant on compassionate grounds. Respondent No.3 vide letter dated 31.10.2000 directed the applicant to appear in written test scheduled to be held on 17.11.2000. Accordingly, the applicant appeared in the written test. Further vide letter dated 05.12.2000, the headquarter of Principal Controller of Defence Accounts New Delhi informed the applicant that she has been selected and appointed for the post of Auditor in pay-scale of Rs. 4000-6000/- subject to completion of pre-employment formalities thereof. Accordingly, the attestation forms in quadruplicate also and medical fitness form has/been sent to the applicant. After completion of pre-employment formalities and Medical Examination by Chief Medical Officer, Allahabad, the attestation forms were sent by the applicant to respondent No.3 who however, on 01.01.2001 returned the attestation forms for filling the same correctly. However, the applicant did not received any response from respondent No.3. Meanwhile, she came to know that a number of persons whose cases are considered by the respondents for compassionate appointment after the applicant's case were already issued appointment letters for appointment on compassionate grounds, such as the cases of Shri Manoj Kumar Tiwari and Shri Ram Chandra Awasthi. Finally the respondent No.4 acting on behalf of the respondent No.3 has issued impugned order dated 19.04.2002 stating that there is no vacancy to be filled on compassionate appointment basis and therefore, the applicant cannot be appointed.

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3. It has been contended by the applicant that she was in dire entire need of financial assistance by way of employment;

that cases of number of persons were considered by the respondents for compassionate appointment after the applicant was already issued the appointment letter for appointing her on compassionate grounds; that it is not the case of the respondents that when the order dated 05.12.2000 was issued to the applicant conveying that she was selected for the post of Auditor and was required to complete pre-employment formalities, at that ^{time} ~~also~~ there was no vacancy for appointment on compassionate grounds; that any subsequent event cannot be applied against the interest of the applicant and denial of appointment on compassionate basis is therefore, patently, illegal and arbitrary; that the respondents have not given any details or reasons as to why there is no vacancy for making appointment on compassionate ground, particularly when the applicant's case was already under consideration before the respondents for the last 2 years; that by referring to the alleged letter dated 27.07.2001 in the impugned order dated 19.04.2002, the respondents have deliberately ignored the previous documents documents and have referred to the reminders letter of the applicant dated 27.02.2001, since the applicant had applied and was selected for compassionate appointment long back; that letter dated 27.07.2001 is a reminder letter sent by the applicant for compassionate appointment; that respondents cannot turn back to take totally different stand on the basis of some alleged imaginary situation but as may be available to the respondents in April 2002, particularly, when in the ~~preceding~~ proceedings one and half years several appointments have been made on compassionate basis including the persons whose cases came up for consideration after the applicant's case; that the action of the respondents

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amounts to fraudulent exercise of power in issuing impugned order by referring to the applicant's reminder letter sent in July 2001; that the denial of the compassionate appointment is therefore, patently, discriminatory and violative of Articles 14 and 16 of the constitution.

4. Respondents on the other hand have admitted that the widow of Late Shri Balram Pandey, Accounts Officer, submitted an application in October 2000 requesting for appointment of the applicant on compassionate grounds. They have further admitted that the applicant was subjected to written examination in November 2000. The applicant made the grade in the written test; it was decided by the competent authority to appoint her on compassionate ground subject to the completion of pre-employment formalities, which were completed in March 2001. However, since there was no vacancy available, the applicant could not be appointed and accordingly she was informed of this position vide letter dated 19.04.2002. Learned counsel for the respondents has relied on in the case of Prem Chand Vs. Union of India and Ors. (O.A. No.1-PB of 2001), wherein on the Hon'ble CAT Chandigarh dismissed the O.A./the ground that the case of the applicant for appointment on compassionate grounds had been considered by the Board of Officers held on January 1998 and it could not come on merit. Similarly, he has relied on in the case of SANTOSH KUMAR TIWARI VS. UNION OF INDIA & ORS. of PATNA HIGH COURT. He has further contended that no discrimination of any sort has been made in the appointment of Shri Manoj Kumar Tiwari and Ramchand Awasthi viz-a-viz the applicant. As a matter of fact according to the respondents the cases of Shri Manoj Kumar Tiwari and Shri Ramchand Awasthi are not at par with the case

of the applicant. Since in both the cases, the pre-enrolment forms were completed before 03.08.2000, which is cut off the date fixed in such cases by the Ministry of Defence, although, appointment letters could not be issued, whereas in the case of applicant, the written examination was held in November 2000 and pre-enrolment forms were completed in March 2001, by that time no vacancy was available in the organisation. Accordingly, she was informed on 19.04.2002. Therefore, according to the respondents, no discrimination in dealing with the case of applicant has been committed.

5. I have heard learned counsel for the parties and perused the records.

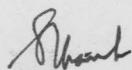
6. In my considered view the applicant has been duly subjected to a written examination in which she had succeeded. Accordingly, the letter dated 05.12.2000 was issued by the office of Principal Controller of Finance Accounts, New Delhi informing the applicant that she has been selected for appointment as Auditor in the scale of Rs.4000-6000/- subject to completion of pre-employment formalities. There is substantive force in the contention of applicant that when the order dated 05.12.2000 was issued to the applicant conveying her selection on the post of Auditor, it is not the case of the respondents at that time also there was no vacancy for appointment on compassionate grounds. No subsequent event, therefore, cannot be applied against the interest of the applicant to deny her appointment on compassionate grounds. Had there been no vacancy, as a measure administrative expediency and prudence, this letter should not have been issued to the applicant informing her of her selection. The cases referred by the respondents counsel are not applicable ^{to} with the case of the applicant at all.

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7. It is more ^{than} curious that the office of the Principal Controller of Defense Accounts has on one hand by letter dated 05.12.2000 intimated the decision of the competent authority for the appointment of the applicant as Auditor in the scale of Rs.4000-6000/-, On the other hand the same office intimated on 19.04.2002 to the applicant that her appointment on compassionate grounds was not possible for want of vacancy. The two positions taken by the same office appear rather incongruous and therefore, not tenable under the law. Accordingly, the order dated 19.04.2002 is quashed and set aside. Respondent Nos.2& 3 are directed to reconsider the case of the applicant for appointment on compassionate grounds if necessary by acceding relaxation as provided in the scheme of compassionate appointment of Govt. of India (Annexure RA-I). As regards the non-availability of vacancy, they are further directed to take appropriate action under Para-7 (e) and 7(f) of the relevant scheme for compassionate appointment and pass a detailed and speaking order under ^{ant}intimation to the application within a period of 6 months from the date of receipt of a copy of this order. Liberty is granted to the applicant to seek legal remedy if still she feels aggrieved by the order of respondents authority.

8. With the above directions, this O.A. is disposed off. No order as to costs.


Member (A)

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