

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

Original Application No.1049 of 2002.

Allahabad, this the 23rd day of September, 2005.

Hon'ble Mr. D.R. Tiwari, Member-A.

Subhash,
A/a 31 years,
Son of (Late) Shri Chander Pal
Safaiwala,
R/o Vill. Sarifpur,
PO : Chakanwala,
Distt. J.P.Nagar.

....**Applicant**

(By Advocate : Shri R.A. Pandey)

Versus

1. Union of India,
Through the Secretary,
Ministry of Defence,
DHQ PO, New Delhi-110 011.
2. Director General of Artillery ,
General Staff Branch,
Army Headquarters,
DHQ PO, New Delhi.
3. Commandant,
Headquarters Artillery Centre,
Hyderabad-500 031.
4. Office in Charge,
Artillery Records,
Hyderabad - 500 031.

....**Respondents.**

(By Advocate : Shri R.C. Shukla)

O R D E R

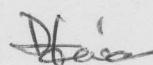
By Hon'ble Mr. D.R. Tiwari, A.M. :

By this OA filed under Section 19 of A.T.Act, 1985, the applicant has prayed for quashing the impugned order dated 20.9.2000 passed by respondent No.3 (Annexure-1) .

2. Briefly stated, the applicant's father was serving as Civilian Safaiwala No.1262394 under the respondent No.3, died during his service period on

H. Tiwari

11.10.1994, leaving behind his wife Smt. Asharfi Devi and sons Rajesh and Subhash, as heirs and representatives. The Death Certificate dated 24.11.1994 is marked as Annexure-2. It has also been submitted that elder brother of the applicant was already living separately in the life time of the deceased Chander Pal (father of the applicant). After the death of his father, the applicant submitted applications for appointment on compassionate ground in the year 1994, 1995, 1996 and in 1998. The copy of the applications dated 9.12.1995 and 29.7.1998 are annexed herewith as Annexure-3 & 4. The applicant has passed Class-IV examination and his date of birth is 22.7.1971. He meets the qualification *Required* for appointment as Class-IV employee/Safai Karmchari. The applicant is unmarried, unemployed and having no source of income except mother's family pension, which is approximately Rs.1500/- per month. Despite of the applications and his personal visit to the respondents' office, till date no reasons and he filed in 2001 a Writ Petition No.43832/2001 in the Hon'ble High Court of Allahabad, which was withdrawn by the applicant because the appropriate Court having jurisdiction over this matter was the Hon'ble Tribunal. The Hon'ble High Court dismissed the Writ Petition as withdrawn with liberty to the applicant to file an application in the appropriate Court (Annexure-5). Accordingly, the instant OA has been filed. In 2002, when the applicant approached



the office of the respondents, he was handed over the copy of letter No.311001/41/A-4 (Civ) dated 20.9.2000 wherein he has been intimated that vacancies for compassionate appointments being limited, waiting list for such cases is maintained at Army Headquarters only for a period of one year. The applicant's case being more than a year old, wherein he could not offer the appointment, hence his name is deleted from the waiting list.

3. The applicant aggrieved with the above letter, has challenged the impugned order on various ground mentioned in para-5 of the OA. It has been submitted the impugned order dated 20.9.2000, which was handed over to the applicant in 2002 is unjust, improper, contrary to law and without due application of mind. The order is against the Government of India, OM dated 30.6.1987 which does not provide for deletion of the name from the waiting list after one year. It has been further argued that the application was made within a year after the death of his father, expressing his willingness to work in the same appointment because he was eligible for working as Class IV employee. The applicant has relied on the decision of Allahabad High Court in the case of Jagadish Ram reported in (2001 (2) ESC 501 All.). This judgment provided that there is no justification to consider the case as belated as the petitioner moved his application within a reasonable time. It is further

Dham

provided that the respondents cannot take advantage of their own wrong, that it is not the case of the respondents that financial crisis stood diluted now and the Hon'ble High Court directed the respondents to grant suitable employment to the peititoner. The applicant also relied on in the case of Pushpendra Singh Vs. Regional Manager, U.P. S.R.T.C., Aligarh & another - (2000 (1) AWC 442 All.), whereby the High Court directed the respondents to consider feasibility of temporary appointment if family still reeling under financial strains. He relied on the decision of the Apex Court in the case of Balbir Kaur & anr. Steel Authority of India Ltd. & ors. - 2000 (3) ESC 1618 SC. On this ground, the applicant prays for allowing the application.

4. The respondents on the other hand have filed a detailed counter affidavit by which the contention and refuted all the claims made by the applicant. It has been submitted that the application along with connected documents of the applicant for grant of compassionate appointment were sent to Director General of Artillery, General Staff Branch, Army Headquarters vide letter dated 27.8.1998. It has been submitted that such appointments offered on the basis of merit of the case, provided other mandatory qualifications are in order. The applicant's case was considered by the Board of Officers constituted at Director General of Artillery, Army Headquarters, New Delhi during the year 1999-2000 for the purpose

Dhoom

of short listing and final selection for compassionate appointment. However, the name of the applicant did not figure in the list of selected candidate as per criteria laid down by the Government. Hence, the offer of appointment could not be made during the above mentioned years. It has also been submitted that the vacancies for compassionate appointment are very limited and the Government issued clarifications on the subject vide their letter dated 9.3.2001 that the waiting list need be maintained for one year only, so that compassionate appointment can be given as an immediate assistance in the most deserving cases. His application and another connected documents forwarded to Army Headquarters have been returned to this office by Directorate General of Artillery and, accordingly, the applicant was communicate vide order dated 20.9.2000. The respondents have also submitted that the limit of 5% of the direct recruitment vacancies on compassionate appointment has been fixed in pursuance of order of Apex Court in the case of U.K. Nagpal Vs. State of Haryana and others - (JT 1994 (3) SC 525) since the limit of 5% vacancies has been fixed and the Department of Personnel vide its OM No.42012/4/2000-Estt. (D) dated 24.11.2000 has also mentioned the limit of 5% of vacancies in a particular year. It is not possible to agree the request of the applicant. They have also relied on the following decisions of the Hon'ble Supreme Court :-

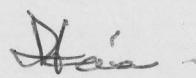
S. Deo

- (i) Himanchal Road Transport Corporation Versus Dinesh Kumar - (JT 1996 (5) SC 319
- (ii) Hindustan Acronautics Ltd. Vs. A. Radhika Thirumalai - JT 1996 (9) SC 97.
- (iii) LIC of India Vs. Asha Ram Chandra Ambedkar and others JT 1994 (2) SC 183) U.P.L.B.E.C. (1) 2003, 444 of 2003 (1) U.P.L.B.E.C. 293.
- (iv) AIR 1989 SC 1976, Sushma... and others - 2005 (1) U.P.L.B.E.C. 60. - National Hydro Electric Power Corporation and other Vs. Nanak Chand and others.

5. During the course of the hearing of the OA, counsel for the applicant as well as counsel for the respondents reiterated the facts and the legal pleas from the OA and the counter affidavit respectively. However, the counsel for the applicant laid stress on the fact that the deletion of name after one year in the impugned order is arbitrary and unjust. Further elaboration provided in the counter affidavit vide para 4 & 5 do not make the impugned order valid and legal. The settled legal position is that when a statutory functionary makes an order based on certain ground, its validity must be judged by the reasons so mentioned in the order and cannot be supplemented by fresh reasons in the shape of affidavits or otherwise, an order in the beginning may, by the time it comes to the Court, on account of challenge get validated by additional ground later brought out. This was so held by the Apex Court in the case of Mohinder Singh Vs. Chief Election Commissioner - AIR 1978 SC 851. Thus, he vehemently argued that impugned order deserves to be set-aside and the OA be allowed.

Dhawal

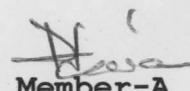
6. The only crucial question which falls for consideration is validity of the impugned order passed by the respondents by which the applicant has been denied the appointment on compassionate ground. It is a settled legal position that the compassionate appointment cannot be claimed as a matter of right but it is provided by executive instructions to enable to family to get over the financial crises which it faces at the time of death of his sole bread winner. It is also equally settled position of law that it cannot be claimed and offered whatever the lapse of time and after the crises over. Keeping in view such legal position, I am of the view that rejection of the request of the applicant is not justified. It may be seen that the applicant has not lost any time in making application for compassionate appointment. This has been done within a period of one year. The respondents have not taken any action for about four years and he gets the rejections letter in the year 2002 which is dated 20.9.2000. The respondents has not denied the allegation that the letter was not handed over to the applicant in the year 2002. The allegation of the applicant that this anti-dated letter might be the result of his filling a Writ Petition in the Allahabad High Court. It is clear that respondents have not come with clean hand and have tried to cancel more than reveal. The impugned order does not give the reasons as to what were the criterion for making appointment to more deserving



cases. It needs further clarification and leaves no one in about that the case of the applicant has been dealt with in a very routine and slip shod manner. As such, the OA is bound to succeed in the favour of the applicant.

7. In view of the facts and circumstances mentioned above and the discussions made, the OA is succeed on merits and is allow. The impugned order is set-aside. The respondents are directed to consider the case of the applicant for appointment on compassionate ground within a period of four months from the date of receipt of this order.

8. The OA is disposed of in terms of the order and direction contained in preceding para. No order as to costs.


Member-A

RKM/