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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO.1155 OF 2002

ALLAHABAD THIS THE 17<sup>th</sup> DAY OF *September* 2008

HON'BLE MR. ASHOK S. KARAMADI, MEMBER-J

Jata Shankar Mishra,  
Son of Late Ganga Prasad Mishra,  
R/o Vilage Shyam Lal Ka Pura (Chack Abhai Ram)  
Karchhana, Allahabad.

. . . . .Applicant

By Advocate : Shri Rakesh Prasad

Versus

1. Commandant Central Ordinance Depot  
Chheoki Naini, Allahabad.
2. Union of India through Defence Secretary,  
Army Headquarter, New Delhi.

. . . . . Respondents


By Advocate : Shri R. K. Srivastava

O R D E R

This application is filed for quashing of the order dated 15.01.2001, and for direction to the respondents to appoint the applicant on compassionate grounds.

2. The brief facts of the case are that the father of the applicant was working in COD Chheoki Naini, Allahabad as class IV employee. After putting 30 years of service in the department he died on 14.06.1997, leaving behind widow and five sons and three daughters except the applicant all are minor.

The applicant submitted an application dated

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22.12.1998 to the respondent no.1 for providing compassionate appointment to the applicant in relaxation to normal rules. The case of the applicant was considered for the first time on 16.02.1999 by the Board of Officers and could not appoint due to limited number of vacancies at the relevant time and directed the applicant to submit a fresh application, in pursuance of the order dated 06.04.1999 the applicant again submitted an application dated 25.01.2000, thereafter the respondents called certain papers by the letter dated 09.08.2000, and accordingly the applicant submitted all the documents required by the respondents along with forms as sought by the respondents. The respondents by the order dated 15.01.2001 rejected the claim of the applicant, and advised to get the name registered with the employment exchange for a suitable job elsewhere, against this impugned order this OA is filed.

3. On notice the respondents appeared and filed the counter affidavit and stated that Ganga Prasad Mishra an employee of Central Ordnance Depot, Chheoki, Allahabad T. No.PM/138 working as Mazdoor died on 14.06.1997. Smt. Chandra Kanti Devi widow of the deceased sponsored her eligible son Shri Jata Shankar Mishra (the present petitioner) for employment under relaxation of normal rules on compassionate grounds. That accordingly the application of the petitioner Jata Shanker Mishra was placed before the Board of Officers held at Central Ordnance Depot, Chheoki





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Allahabad on February, 1999 for the first time along with other eligible candidate for consideration of the relative hardships of the deceased family in the light of the Army Headquarters Policy letter No.93669/Policy/OS-8C9i) dated 8.6.1989. That the Board of Officers held at Central Ordnance Depot, Chheoki Allahabad in February 1999 considered the case of the petitioner Jata Shanker Mishra for the first time along with other eligible candidates against only 2 vacancies but he could not be selected for employment on the basis of the criteria laid down to determine the relative hardships in the face of more deserving and meritorious candidates and limited number of vacancies. Petitioner was informed about his position vide Central Ordnance Depot letter dated 06.04.1999. That the application of the petitioner was again placed before the Board of Officers held on 20.09.1999 at Central Ordnance Depot, Chheoki, Allahabad for the second time along with other eligible candidates. The Board of Officers considered the case of the petitioner denovo along with other eligible candidates against 03 vacancies but again the petitioner could not be selected for employment on the basis of criteria laid down to determine relative hardships in the face of more deserving and meritorious candidates and limited number of vacancies available. The petitioner was intimated about his position vide Central Ordnance Depot, Chheoki letter dated 04.12.1999. Position of the petitioner in the merit list was 7<sup>th</sup> cut of only 42 candidates while the





number of vacancies were three only. That the case of the petitioner was considered for the third time by the Board of Officers held on 05.01.2001 at Central Ordnance Depot, Kanpur along with other eligible candidates against 08 vacancies. This time also the petitioner could not be selected for employment being low in merit in comparison to the selected candidates. That after third consideration the case of the petitioner stood rejected finally in terms of Army Headquarters letter dated 27.07.2000. Petitioner was intimated about his position vide Central Ordnance Depot letter dated 15.06.2001 and he was advised to try suitable job elsewhere. "10.that it is to point out that position of the petitioner is three consecutive Board of Officers held was as Under:-

No of Ch an ce	Board held On/at	No. of Vacan cy	Tota l Cand idat es	Marks selected Candidates	Marks of Petit ioner	Position of the Petitioner
I	Feb/1999 COD Chheoki	02	42	79 (IInd selected Candidate)	60	07/42
II	20.09.1999 COD/Chheok i	03	48	70 (IIIrd selected Candidate)	60	07/48
II I	05.01.2001 COD Kanpur	08	139	75 VIIIth selected candidate	60	25/139

As per Army HQs policy letter dated 27.07.2000 all harness cases of Central Ordnance Depots within the jurisdiction of Central Command are considered centrally by the Board of Officers. Under this rules the case of the petitioner was considered third time





by the Board of officers held a Central Ordnance Depot, Kanpur."

Based on the above statements sought for the dismissal of this OA.

4. The applicant has filed the rejoinder reiterating the contentions stated in the OA, and further stated in support of the decision taken by the respondent no. reasons are given in the communication made to the applicant. Since the applicant's family is suffering from great hardship and therefore the respondent should have given the appointment on compassionate grounds to the applicant.

5. I have heard the learned counsel for the applicant and the respondents and perused the impugned order passed by the respondents. In the impugned order it is stated that the case of the applicant was considered for the third time by the respondents and therefore as the applicant has not fulfilled criteria and the relative hardship, and having regard to the limited number of vacancies more deserving cases than the applicant was considered and the case of the applicant was rejected. The learned counsel for the applicant submitted that the respondents without considering the hardship of the applicant arbitrarily, without showing any reasons in a mechanical manner, without considering the bonafide claim of the applicant rejected. This contention of the learned counsel for the applicant cannot be accepted having

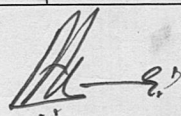
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regard to the fact that the respondents on the receipt of the application from the applicant place before the Board of Officers held at Central Ordnance Depot, Chheoki, Allahabad in February 1999 for the first time along with other eligible candidates for two vacancies, on considering the hardship and the criteria laid down to determine the applicant could not be selected, thereafter second time the case of the applicant was placed before the Board on 20.09.1999 considered the case of the applicant along with other eligible candidates for three vacancies applicant could not be selected, and further the Board of Officers on 05.01.2001 for the third time considered the case of the applicant along with other eligible candidates for eight vacancies, in comparison with other persons similarly placed that of the applicant seeking for compassionate appointment, the applicant could not be selected for the marks obtained and in view of the position of the applicant and therefore finally rejected his claim. In support of this the statements made by the respondent in the counter affidavit in para 10 is reproduced as under:-

"10.that it is to point out that position of the petitioner is three consecutive Board of Officers held was as Under:-

No of Ch an ce	Board held On/at	No. of Vacan cy	Total Candidate s	Marks of selected Candidates	Marks of Petition er	Position the Petitione
I	Feb/1999 COD Chheoki	02	42	79 (IInd selected Candidate)	60	07/42
II	20.09.1999	03	48	70	60	07/48





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	COD/Chheok i			(IIIrd selected Candidate		
II I	05.01.2001 COD Kanpur	08	139	75 VIIIth selected candidate	60	25/139

As per Army HQs policy letter dated 27.07.2000 all harness cases of Central Ordnance Depots within the jurisdiction of Central Command are considered centrally by the Board of Officers. Under this rules the case of the petitioner was considered third time by the Board of officers held a Central Ordnance Depot, Kanpur."

In view of the above it is clear that the respondents have considered the case of the applicant more than once and in comparison with the other candidates who are similarly placed have come to the conclusion that the applicant cannot be selected, and accordingly rejected. Having regard to the same the contention of the applicant that the case of the applicant was not considered by the respondent in a just and proper manner and the same is not based on reasons cannot be accepted, on the other hand the respondents have made out a case that the case of the applicant was considered in a just and proper manner on taking into consideration of the comparative consideration of the candidates seeking for compassionate appointment, and have arrived their decision based on the marks of the candidates and the position of the candidates. The position of the applicant from the above statement is 07/42, 07/48 and 25/139 in the Board meeting held for three times, considered for compassionate appointment, and therefore the contention of the applicant cannot be accepted and the impugned order does not call for any interference. The learned counsel for the





applicant has relied upon the decision of the Hon'ble Supreme Court reported in (2000) 3 UPLBEC 2055 in the case of Balbir Kaur and another etc. Vs. Steel Authority of India Ltd. and others.

"(C) Service-Compassionate employment-Refusal on the ground of benefits provided under family Benefit-Scheme-Held-Refusal-Illegal-Order refusing compassionate employment-quashed.

The fact remains that having due regard to the Constitutional philosophy to decry a compassionate employment opportunity would neither be fair nor reasonable. The concept of social justice is the yardstick to the justice administration system or the legal justice and as Rescopound pointed out that the greatest virtue of law is in its adaptability and flexibility and thus it would be otherwise an obligation for the law Courts also to apply the law depending upon the situation since the law is made for the society and whichever is beneficial for the society, the endeavour of the law court would be to administer justice having due regard in the direction".

I have perused the decision, as the same is not applicable to the facts and circumstance of this case.

6. In view of the foregoing reasons the OA is dismissed. No costs.



Member-J

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