

(Reserved)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

ALLAHABAD this the 16th day of January 2017

Present:

HON'BLE MR. O.P.S. MALIK, MEMBER- A

ORIGINAL APPLICATION NO. 330/01121/2003

Mohan Sharma, aged about 20 years, Son of Late Sri Swaraj Kumar Sharma, Resident of 406, Shafipur I Harjinder Nagar, District Kanpur Nagar.

.....Applicant.

VERSUS

1. Union of India through Secretary, Ministry of Defence, New Delhi.
2. Director of Defence Materials and Stores, Research and Development Establishment, Kanpur Nagar.
3. Chief Store Officer, Defence Materials and Stores Research and Development Establishment, Kanpur Nagar.

.....Respondents

Present for the Applicant : Shri Vikas Budhwar
Present for the Respondents : Shri P. Krishna

ORDER

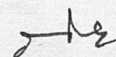
By way of instant Original Application filed under section 19 of Administrative Tribunals Act 1985 the applicant seeks following main reliefs: -

- "i). ...to quash the order dated 30.09.2002 passed by the respondent no. 2 (Annexure No. 8 to O.A).
- ii). ...to direct the respondents to appoint the applicant on the post of TOA in D.M.R.D.E i.e. on the post on which

the father of the applicant namely Late Sri Swaraj Kumar Sharma was posted under the provisions of Dying in Harness Rules on compassionate ground....

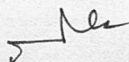
iii). ...to direct the respondents to consider again the case of the applicant under the provision of Dying in Harness Rules on compassionate grounds."

2. Briefly stated, the father of the applicant, who was working as TOA in Department of Defence Materials and Stores Research and Development Establishment , died on 23.05.1998 while he was in service leaving behind his widow, three daughters out of which two are married and one son. The mother of the applicant submitted an application on 27.07.2000 seeking compassionate appointment in favour of her son (Annexure-2). Thereafter, the respondent no. 3 sent a letter dated 31.07.2000 asking his mother to submit the application in three copies on prescribed proforma (Annexure-3). The mother of the applicant complied the requirement of respondent no. 3 and every information, as required for consideration of a case on compassionate ground, was provided on prescribed proforma on 22.08.2000 (Annexure4). The mother of the applicant also filed a representation in July 2001 (Annexure-5). Having received no response, the applicant filed a Writ Petition No. 23252/2002 before Hon'ble High Court, which was disposed of vide order dated 30.05.2003 with direction to the respondents to consider and decide the representation of the applicant filed in July 2001 (Annexure-7). Thereafter, his claim was considered and the



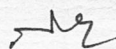
decision of the competent authority was communicated to the applicant vide order dated 30.09.2002 whereby rejecting his claim (Annexure A-8). Aggrieved the applicant has filed the instant original application on the ground that the action of the respondents is arbitrary and bad in law as they have passed the impugned orders without application of mind. It is contended that at the time of death of his father, the applicant was about 15 years old but at the time of representation in July 2001, he completed 18 years and was fully eligible for consideration. It is the contention of the applicant that the compassionate appointment is an exception to general rule intending for immediate relief to the family of the deceased employee. It is also contended that the family benefit cannot be in any way equated with compassionate appointment.

3. Upon notice the respondents filed counter affidavit and contested the claim of the applicant. Learned counsel for the respondents invited my attention to para 8(ii) of relief clause and submitted that the applicant is seeking direction to the respondents to appoint him on the post of TOA on compassionate grounds whereas, as per Hon'ble Supreme Court's decision rendered in the case of **LIC Vs. Mrs. Asha Ram Chandra Ambedkar & Ors. - JT 1994(2) SC 183**, the High Court and Administrative Tribunals cannot give direction for appointment of a person on compassionate grounds but can merely direct for consideration on the claim for such an application. Learned counsel for the respondents further contended that while considering the case of the applicant, the



competent authority has taken into consideration various aspects such as size of family, amount of terminal benefits, liabilities, movable/immovable properties left by the deceased etc. and did not find the applicant fit for offering appointment on compassionate grounds. Learned counsel for the respondents further relied on judgment of Apex Court in **Umesh Kumar Nagpal Vs. State of Haryana and others - JT 1994(3) SC 525** and submitted that appointment on compassionate grounds can be considered only if the family is in indigent circumstances and not as a matter of right, which can be executed at any time in future. It is averred that while considering the claim of the applicant, based on the limited liabilities in comparison to possessed assets and financial condition of the family and age of children, the competent authority observed that the family can self sustain and therefore, keeping in view the above surroundings the competent authority has passed the orders impugned in the instant O.A. Learned counsel for the respondents drew attention to the D.O.P & T O.M dated 09.10.1998 and submitted that at the time of considering cases of compassionate appointment a balanced and objective assessment of the financial condition, which can justify the ground of compassionate appointment, has been followed strictly and hence the respondents claimed that the impugned orders do not call for any interference.

4. The applicant has filed Rejoinder Affidavit in which he has merely denied the contentions of the respondents in the Counter Affidavit and nothing new has been added.



5. Heard Shri Vikas Budhwar, learned counsel for the applicant and Shri P. Krishna, learned counsel for respondents and perused the record.

5. Having heard learned counsel for the parties and in view of the decision rendered by Hon'ble Supreme Court in the case of **LIC Vs. Mrs. Asha Ram Chandra Ambedkar (Supra)**, I am firmly of the opinion that in view of the decision rendered by Hon'ble Supreme Court in the case of LIC Vs. Asha Ram Chandra Ambedkar (Supra), this Tribunal cannot issue direction to the respondents to appoint the applicant under dying in harness rules, as claimed by the applicant in para 8(ii) of O.A and this prayer is rejected.

6. So far as the prayer of the applicant for re-consideration of compassionate appointment is concerned, it is always open to the respondents to consider the case of eligible dependent as there is no cap on the number of times that a case can be considered. However, it is seen that the matter was considered by the respondents and a detailed order was passed by the Director of Defence Materials and Stores, Research and Development Establishment, Kanpur Nagar (Respondent no. 2) on 30.09.2002. Various parameters were analyzed in this order by the competent authority who came to the conclusion that the request for compassionate appointment has been re-examined in terms of existing Government orders on the subject and is not found to be a fit case for granting compassionate appointment. Learned counsel




for the applicant has brought to my notice the latest instructions issued by the DOPT regarding compassionate appointment to make it clear that the case of a candidate can be considered any number of times.

7. Having regard to the facts and circumstances of the case and rule position, I am of the considered opinion that it will be just and proper that the case of the applicant is considered in the next Screening Committee meeting.

8. Accordingly, the respondents are directed to reconsider the case of the applicant for compassionate appointment in the next Screening Committee meeting in view of the latest instructions issued by the Government of India.

9. With the above direction, the O.A is disposed of. No costs.


Member-A

Anand/