

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD

Original Application No. 143 of 2003

Dated: This the 28<sup>th</sup> day of April, 2004

HON'BLE MR. A.K. BHATNAGAR, MEMBER(J)

1. Smt. Asha Devi, adult, widow of late Raju  
Residence of House No. 85/290, Luxmi Purwa,  
Kanpur Nagar.
2. Sandeep Kumar son of late Raju, Residence of  
House No. 85/290, Luxmi Purwa, Kanpur Nagar.

.....Applicant

By Advocate : Shri Krishna Lal

Versus

1. Union of India, through the Secretary,  
Ministry of Defence, New Delhi.
2. The Additional Director General Ordnance Factories  
O.E.F. Group Hqrs. G.T.Road, Kanpur Nagar.
3. The General Manager, Ordnance Equipment Factory,  
Post Box No. 76, Kanpur Nagar.

.....Respondents.

By Advocate :- Shri P.Krishna

O R D E R

By Hon'ble Mr. A.K.Bhatnagar, JM

By this O.A. filed under section 19 of Administrative  
Tribunals Act 1985 the applicant has prayed for a direction  
to respondent no.3 to consider the case of the applicant no.2  
and provide compassionate appointment on the suitable post.

2. The facts of the case, in brief, are that the husband of the applicant no.1, Late Raju was working as Sweeper(N.I.Group'D'employee) in the respondents' establishment. He died in harness on 29.02.2000 while working with the respondent no.3 leaving behind mother, widow(applicant no.1), two sons namely Sandeep Kumar (applicant no.2) and Ashwani and one daughter-Km.Reena. After the death of the bread earner of the family, the family has reached at the stage of starvation. There is no landed property existing in the name of the deceased employee. It is also stated that Late Raju had been suffering from blood cancer during the period of ~~1996~~ 1996-97 and the applicant had to spent huge amount on his illness which ultimately resulted into death of the husband of applicant no.1. The applicant no.1 sent a representation dated 02.06.2000 to respondent no.3 for giving compassionate appointment to her son i.e. applicant no.2 namely Sandeep, which was rejected by the respondent no.3 vide order dated 21.2.2002(annexure A-6). The applicant no.1 again sent an application dated 14.03.2003 to respondent no.3 for reviewing the case of applicant's son i.e. applicant no.2 for appointment on compassionate ground(annexure A-VII) followed by two more reminders dated 02.07.2002 and 05.08.2002. She also preferred an appeal dated 03.12.2002 addressed to Member/Additional Director General, Ordnance Factory, O.E.F., Group Headquarters, Kanpur against the impugned order dated 21.02.2002, which is still pending before appellate authority as undecided. Hence, the applicant filed this O.A.

3. The learned counsel for the applicant submitted that there is no earning member in the family of the deceased after his death the family has almost reached at the stage of

starvation and he has an immediate need of assistance. It is further submitted by the learned counsel for the applicant that the respondent no.3 has committed partiality in the case of the applicant as applicant no.2 got 72 points in the list of eligibility for appointment on compassionate grounds and one Smt. Pratima Singh, who got 71 points, was given appointment on compassionate grounds while the claim of the applicant is that why he has been ignored inspite of securing 72 points. The applicant stressed these facts in para 5 of the Rejoinder Affidavit.

4. The learned counsel for the respondents contested the claim of the applicant by filing Counter Affidavit followed by the Rejoinder, learned counsel for the respondents submitted that compassionate appointment is not a matter of right but a measure to provide immediate help to the family of the deceased to tide over their difficulties and the same is to be considered in accordance with rules and instructions on the issue and subject to availability of vacancies. and as per revised policy of the Government, which has been legally upheld an application for compassionate appointment would remain alive for a period of one year and after that the name of aspirant would be deleted. There is a ceiling of 5% of vacancies, which is based on the policy decision of the department. Having regard to the ceiling of 5% of direct recruitment quota posts for making appointments on compassionate basis, it is not possible to accommodate each and every person by offering an appointment. Compassionate appointment is required to be determined by a careful assessment of financial status and the needs of the families of the deceased employees. It is natural that in such a situation there will always be some, who are left out. In the present case the applicant no.1 has been paid an amount

of Rs.99,919/- as terminal benefits and a family pension as Rs.2608/-. It is further contended that the application for compassionate appointment of the applicant no.2 was duly considered by respondent no.3 on three occasions on 10.7.2001, 10.10.2001 and 10.01.2002 in the light of guidelines/instructions issued by the Ministry of Defence. vide letter dated 09.3.2001 (Annexure-CA-I). The case of the applicant could not be accepted as there were more deserving candidates and she was accordingly informed vide impugned order letter dated 21.2.2002. as averred in para 10 of the C.A. Copies of Minutes of Screening-cum-Selection Committee for considering employment on compassionate ground in respect of the applicant no.2 has been filed as Annexure 2,3 and 4 of the C.A. Learned counsel for the respondents invited my attention on para 17 of C.A. and submitted that one whose circumstances are worse then that of the applicant should be given priority and preference over others whose position is better. The case of the applicant was duly considered three times by the Board of Officers in the light of guidelines/instructions issued by Ministry of Defence but his case was not found more deserving than that of others who were waiting for their turn to come and whose cases were more indigent than the applicant no.2. Therefore, it was rejected by the Competent Authority vide letter dated 21.2.2002. Learned counsel for the respondents placed reliance on the following judgments:

1. State of Haryana and Another Vs. Ankur Gupta reported in 2003 Supreme Court Cases (L&S) 1165,
2. Union of India Vs. Joginder Sharma reported in (2002) 8 Supreme Court Cases 65

In the case of UOI Vs. Joginder Sharma (Supra) it has been held as under:

" question of relaxing the ceiling limit of 5% being in the discretion of the authority concerned which is purely administrative and not

Statutory in nature, tribunal or court cannot compel the authority to accord relaxation."

It is finally submitted by the counsel for the respondents that compassionate appointment cannot be claimed as a matter of right.

5. I have heard counsel for both the parties and perused the pleadings as well. Admittedly the husband of the applicant No.1 died on 29.2.2000 and he worked for more than 18 years in the department. It is also not disputed that the deceased was suffering from cancer before his death. I have also gone through the meeting of Board of Officers who considered the case of the applicant for compassionate appointment. The case of one Smt. Pratima Singh wife of Late Surender Singh, whose name is shown on serial No.4, scored 71 points in the meeting held on 22.7.2001 at 11.00 pm and was recommended accordingly for compassionate appointment. The name of applicant no.2 is at serial No.3 in the list of meeting on 10.10.2001 in which the applicant no.2 scored 67 points, which was revised as 72 and the case of the applicant was not recommended for want of vacancy. It is not understood as to how and why the points were revised from 67 to 72 of the applicant no.2. If the applicant no.2 scored 72 points then why the case of the applicant was not considered. On 27.7.2001 for compassionate appointment while the case of Smt. Pratima Singh wife of late Surender Singh, who scored 71 points, was considered.

6. In view of the above observations, the O.A. is finally disposed of with a direction to respondent No.3 to reconsider the matter of compassionate appointment of the applicant No.2 and decide the same within a period of two months from the date of receipt of a copy of the order.

7. There will be no order as to costs.