

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO. 1532 OF 2003  
ALLAHABAD THIS THE 14TH DAY OF JULY, 2004

HON'BLE MRS. MEERA CHHIBBER, MEMBER-J

Smt. Kushum Devi,  
W/o Late Gama Ram,  
resident of 311/241 Chak Niratul,  
G.T.B. Nagar, Allahabad. ....Applicant  
( By Advocate Sri S. Lal )

Versus

1. Union of India,  
through its Secretary, Ministry of Defence,  
New Delhi-110011.
2. Dy. Director General,  
Military Farms,  
Arms Headquarters, DHQ PO  
New Delhi-110011.
3. The Director, Military Farms,  
Headquarters Central Command,  
Lucknow (U.P.)
4. Officer Incharge, Military Dairy Farm,  
Allahabad.
5. Dy. Quartermaster General,  
Quartermaster General's Branch,  
Army Headquarters, New Delhi-110011.  
.....Respondents  
( By Advocate Km. S. Srivastava )





ORDER

By this O.A. applicant has sought the following reliefs:-

"(a) to issue a writ, order or direction in the nature of certiorari to quash the order dated 25.9.2003 (Annexure A1 to compilation no.1) passed by respondent no.5.

(b) to issue a writ, order or direction in the nature of mandamus commanding the respondents to appoint/consider the case of the applicant for the post of Group 'D' as a civilian employee anywhere in India including in Military Dairy Farm, Allahabad.

C. to pass a suitable writ, order or direction as the Tribunal may deem fit and proper in the facts and circumstances of the case.

D. to award the cost of the application in favour of the applicant."

2. It is submitted by the applicant that her husband died on 01.04.2001 while he was in service leaving behind a large family consisting of his widow aged 35 years, Rakesh (Son) aged 16 years, Mukesh (son) aged 14 years, Km. Guria (Daughter) aged 12 years, Rakesh (Son) aged 10 years, Km. Shushma (Daughter) aged 9 years. She was finding it difficult to run the family, therefore, she submitted an application for compassionate appointment on 16.07.2001. She was not being given any reply, in spite of repeated queries, therefore, she filed O.A. No.526/03 which was decided on 14.05.2003 (Page 34) by directing respondent no.2 i.e. Dy. Director General, Military Farms, Army Headquarters to decide the case of the compassionate appointment of the applicant within a period of six months by reasoned and speaking order. Pursuant to the said direction respondents passed an order on 25.9.2003 (page 11) whereby applicant was informed that the PE of all Military Farms has been reduced to make the organization more cost effective. Consequently, the number of posts available for





appointments on compassionate grounds have also come down considerably. As such, it is not feasible to provide compassionate appointment immediately to all the cases. They had, therefore, stated in para 6 that at present there is no vacancy against which her compassionate appointment can be considered. Hence no relief by way of compassionate appointment can be provided. Applicant has challenged this letter and has relied on Govt. of India, office Memorandum dated 9.10.1998 para 7 (e) and (f) which for ready reference reads as under:-

"(e) Employment under the scheme is not confined to the Ministry/Department/Office in which deceased/medically retired Government servant had been working. Such an appointment can be given anywhere under the Government of India depending upon availability of a suitable vacancy meant for the purpose of compassionate appointment.

(f) If sufficient vacancies are not available in any particular office to accommodate the persons in the waiting list for compassionate appointment, it is open to the Administrative Ministry/Department/Office to take up the matter with other Ministries/Departments/Offices of the Government of India to provide at an early date appointment on compassionate grounds to those in the waiting list."

Applicant has also relied on the latest instructions issued on 05.05.2003 wherein it has been decided by the department of Personnel and Training that if compassionate appointment is found to be genuine and deserving case but it is not possible in the first year due to non-availability of regular vacancy, the prescribed committee may review such cases to evaluate the financial condition of the family to arrive at a decision as to whether a particular case warrants extension by one more year, for consideration of compassionate appointment by the Committee, subject to availability of a clear vacancy within the prescribed 5% quota. In case it is found, to be a deserving case the name of such persons can be continued for consideration for one more year. The maximum period is stated to be three

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23 years for consideration. After three years also if compassionate appointment is not possible, the case has to be finally closed and will not be considered again.

3. Learned counsel for the applicant submitted that from the speaking order it is clear that the case of applicant has not even been considered whereas under the O.Ms as referred to above, committee had at least to decide <sup>the same</sup> after applying their mind to the various aspects as to whether it is a fit or genuine case for grant of compassionate appointment or not and whether it should be re-considered in the second <sup>year</sup> ~~order~~. He has thus, prayed that the O.A. may be allowed in favour of applicant.

4. Learned counsel for the respondents, on the other hand, ~~have~~ submitted that applicant's husband was appointed as Farm Head on 01.02.1996 and he expired on 01.04.2001. The family has been paid DCRG amounting to Rs.48,732/., CGEGIS amounting to Rs.15,929/-, G.P. Fund amounting to Rs.11,748/-, Leave Encashment amounting to Rs.6,904/-, and Family Pension @ Rs.1,275/-. They have relied on OM dated 03-12-1999 wherein it has <sup>been</sup> stated that compassionate appointment can be given in case the vacancies are available for the purpose i.e. to the extent of 5% vacancy falling under quota of direct recruitment but since there was no vacancy, at present her case has rightly <sup>been</sup> rejected. In ~~nut~~ shell that <sup>have submitted</sup> since there is no vacancy available, no relief as prayed by the applicant can be given by the court. They have thus, prayed that the O.A. may be dismissed.

5. I have heard both the counsel and perused the pleadings as well. It is correct that no court can give





direction to the respondents to give appointment to any person unless there is vacancy available and also no direction to <sup>can be given</sup> ~~the~~ relaxation <sup>Quota</sup> of 5% ~~not~~ fixed for the purpose of compassionate appointment from amongst the direct recruitment vacancy. So long the vacancy are not available, naturally no such direction can be given as prayed by the applicant but perusal of the impugned order shows that the case has not even been considered since there is no vacancy available at present, therefore, respondents have worded it very consciously by stating as under:-

"6. At present there is no vacancy against which your compassionate appointment can be considered. Hence no immediate relief by way of compassionate appointment can be provided to you."

However, perusal of the DMs relied upon by the counsel for the applicant shows that the DM dated 03.12.1999 which has been relied upon by the respondents was also taken into consideration by the Department of Personnel and Training and it was re-considered as to what should be the time limit for making compassionate appointment. It was stated that often the limitation of one year for grant of compassionate appointment ~~was~~ resulted in depriving genuine cases from getting the benefit, it was thus, keeping in view, this aspect that Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training ~~to~~ decided that if compassionate appointment to genuine and deserving cases is not possible in the first year due to non-availability of regular vacancy, the committee should still review such cases to evaluate the financial condition of the family to arrive at a decision as to whether the case deserves extension by one more year or not. The consideration would be subject to availability of a clear vacancy and the name of the person

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can be considered upto three years i.e. the maximum time a person's name can be kept under consideration. The effect of this OM would be that even if the vacancy was not available, committee was still under an obligation to evaluate the financial condition of the family to see whether it was a deserving and genuine case for grant of compassionate appointment or not. If the committee finds the case to be genuine and deserving case after evaluation, it should certify the same for consideration on the second and third year respectively, of course subject to availability of vacancy.

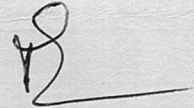
6. In the instant case, it is seen, that the employee had died at young age leaving behind his widow who was only of 35 years of age and had liability of five young minor children. At such an age, it does seem to be a hard case but I do not wish, to make any observations on this aspect because the case would have to be considered by the committee on the basis of parameters laid down in the policy decision taken by the respondents themselves for arriving at the conclusion, whether it is a fit case for consideration in the second year or not. Since from the impugned order, it is not clear whether applicant's financial position qua the liabilities has been assessed by the committee or not, therefore, I am of the opinion, that keeping in view, the latest instructions issued by the department of Personnel and Training as laid down on 05.08.2003, (Page 32) case of the applicant needs to be re-considered by the committee constituted by the department concerned, to see whether it is a deserving and fit case for consideration in the second year or not. After evaluation, if committee is of the opinion, that this





case is deserving for grant of compassionate appointment but could not be considered for want of vacancy in the first year, it should be certified that the case should be considered in the next and third year. In case, committee takes a negative view against the applicant the same shall be informed to the applicant by a reasoned and speaking order in either case within a period of three months from the date of receipt of a copy of this order.

7. With the above direction, this O.A. is disposed off with no order as to costs.



Member-J

/Neelam/