

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH ALLAHABAD.

Original Application No.303 of 2003.

Allahabad this the 23rd day of May 2004.

Hon'ble Mrs. Meera Chhibber, Member-J.

1. Naveen Kumar
son of late Kalika Prasad.
2. Smt. Kalawati
wife of late Shri Kalika Prasad.

Both the applicants are residents of Quarter No.11/3,
Allenganj, Settlement Kanpur Nagar.

,.....Applicant.

(By Advocates : Sri S.C. Tiwari/
Sri M.B. Lal)

Versus.

1. The Union of India
through the Secretary
Ministry of Defence (Production)
Government of India,
New Delhi.
2. The Director General of Ordnance Factories/
Chairman Ordnance Factories Board, 10A,
Auckland, Calcutta.
3. The Additional Director General of Ordnance
Factories (Ordnance Equipment Group)
Sarvedaya Nagar, Kanpur Nagar.
4. The General Manager,
Ordnance Equipment Factory,
Kanpur Nagar.
5. The Workshop Manager,
Karmik Ordnance Equipment Factory,
Kanpur Nagar.
6. The Senior Labour Officer,
Ordnance Equipment Factory,
Kanpur Nagar.

,.....Respondents.

(By Advocate : Sri R.K. Tiwari)

O_R_D_E_R_

This O.A has been filed by son and wife of late Shri
Kalika Prasad, who died on 09.02.1997 while in service.



Since he was the sole bread earner and had left behind a widow and two sons, they applied for compassionate appointment but after calling the applicant for interview etc. ultimately his request was turned down vide letter dated 04.11.1997 on the ground that her request would be considered after Shri Naveen Chandra attaining majority (Annexure 6). She thereafter gave application on 12.12.1999 and 21.09.2001 but neither they were given any reply on given appointment ultimately they were informed vide letter dated 07.09.2002 that due to limited posts and not fulfilling the prescribed standard by Naveen Chandra, it would not be possible to give appointment to Naveen Chandra (Annexure 1).

2. It is this letter which has been challenged by applicants, they have submitted that respondents have advertised several posts and have appointed several persons on compassionate ground who could please them as they desired. Even on 16.02.2002 they had advertised applications for fresh appointment in Hindi Daily Jagran (Annexure 11), therefore, the reasoning given by them while rejecting their request of ^{now} availability of vacancies is absolutely wrong. They have further submitted that applicant belongs to O.B.C, therefore, he is entitled to all the benefits which are reserved for O.B.C candidates. They have next contended that which standards applicant has not been able to fulfil are not even mentioned, ⁱⁿ ~~therefore~~ the order of rejection ^{therefore} has to be set aside. ^{on the contrary} he has ^{further} submitted that since he is unemployed and eligible he is entitled in law to be given compassionate appointment. He has thus prayed that:-

- "i) respondents may kindly be directed to provide a job to the applicant No.1 on compassionate grounds as his father late Kalika Prasad who was working as Chargeman grade I in Boot Plant in Ordinance Equipment Factory Kanpur, Phool Bagh, had died on 09.02.1997 during his service and before his retirement.
- ii) The Tribunal be pleased to quash the order



dated 07.09.2002 and all erroneous reasons of respondents refusing to provide a job to the applicant No.1 on the compassionate grounds.

- iii) Any suitable order or direction which this Court may deem fit and proper in the circumstances of the case".

2. Respondents have opposed this O.A by stating that applicant's request for compassionate appointment was rejected by Competent Authority on 03.08.2000 itself which fact has been concealed by the applicant, therefore, applicant has not come to the Court with clean hands. Since cause of action arose in 2000 while O.A has been filed ⁱⁿ March 2003, therefore, O.A. is barred by limitation and is liable to be dismissed on these grounds alone. Applicant has not even filed application for condonation of delay and as per judgment of Hon'ble Supreme Court given in the case of Ramesh Chand Sharma Vs. Udhamsingh reported in 2000 S.C.C (L&S) 53 the O.A. has to be dismissed out-right.

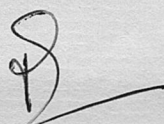
3. On merits they have submitted that as per revised policy of the Government which has been legally upheld, an application for compassionate appointment would remain alive for a period of one year and after that, the name of aspirant would be deleted. They have further submitted that while considering the application for employment on compassionate ground, according to Govt. Rules, it is necessary to assess the assets, liabilities, terminal benefits received by the family as per scientific scale laid down and to measure the indigent circumstances of each case and offer employment to most deserving cases within only 5% of vacancies during the year. They have further submitted that from provisions made in the relevant guidelines issued by the Govt. of India, it is clear that the compassionate appointment cannot be claimed as a matter of right. Moreover, 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



an appointment. The competitive merit of the various applicant for compassionate appointment is required to be determined by a careful assessment of the 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. They have further stated that the mother of petitioner No.1 through her representation dated 18.02.1997 (Annexure CA-1) requested for compassionate appointment for herself in place of her husband which was duly considered by the Competent Authority and accordingly she was called for interview to be held on 01.07.1997 vide this factory letter dated 20.06.1997 but she asked for compassionate appointment for her son (Petitioner No.1) only and not for herself who was minor at that time (aged about 15 1/2 years) and requested through her another representation dated 28.07.1997 to offer employment on compassionate ground to her son (Petitioner No.1) after attaining ^{majority} ~~his majority~~. Request ^{of} ~~for~~ the petitioner No.1's mother was duly considered by the Competent Authority and accordingly she was intimated to apply for compassionate appointment of her son after attaining his ~~majority~~ ^{majority}. After attaining ~~majority~~ ^{majority by} of the petitioner No.1, mother of the petitioner No.1 vide her representation dated 12.12.1999 requested for his compassionate appointment. The case for compassionate appointment in respect of petitioner No.1 was duly considered by the Competent Authority in the light of laid down guidelines but his case was not found suitable/deserving for offering employment assistance on compassionate ground. Therefore, it was rejected by the competent authority vide order dated 03.08.2000 (Annexure CA-2). They have further explained that request for compassionate appointment in respect of petitioner No.1 was also considered by the competent authority in the light of guidelines/instructions issued by M.O.D. but his case was not found more deserving than that of others who were waiting for their turn to come and whose cases were

B

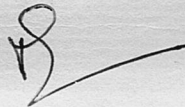
more indigent than the petitioner No.1. Therefore, it was rejected by the competent authority vide order dated 03.08.2000. There is no illegality in it. Besides, it was held by the Hon'ble C.A.T. Chandigarh Bench vide its judgement/ Order dated 25.09.2001 in O.A. No.903/HR/2001- Gurubachan Singh Vs. U.O.I. & Others, "compassionate appointment cannot be claimed after considerable lapse of time and a vacancy cannot be kept reserved for a ward of the deceased till such time his son or daughter attains majority. Besides, the above, compassionate appointments can be offered within a quota of 5% reserved for such appointments and not beyond that percentage. Compassionate appointment cannot be claimed as a right and can be granted only as per the policy in that behalf. The very purpose of offering compassionate appointment is to mitigate the hardship caused to the family of the deceased employee on ground of the sudden death of bread winner. The compassionate appointment is indeed neither a statutory right nor fundamental right. Under the policy, ~~a~~ compassionate appointment cannot be offered to member of the deceased family after long delay." They have further explained that direct recruitment and appointment on compassionate ground are entirely different and cannot be linked since appointment made through advertisement were against the direct recruitment quota against advertised vacancies whereas appointment on compassionate ground were/are offered against 5% quota fixed for appointment on compassionate ground as welfare measure. So far as advertisement published in Hindi Daily Jagran dated 16.02.2002 is concerned, it was for inviting applications for Trade Apprenticeship Training where no employment is assured and that has no bearing with appointment on compassionate ground. The petitioners are deliberately trying to confuse the Tribunal with misleading information. They have thus prayed that O.A. may be dismissed.



4. I have heard counsel for the respondents and perused the pleadings. As none was present for applicant, I am deciding the case on merits by attracting Rule 15 (1) of C.A.T. Procedure Rules, 1987.

5. The law on the subject of compassionate appointment is well settled by now. Hon'ble Supreme Court has repeatedly held that compassionate appointment cannot be sought as a matter of right or as a line of succession but can be granted only in exceptional circumstances where after the death of deceased employee, family is in total financial distress. It is also settled by now that compassionate appointment can be given to only such of the cases who fall within 5% vacancies meant for compassionate appointment. It is also settled by now that courts cannot give directions to the respondents to give appointment to any person but at best can direct the respondents to reconsider the case in case court is satisfied that either applicant's case has not been considered properly or respondents have acted in an arbitrary manner.

6. In the instant case, it is seen that the deceased employee had died on 09.02.1997 and after his death initially the widow applied for compassionate appointment in her own favour (Annexure CA-1) but later on she changed her mind and requested the authorities to consider her son who was still a minor. Perusal of her application shows she was in good health and was literate also, therefore, the very request to consider her son who was still a minor itself shows that family was quite comfortable. Had there been financial distress widow of deceased employee could not have waited for the son to attain majority. After all the object of compassionate appointment is to tide over the sudden crisis which comes up due to the sudden death of sole bread earner and family is in such financial crunch with large liabilities that unless they are given immediate



assistance, they would not be able to survive, that compassionate appointment has to be given. This aspect seems to be totally missing in the present case because the widow was though being considered, she requested ^{her self} to grant compassionate appointment to her son who was still a minor so naturally ^{he is} could not have been given the appointment at that time. Accordingly respondents had informed the applicant vide their letter dated 04.11.1997 that it is not possible to give compassionate appointment to Naveen Chandra as he is still a minor. Even otherwise as per applicants own averment the son also attained majority in around 1999 as is evident from Annexure No.7 and this request was also rejected vide letter dated 08.03.2000. Even at that time applicants did not approach the Court. In rejoinder applicant has stated that they did not receive this letter however since finally this case was rejected on 09.09.2002 the O.A. is filed within limitation period. Here it is not the question of limitation but that of delay. Even if it is assumed for the sake of argument that applicants had not received the letter dated 08.03.2000 still his cause of action would have matured in the year 2000 as admittedly applicant had attained majority in 1999 and if no reply was given to them they should have approached within one year from that date. If they kept on waiting for a reply being given by the respondents that again leads to the same conclusion that family was quite comfortable as they could survive for all these years without any assistance. Delay in approaching the courts in such matters is fatal because Hon'ble Supreme Court has held if a family is able to survive for number of years that itself proves there is no necessity of compassionate appointment.

7. In the O.A., applicant has submitted that he is entitled to the benefits available to S.C. candidate but in compassionate appointment there is no provision which gives

[Signature]

any extra weightage to S.C. ~~for~~ candidate. The only consideration is financial distress of the family. He has next contended that number of persons have been given compassionate appointment but neither he has given any names nor he has stated that those persons were in better condition than the applicant, therefore, nothing turns on this. The averment is absolutely vague and made in a casual manner. He has next contended that respondents have advertised number of posts but that does not mean applicant has to be considered against those posts. Now it is made clear by Government of India that compassionate appointment can be given limited to 5% vacancies only out of direct recruitment posts earmarked in a year. No direction can be given to give compassionate appointment beyond the limited number of vacancies. In these limited number of vacancies naturally such of the cases would be recommended who are more needy. In the process every body cannot be accommodated and some persons would always be aggrieved. It is in these circumstances that Hon'ble Supreme Court has held that compassionate appointment cannot be made an easy step to gain entry in Government service nor the children of deceased employee can seek compassionate appointment as a line of succession. All that Courts have to see is whether the case has been considered or not. In the instant case it is seen that there is no liability of unmarried daughters and family was willing to wait till the son attained ~~ed~~ majority. That itself indicates that it was not one of those cases where family is in an indigent condition.

8. In view of the above discussion, I do not think there is any scope for interference in the orders passed by respondents. The O.A. is accordingly dismissed with no order as to costs.


Member-J.