

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 16th day of Jan 2006.

Original Application No. 402 of 2003.

Alongwith

Original Application No. 403 of 2003.

Hon'ble Mr. K.B.S. Rajan, Member (J)

Smt. Babita Tyagi, W/o late Mr. S.K. Tyagi,
R/o P-27, Pallavpuram, Phase-II,
Modipuram.

.....Applicant(in both the OAs)

By Adv: Sri D.B. Kauser & Ms R. Kauser.

V E R S U S

1. Union of India (By & through its Secretary, GOI Ministry of Personnel), Public Grievances & Pensions, Department of Personnel & Training, 3rd Floor, Lok Nayak Bhawan, NEW DELHI.
2. Director General, ICAR & Secretary DARE, Indian Council of Agricultural Research, Krishi Bhawan, Dr. Rajendra Prasad Road, NEW DELHI.
3. Project Director,
Project Directorate for Cropping System Research,
MODIPURAM.

.....Respondents(in both the OAs)

By Adv: Sri B.B. Sirohi
Sri P. Krishna (in OA No. 403/03)

O R D E R

These two OAs pertain to the same parties and the relief sought is also the same. Necessity arose to file two different OAs as the impugned orders (those on the same subject matter) are different.

Hence, these two OAs are disposed of by a common order.

2. The cardinal principle in service jurisprudence as contained in the judgment of the Apex Court *Nirmal Chandra Bhattacharjee v. Union of India, 1991 Supp (2) SCC 363* is, "The mistake or delay on the part of the department should not be permitted to recoil on the appellants."

3. This case has to be tested on the touchstone of the above dictum of the Hon'ble Supreme Court.

4. Brief Facts of the case are as under:-

- a. The applicant's husband late Sri Satendra Kumar Tyagi had been serving as Pump Operator in the Project Directorate for Cropping System Research, Modipuram (for short, PDCSR) since 13th June, 1990 to 26th September, 2000, and additionally also had been discharging the functions and duties of Tractor Driver.
- b. The post of Pump Operator comes within the ambit of ICAR's Technical Service Rules, 1975 and stands classified as Category-I, Grade-I carrying pay scale of Rs. 975-1540 since revised to Rs. 3200-85-4900(Grade S-6).
- c. According to the Report of the IV Central Pay Commission the post of Tractor Driver carries a scale of pay with a maximum of over Rs. 1150/- and hence stands classified as Group 'C' post.
- d. As per position obtaining in March, 2003 PDCSR, Modipuram does not have on its 'Pay-roll' a single duly selected Pump Operator (as against overall requirement for 4 Pump Operators). However, there is only one regularly appointed Tractor Driver. (para 4.6 of the OA)
- e. The applicant's husband possessed the requisite qualifications for the posts of Pump Operator

as well as Tractor Driver is well quantified by the under-noted details:- (Para 4.8 of the OA)

# Educational qualification	High School (1979)
# Vocational qualification	Certificate from ITI, Meerut granted in 11/87
# Technical qualification	Licence for Tractor driving granted in 3/96 by R.T.O. Meerut.

f. OA No. 201/93 (S.K. Tyagi Vs. Union of India) came to be disposed of vide order dated 13th September 2000 carrying a direction to the Respondents to consider the claim for regularization of services of applicant's husband on the post of Pump Operator.

g. The applicant's husband died instantaneously on the spot while performing his official duty as Tractor Driver, when Tractor driven by him suffered a head-on-collision on 26th September, 2000 at an unmanned railway crossing.

h. Former Project Director, PDCSR made a forceful plea for taking up the applicant's case for compassionate appointment with Government of India, Department of Personnel, New Delhi.

i. Present Project Director, PDCSR, Modipuram, too in his letter dated 10.01.2002 very strongly urged that considering the onerous burden of maintenance of two minor daughter's aged 12 years & 8 years and one son aged 4 years it was a very deserving case that merited sympathetic consideration for grant of compassionate appointment to the applicant.

j. The revised consolidated instructions dated 09.10.1994 permit relaxation of upper age limit and relaxation of temporary educational qualification the case of appointments at the lowest level in exceptional circumstances; in the matter of affording appointment on compassionate grounds.

k. Jodhpur Bench in order dated 08.10.2000, in OAS No. 303 of 1999 (Smt. Meena Devi, W/o Hanuman Prasad. 'Temporary Status Casual Labourer' Central Ariz Zone Research Institute Vs. ICAR, New Delhi) were pleased to direct the authorities of CAZR Institute, Jodhpur to consider the case of appointment of Smt. Meena Devi on compassionate grounds in the light of Circular dated 07th May, 1991.

l. In view of above referred judgment there is no justification for rejection of applicant's representation when six vacant posts of

messengers in the pay scale of Rs. 2550-3200 were available in PDCSR.

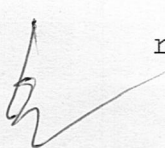
- m. Even though the applicant's husband had been working for nearly ten years and doing the same type of work as a regularly recruited/appointed on Group 'C' post of Pump Operator elsewhere in any other Central Government organization, institution, Public Sector Undertaking, he was subjected to hostile discrimination within the meaning of Article 38(2) of the Constitution of India by denial of pay scale of Rs. 975-1540 from 1st July, 1990 onwards.

5. Brief reply by the respondents is as under:-

- a. The Tractor Drivers in ICAR setup have been classified as Technical (T-1) w.e.f. 1996. In reply to the contents of paragraph 4.6 of the Original Application it may be stated that the contents contained therein are matter of record.
- b. In reply to contents of paragraph 4.8 of the OA the contents contained therein are misconceived as the applicant's husband was engaged as casual labour and he was required to perform the duties of the farm section.
- c. The applicant has no case.


6. Arguments were heard and the documents including the supplementary counter filed by the respondents perused. The written submission furnished by the respondents also has been scanned through.

7. The respondents could not meet certain specific contentions of the applicant, such as purchase of a number of Tractors and oil pumps. Again, when there is a positive recommendation by the Director, reasons for non consideration of the case in proper



perspective have not been furnished by the respondents.

8. The question is whether, after the applicant's husband had acquired temporary status, whether there was any post on regular basis vacant either in the grade of pump operator or Tractor driver and if so whether the applicant was considered. The temporary status was conferred upon the applicant's husband as early as from 01-09-1993 and if new tractors and pumps were purchased after 1993, obviously certain posts were to be created for operating the same, save when the purchase was after condemning the old ones and in substitution of the old ones. On the sole ground that the Ministry of Finance did not give permission for filling up of the post or creation of vacancies, the respondents seem to have negatived the claim of the applicant. If the Finance gives approval for purchase of a new tractor, save when the same is in substitution of an old one, there is every justification that rests with the user department to ask for permission for necessary man power. Had the same been done at appropriate time, the applicant's husband would surely have been considered. In fact OA No. 201/93 was decided with a specific direction and there was a clear and unequivocal assertion by the applicant in the said OA (husband of the applicant in the present OA), that vacancies were available.



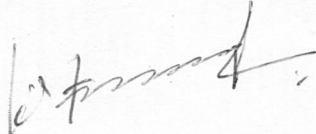
✓
9. The rejection of the claim of the applicant by the respondents appears to be totally mechanical and pedantic. The respondents ought to have considered the availability of a vacancy either in the grade of Pump Operator or tractor Driver during the period from 1993 to 2000. There is a clear mistake coupled with delay on the part of the respondents in this regard. Here exactly springs up the dictum of the Hon'ble Supreme Court cited in para 1 above. The delay and mistake resulted in the applicant's being deprived of her being considered for compassionate appointment and other attendant benefits.

✓
10. The both OAs are therefore, disposed of with the following directions to the respondents:-

Q
"There shall be a drill conducted by the respondents to ascertain the total number of tractors that were functional during the period from 1993 to 2000 and if adequate number of tractor drivers were not available by then, since the applicant's husband was admittedly functioning as a driver (and in fact he died in an accident while he was driving a tractor), a post of driver should be got created with retrospective effect and the applicant's husband should be deemed to have been posted against the said post. This would make the said individual entitled to certain concessions such as pay and allowances, pensionary benefit subject to completing minimum years of service, and in the event of the death, for necessary family

Q pension and compassionate appointment. Once the applicant's husband is deemed to be in regular service till his death, the consequential benefits, such as Family Pension, Compassionate appointment to the legal heir, as per Rules should be made available to the applicant/her family. Since the applicant has been claiming for her right since the time her husband had expired, the respondents should not negative her claim solely on the ground that the death of applicant's husband having taken place in 2000, the claim for compassionate appointment is belated."

Q 11. The above drill shall be completed within a period of six months from the date of communication of this order. No cost."


Member (J)

/pc/