

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 640 of 2003

Allahabad this the 12th day of April, 2004

Hon'ble Mr.s Meera Chhibber, Member (J)

Smt.Sobha Mishra W/o Late Shri Anil Kumar Mishra,
R/o Village & Post-Faridpur Sulem, District Kaushambi.

Applicant

By Advocate Shri A.K. Mishra
Dr.H.N. Tripathi

Versus

1. Union of India through its Secretary, Ministry of Defence, New Delhi.
2. The Principal, Central Defence Account(Pensions) Allahabad.
3. Deputy Controller of Defence Account(Administration) In the Office of Principal C.D.A.(P), Allahabad.

Respondents

By Advocate Shri P.D. Tripathi

O R D E R

By this O.A. applicant has sought quashing of the order dated 21.08.2002(annexure-2) and further direction to the respondents to give compassionate appointment to the applicant w.e.f. 29.05.2000 in accordance with law.

2. It is submitted by the applicant that her husband Late Shri A.K. Mishra died on 15.04.2000 while working on the post of Senior Auditor, therefore, she

gave application seeking compassionate appointment on 29.05.2000. Same was, however, rejected by the impugned order dated 21.08.2002 only on the ground that there is no vacancy .

3. It is submitted by the applicant that as per rules her case should have been considered three times by the Board of Officers but her case was considered only one time, therefore, final rejection order is not in consonance with respondents' own scheme. It is submitted by the applicant that according to her information there are several posts available for Class III appointments meant for compassionate appointment but respondents have closed their rooms to consider compassionate appointment. Therefore, this is a fit case for granting relief, as claimed by the applicant.

4. The respondents on the other hand ^{have} opposed this O.A. They have submitted that Hon'ble Supreme Court has held that Courts cannot give direction to appoint any person whereas applicant has sought the relief to direct the respondents to appoint her on compassionate ground. A person only has right of consideration and her case has already been considered by the Board of Officers and since there is no vacancy, her case has rightly been rejected. They have further explained that compassionate appointment can be made only upto 5% of the vacancy falling under direct recruitment quota in Group 'C' or 'D' post. Therefore, while making recommendations, Board of Officers keep in mind the availability of the vacancy and recommend only such of the case which are really deserving that too if vacancy for compassionate appointment is available within a year, as is required by the instructions and since there

was no vacancy available, her case was finally rejected keeping in view the Judgments given by the Hon'ble Supreme Court in the case of 'Himanchal Road Transport Corporation Vs. Dinesh Kumar reported in J.T. 1996(5) S.C. 319 and Hindustan Aeronautics Limited Vs. Smt. A. Radhila Thirumulai J.T. 1996(9) S.C. 197'. They have relied on Office Memorandum dated 09.10.1998(annexure C.A.-2) and 03.12.1999 (annexure C.A.-3). Since her case was considered by the Board of Officers on 10.01.2002 and the same was more than one year old as on 31.12.2002, same was rejected by speaking order keeping in view the various instructions issued by the department from time to time. They have further explained that applicant was informed about the vacancy position vide letter dated 07.02.2001(annexure C.A.-5), 20.09.2001(annexure C.A.-6) and finally by letter dated 21.08.2002(annexure A-2). They have also relied on the Judgment given by the Principal Bench in O.A.No.3469/01 Smt.Nirmal Jain and another Vs. The Secretary, Ministry of Defence, annexed as annexure C.A.-7. They have, thus, submitted that there is no illegality in the orders passed by the respondents. Therefore, this O.A. may be dismissed. They have categorically denied the allegations of malafide or arbitrariness in conducting the Board Proceedings and in order to show fairness on their part, they have annexed annexure C.A.-8 with their counter-affidavit.

5. Heard, both the counsel and perused the pleadings as well.

6. Counsel for the applicant has invited my attention to paragraph-8 of the counter-affidavit in which it is stated that if the case is not recommended in the First Board of Officers for want of vacancy, it is to be

considered fresh alongwith fresh applicants by the Board of Officers on three occasions consecutively and the final decision is to be communicated by a detailed and speaking order. Counsel for the applicant, therefore, submitted that consideration of applicant had to be on three occasions on the availability of vacancy and merely giving three letters to the applicant, would not be sufficient in the eyes of law. It is seen that various instructions have been issued by the department from time to time for the issuance of compassionate appointment. While deciding the case, respondents have to keep in mind all the relevant instructions on the subject. Paragraph-4 of Scheme dated 09.03.2001 reads as under:-

"4. The weightage fixed above is to be strictly followed for assessing comparative merit keeping in view the instructions issued by the DOP&T from time to time. Further all applications may be acknowledged immediately on receipt and decision of the Board of Officers(BOO) be communicated to the applicants after every sitting. The system of WAITING LISTS have already been discarded(Ref. DOP&T OM F.No.14014/23/99-Estt.(D) dated 3-12-1999). The candidates are required to apply only once and the application if not recommended in the first BOO for want of vacancy, is to be considered afresh alongwith the fresh applicants by the BOO on three occasions consecutively and ensure that the final decision is communicated to the applicant by a detailed speaking order."

This itself shows that the above marking is to be done for assessing comparative merit by keeping in view the instructions issued by the D.O.P. & T. from time to time. The other instruction relevant on the point is Office Memorandum dated 03.12.1999 wherein time limit for

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making compassionate appointment, has been laid down. In this Office Memorandum, it is specifically stated as under:-

"Accordingly, it has been decided that the Committee prescribed in paragraph 12 ibid for considering a request for appointment on compassionate grounds should take into account the position regarding availability of vacancy for such appointment and it should recommend appointment on compassionate grounds only in a really deserving case and only if vacancy meant for appointment on compassionate grounds will be available within a year, that too within the ceiling of 5% mentioned above."

7. The applicant in the O.A. has merely stated that there are number of posts available in Group 'C' without giving any details thereof. Therefore, the averment made is absolutely vague. If applicant feels that the posts are indeed available for grant of compassionate appointment within 5 % vacancies meant from amongst the direct recruitment quota, she should ^{have} made more specific averments so that respondents could have properly answered the said averment. Instead of making any clear averment, the applicant has left it to the respondents to give the details as to how many posts are available and how many persons have been recommended for compassionate appointment. This kind of exercise cannot be undertaken by a Court as we are not sitting here to have roving and fishing inquiry in the working of the department. The settled position is that the working of the department is to be viewed as correct working unless it is shown to the satisfaction of the Court to be ^{to the} contrary. For showing the department is not working in a proper manner or is acting in an arbitrary manner, onus lies on the applicant to make

averment to this effect by giving specific instances whereas no such averment has been made by the applicant for showing the arbitrariness on the part of the respondents in this case.

8. Subject of compassionate appointment is well settled and well defined by the Hon'ble Supreme Court in number of decisions wherein it is held that nobody can claim compassionate appointment as a matter of right or as a line of succession. On the other hand, compassionate appointment can be given only in exceptional circumstances to tide over the sudden crisis left in the family due to sudden death of the sole bread earner in the family. Here also the Hon'ble Supreme Court has clearly stated that the Tribunal cannot give direction to the respondents straight away to give compassionate appointment to any individual on compassionate ground as it has to be decided by the competent authority ^{whether} ~~where~~ ^B a particular case falls within 5% vacancies meant for compassionate appointment or not looking at the particulars relevant for this purpose. They have further held that a person only has right of consideration and so far the person has been considered and the reasons assigned by the department is valid in the eyes of law, no interference should be made by the Tribunal. In the instant case, it is not disputed by the applicant that her case has already been considered by the Board of Officers. Her only grievance is that it should have been considered second and ^{line B} ~~third~~ only on availability of vacancy. I do not think that ~~it~~ could be the right approach because availability of ~~vacancy~~ every year is not certain and case cannot be kept hanging for years together on the

ground that it shall be considered on availability of vacancy. In fact the latest decisions given by the Hon'ble Supreme Court have made it clear that if the case does not fall within 5% of the vacancy meant for compassionate appointment, no direction can be given by the Court to give compassionate appointment to any individual. In the instant case, respondents have specifically stated that there is no vacancy available and applicant has not been able to prove that vacancy for compassionate appointment is still available with the respondents. Therefore, in these backgrounds when Hon'ble Supreme Court has repeatedly held that in the absence of vacancy, no direction can be given to the respondents to give compassionate appointment, I do not think that this case calls for any interference by this Tribunal. Accordingly, O.A. is dismissed with no order as to costs.



Member (J)

/M.M./