

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
THIS THE 29 DAY OF JULY, 2006
Original Application No. 722 of 2003

CORAM:
HON.MR.JUSTICE KHEM KARAN,V.C.

Smt.Munni Devi, wife of Late
Shri Chhote Lal, Ex-Mazdoor
of BSD CDS (1) Bareilly (U.P.) i.e.
respondent no.4, r/o village Zheel
Gantiya P.P. Khanderpur, district
Bareilly, U.P. .. Applicant

(By Adv: Shri R.C.Pathak)

Versus

1. Union of India through the
Defence Secretary, Ministry
Of Defence, Govt. of India,
South Block, C.G.O. Complex,
New Delhi 110 001
2. The Chief Engineer,
Bareilly Zone, Station Road,
Bareilly Cantt.
3. The Commander Works Engineer(CWE)
Station Road, Bareilly Cantt.
4. The Barrack Store Officer,
Central Divisional (BSO) Stock
(CDS) MES Bareilly Cantt. .. Respondents.

(By Adv: Shri Saumitra Singh)

ORDER

JUSTICE KHEM KARAN,V.C.

Applicant's husband Late Shri Chhote Lal serving as Civilian
Mazdoor in MES under Barrack Store Officer, Central Divisional Stock (independent)
BSO (CSD) (1) Bareilly died on 24.1.1999 after serving for about 19 years, leaving
behind him the applicant, two minor sons and four minor daughters. She applied for
appointment under dying in harness rules. According to the averments made in OA,
respondent no.4 sent letter dated 30.11.1999 (Annexure-10) to the applicant to attend the
Board of Officers on 10.12.1999. She alleges that the respondent no.2 issued
appointment letter dated 30.5.2002 (Annexure-12) appointing her on the post of
Mazdoor (USK) and asked her vide letter dated 18.6.02 (Annexure-13) to submit

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necessary documents undertaking etc. She complied with letter dated 18.6.02. It was to her utter surprise that she received the impugned order dated 18.10.02 (Annexure-1) informing her that her case could not be recommended for compassionate appointment, for want of requisite number of vacancies, being limited to 5% of the direct recruitment. She is challenging this rejection on the grounds interalia, that once she had already been offered appointment dated 30.5.02, there was no justification to say that her case could not be recommended for such appointment and more over in a view of the judgment dated 7.3.02 (Annexure-11) of this Tribunal at Cuttack in OA No. 135/00 the case of the applicant for appointment on compassionate grounds could not have been rejected on the ground of non availability of vacancy. It has also been said that her economic condition was very poor and seeing the several family members in her family her case was more pressing one for such appointment.

2. In their reply the respondents have tried to say that letter dated 30.5.02 being relied on by the applicant as an appointment letter, was not an appointment letter but an information regarding consideration for compassionate appointment on the recommendation of Board of Officers. They have also stated that the case of the applicant was duly considered by the board of officers in accordance with rules, along with the cases but vacancies being limited to 5% of the direct quota, the case of the applicant could not be recommended for such appointment. In their supplementary reply dated 9.2.05, they have tried to say that in view of the guide lines issued by the Department of Personnel & Training and the judgments of the Apex court, such appointment cannot be claimed as a matter of right and more over the family of the deceased is receiving family pension besides having received terminal benefits as admissible under the rules. They have also produced the photo copy of the proceedings that took place before the board of officers in the month of December 2001. A perusal of these proceedings would reveal that in the category of mazdoors, for which the applicant had applied there were 204 applicants in all and the board of officers recommended 10 persons including the applicant, as most deserving cases. The name of the applicant was at sl.no.6.

3. Shri R.C.Pathak, learned counsel for the applicant has submitted that there is no dispute that the applicant belongs to a lower strata (backward class) of the society and the economic condition of the family of the deceased is extremely pitiable. He has referred to the certificates including income certificate issued by the district authorities. Shri Pathak has also submitted that there is no dispute that the applicant has to feed her minor sons and daughters (who are six in number) and family pension of Rs.1200/- a month or so is too meager to sustain the family. The learned counsel has reiterated that the object behind the provision of compassionate appointment is to save the family of the deceased servant from pensionary and to prevent it from going to destitutes. Shri Pathak has submitted that considering all these facts and circumstances, letter of appointment dated 30.5.02 (Annexure-12) was issued by the Chief Engineer Bareilly and the applicant was appointed on the post of mazdoor but it is not known as to how the same is being denied on the basis of the alleged proceedings of December 2001 before the board of officers. Shri Pathak has contended that the proceedings before the board of officers took place earlier to this appointment letter dated 30.5.02 and therefore it should be inferred that her case had been recommended for such appointment and it was in view of all this, that appointment letter was issued on 30.5.02. Shri Pathak says that the respondents are not correct in saying that it was not an appointment letter but was an information. The learned counsel for the respondents has tried his best to say that this letter dated 30.5.02 is not an appointment letter. A close reading of para 3 of this letter leaves no room for doubt that it was a sanction for employment of the applicant as mazdoor and it was a clear-cut order for appointment which clearly says that the Chief Engineer has conveyed his sanction to the employment of the applicant on the post of mazdoor (unskilled) in relaxation of normal recruitment rules. After these orders the applicant was asked to submit documents undertaking etc which she did. The Tribunal fails to understand as to how letter dated 18.10.02 (Annexure-1) was issued after clear-cut orders of appointment dated 30.5.02. So from this point of view the proceedings before the Board of officers that took place in December 2001, (copy of which has been placed on record) cannot be made a ground to reject the case of the applicant for compassionate appointment. More over, even the Board of Officers found her case most

deserving. In other words, out of about 204 applicants for the post of mazdoor, the applicant was found along with 9 others as most deserving candidates for getting such compassionate appointment. The Tribunal is of the view that the job should not be denied to her especially when it was once given vide order dated 30.5.02. Her economic condition, number of dependents in the family etc justify her request for compassionate appointment.

4. The Tribunal need not refer to the law that has been quoted by the respondents in their reply or by the government in its guide lines. The law is well settled and the same is that compassionate appointment is by way of exception to the general rule of recruitment. Such appointment is given to help the family to sustain itself and to prevent it from going to destitution. The Apex court has observed that such appointments should be limited to not more than 5% of the vacancies of the direct quota and if it is found that the family has been able to sustain itself for few years, chances of compassionate appointment are reduced. The policy of compassionate appointment is still in vogue and such appointments are being made.

5. Shri Pathak has referred to the decision dated 7.3.02 of Cuttack bench of this tribunal in OA No.135/00 Dev Prasad Mohanty Vs Union of India and Others so as to say that such appointment cannot be refused on the ground of non-availability of vacancy. We need not enter into the question as to whether such appointment can be refused on the basis of non-availability of vacancies, because we have found above that the applicant was offered appointment vide letter dated 30.5.02 and so the respondents should honour the same by putting her on job.

6. The OA is accordingly allowed and the communication dated 18.10.02 (Annexure-1) to the extent it conveys the rejection of the request of the applicant for compassionate appointment, is quashed and the respondents are directed to appoint the applicant on the post of mazdoor (unskilled) as provided in the earlier letter dated 30.5.02, within a period of two months from the date a certified copy of this order is produced before him. The applicant shall be entitled to get the cost of this litigation, from the respondents.

1, J.W. " 28.7.2006
VICE CHAIRMAN

Dated: 28, July, '06

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