

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO.770 OF 2003

ALLAHABAD, THIS THE 10TH DAY OF FEBRUARY 2006

HON'BLE MR. D. R. Tiwari, MEMBER-A

1. Smt. Omvati Devi,
Aged about 55 years,
Widow of Late Shri Pratap Singh,
R/O Village & Post Mankeda,
Pargana Agra,
District : Agra.
 2. Shri Jaiveer Singh,
aged about 27 years,
Son of Late Shri Pratap Singh,
R/o Village & Post Mankeda,
Pargana Agra, District-Agra.
- Applicant.

(By Advocate Shri R. Verma)

Versus

1. Union of India through the Secretary,
Ministry of Defence,
New Delhi.
 2. Engineer-in-Chief, E-in-C's Branch,
Army Head Quarter,
Kashmir House, DHQ P.O., New Delhi-110011.
 3. The Chief Engineer,
Head Quarter Central Command,
Lucknow.
 4. The Chief Engineer (Air Force),
Allahabad.
- Respondents.

(By Advocate Shri V. V. Mishra)

D. R. Tiwari

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By this O.A. filed under section 19 of Administrative Tribunals Act 1985, the applicant has prayed for quashing the impugned order dated 15.04.2002 passed by respondent no.3 denying the appointment on compassionate ground. He has further prayed for issuance of direction to respondent nos.2,3 and 4 to offer suitable employment on compassionate ground in pursuance of the letter dated 27.11.1999 (Annexure-4).

2. Briefly stated, the husband of the applicant no.1 was working with Assistant Garrison Engineer (Air Force Station), Kheria. He died, while in service, on 11.4.1994. The applicant no.1 made a representation praying for appointment on compassionate ground for her son by letter dated 01.02.1994. In response to the representation, the respondents vide letter dated 27.11.1999 informed the applicant that the employment will be offered as and when his turn comes and the vacancies for the same are released. By the impugned order dated 15.4.2002, the respondents have rejected the claim of the applicant merely on the ground that some deserving cases were considered while making the appointment. They have also submitted that in accordance with D.O.P.T. circular restriction is about

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5% of the vacancies available in a year and accordingly he could not be offered. They have further submitted that the object of grant of the compassionate appointment is to tie over the immediate crisis in the family on sudden death of the bread earner. In this case they have stated that since the father of the applicant died in the year 1994 and more than eight years have passed so according to them, the financial crisis in the family does not continue with the lapse of time of eight years in the year 2002.

3. The applicant has challenged this order on various grounds mentioned in para 5 of the O.A.

"a.) Because the aforesaid impugned order is totally, arbitrary, illegal, unjust and as such is liable to be quashed in as much as the same has been passed on the ground as shown in paragraph no.5 thereof that due to more deserving candidates and few vacancies available, the case of the petitioner could not be recommenced by the Board of Officers for appointment on compensate ground and that the competent authority has not found the case deserving employment assistance on compensate ground is untenable, arbitrary and unjust on merit. In view of the fact that the case of the petitioner was already considered earlier wherein the petitioner stood at sl.no.1, but the employment could not be given due to non-availability of vacancy and that it was decided by the respondents that the employment shall be offered to the petitioner in his turn as and when the vacancies are released. In view of this, it is submitted that the aforesaid action of the

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respondents cannot be considered to be justified. The petitioner was already in waiting list after having been found most deserving and having stood at sl.no.1 and as such, he has priority over others in view of the fact that there is ceiling of 5% quota against appointment on compensate ground. When in the subsequent years, the vacancies were released under the aforesaid quota, it was the petitioner who should have been accommodated first and thereafter the case of others would have been looked into, but in the present case the respondents illegally and arbitrarily side tracking the claim of the petitioner and have accommodated the orders. The aforesaid action of the respondents is liable to be depleted and in these circumstances the impugned order is liable to be quashed.

b) Because further on the ground of paragraph no.5 of the aforesaid letter itself, the death of the deceased occurred in 1994 i.e., 8 years ago, is also not tenable in view of the fact that the petitioner no.1 has immediately moved an application for appointment on 1.2.1994, which was considered and decided in favour of the petitioners vide letter dated 27.11.1999. In view of this the grounds of delay is not attributable to the respondents. More over once the case was considered and it was decided vide letter dated 27.11.1999, that the petitioners shall be offered appointment on release of vacancy, this ground also is not legally tenable under the law. The whole contention of the respondents is totally misleading, arbitrary, discriminatory and illegal.

c) Because it is submitted that the impugned order, which has not disputed anywhere that the

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family of the deceased consist widow, three sons, two unmarried daughters and that the family has received only Rs.68,560/- as terminal benefits and is getting family pension of Rs.1275/-p.m. + D.A. It is also not disputed in the impugned order that the family has no landed property moveable or immoveable including agricultural land except Kaccha house consisting one room with shed valued at Rs.18,000/-. This it would be seen that the distress condition, which is the most important factor, is to be seen in such matters have not been disputed and the claim has not been rejected that the family has sufficient means of livelihood in any manner. In view of the above, it is also submitted that as per the provisions enumerated in the scheme as shown in paragraph no.3 of the impugned order, the case of the petitioner is clearly covered there with particularly when there is no finding of the competent authority that the family is having sufficient means of livelihood by any means. In view of the above, it is submitted that the approach of the respondents is totally illegal and arbitrary and the impugned order has been passed in spite of the fact that the financial condition of the family is so poor warranting to offer of appointment on compensate ground, the same has been denied on the untenable grounds as shown in paragraph no.5 of the impugned order as mentioned above.

d) Because the action of the respondents in rejecting the claim of the petitioner is totally illegal in view of the fact that admittedly as shown in the impugned order, the vacancies are there, but instead of accommodating the petitioner against one of the aforesaid vacancy

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as per letter dated 27.11.1999, the respondents have accommodated others.

e) Because a copy of the revised scheme dated 9.10.1998 issued by the Govt. of India, Department of Personnel & Training, O.M. No.14014/6/94-Estt.(D) dated 9.10.1998 is being annexed herewith as Annexure-V to compilation no.2 to this petition. IT is submitted that the case of the petitioner is fully covered under the aforesaid scheme and yet the respondents have rejected the same by means of the impugned order illegally and arbitrarily."

4. The O.A. has been resisted by the respondents and they have filed a detailed CA in this regard. They have almost reiterated the grounds of the impugned order in various paragraphs of the CA.

5. The counsel for the applicant Shri R. Verma, during the course of the arguments, submitted that the respondents by their letter dated 27.1.1999 have accepted that the case of the applicant deserves to be allowed on merit. He has also submitted that the respondents themselves have admitted that his position is at serial no.1. He has very forcefully argued that once his case was assessed on merit and he was placed at serial no.1, it was not understandable that as to how he could be deprived the benefit of appointment in the year 2002.

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6. Learned counsel for the respondents Shri V. V. Mishra submitted that it could have been possible because the cases from the year 1999 and subsequent years upto the year 2002 appear to have been considered and more deserving cases and that of the case of the applicant were there for consideration before the Board of Officers and it is for these reasons that the applicant would not be granted appointment on compassionate ground.

7. I have heard very carefully the rival submissions of the counsel for the parties and given anxious consideration.

8. From what has been stated above, the only question, which falls for consideration, is the validity of the impugned order passed by the respondents. Counsel for the applicant has relied upon the Division Bench decision in the case of Smt. Chando Devi and Others Vs. U.O.I. and Others in O.A. No.290/03 decided on 12.12.2005. He has submitted the facts in the case of Smt. Chando Devi (Supra), which is almost, and substantially the same. In that case also the Board of Directors approved the name of the applicant but he was not given the compassionate appointment. When the court asked for the original records and found that the respondents were not justified in not giving compassionate appointment to

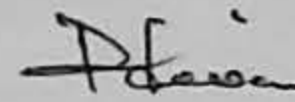
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the applicant, a direction was issued to the respondents for offering the appointment. In this case also I find that the applicant was informed about his obtaining no.1 in the merit list for compassionate appointment by letter dated 27.11.1999. The contention of the counsel for the respondents that it has already been delayed, cannot be sustained in law as the applicant has taken up the case immediately after the death of her husband and after few years even the respondents have acknowledged his merit for appointment. I also find that the statement from the respondents about more deserving cases is very vague and it is very difficult to make out precisely as to who were more deserving cases. They have also taken into account the retiral benefits to deprive the applicant for grant of compassionate appointment. In this connection it may be stated that retiral benefits are not by grace but it is flowing from statutory rights. I am fortified in this view by the judgment of the Supreme Court in the case of Govind Prakash Verma Vs. L.I.C. of India and Others - 2005 SCC (L&S) 590 in which case the Supreme Court has held that the service benefits received on the death of the employee should not be a ground for refusal of compassionate appointment. As such, the O. A. deserves to be allowed on merit.

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9. In view of the facts and circumstances mentioned above and discussions made, the O.A. succeeds on merit and is allowed. The impugned order dated 15.04.2002 is quashed and set aside. The respondents are directed to reconsider the case of the applicant for giving him appointment on a suitable post. The entire exercise in this regard may be completed within a period of three months from the date of receipt of a copy of this order.

No Costs.


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