

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

MISC. APPLICATION NO.235 OF 2003

IN

DIARY NO. 40 OF 2003 In O.A. No. 76 of 2003.
ALLAHABAD THIS THE 28th DAY OF January 2003

HON'BLE MRS. MEERA CHHIBBER, MEMBER-J

1. Smt. Kushum Late Yadav,
Widow of V.K. Yadav.
2. Dharendra Kumar Yadav,
Son of V.K. Yadav,
Both resident of House No.1107/946,
Purana Katra,
District and City Allahabad.Applicants
(By Advocate Shri Rajeshwar Yadav)

Versus

1. Union of India,
through Secretary,
Ministry of Defence,
NEW DELHI.
(Director General of EME (EME CIVI.),
MGO's Branch Army Head Quarters,
DHQ, P.O. New Delhi-11.)
2. Commanding Officer (Colonel)
Station Workshop,
Lucknow.Respondents
(By Advocate Sri R.C. Joshi)

O R D E R

HON'BLE MRS. MEERA CHHIBBER, MEMBER-J

By this O.A., the applicant has challenged the order dated 03.09.02 asking for quashing of the same and a direction to respondents to pass order of appointment in favour of petitioner no.2 on compassionate grounds under dying in harness rules. By this order (Page 10A), the applicant has ⁹²been informed that this case was considered by Board of Officers September 2001, December 2001, March 2001 and June 2002 in accordance with the O.M. dated 08.10.1998 as amended from time to time. Merits of cases were decided by Boards of Officers by allotting points to applicant based on various attributes Viz. family pension, terminal benefits movable/ immovable properties, number of dependents, number of minor children, number of unmarried daughters and left over service.

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On the basis of points, applicant was informed that out of 140,74,58 and 53 applicant was placed at Srl. No.65,33,25 and 19 and obtained 50 marks out of 100, while the number of vacancies within 5% meant for this purpose were only 25,6,11, and 8 respectively accordingly his case was not found to be on merit as compared to other more deserving cases, therefore, he can't be granted compassionate appointment.

2. Applicant's contention is that his father late Shri Virendra Kumar Yadav had died at the age of 50 years and his case has been dismissed without looking into ~~in~~ the financial condition of the family and the size of the family only, on the ground that vacancies are less thus, the impugned order is liable to be dismissed. It is submitted by applicant that deceased employee left behind him his widow and six major educated sons, three minor sons and one minor daughter and there is no other earning member in the family thus, they are all finding it difficult to survive. The applicant's counsel submitted the object of scheme for compassionate appointment has been defeated by the impugned order.

3. I have heard the counsel and perused the pleadings as well. Law on the subject of compassionate appointment is well settled by now ~~and it is well established by law~~ that compassionate appointment can't be sought as a matter of right and the members of deceased employee who dies in harness only have a right of consideration and courts can't direct the respondent to give appointment to any individual, as appointment on compassionate grounds is to be decided, keeping in view various aspects of the matter. In the instant case it is seen that applicant's case was not considered once but four times, but each time there were more deserving cases than him ^{12 and 18} ~~and~~ the number of vacancies was much less so applicant's case could not be recommended for compassionate appointment. The respon-

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dents have explained that points were given on each count viz. family pension, terminal benefits, size of the family, liabilities and assets left by the deceased employee, property movable/immovable and source of other income etc., I think these are the criterion which are most important for deciding the question of grant of compassionate appointment. Since the respondents have ^a big organisation and there are number of applicants for compassionate appointment, the procedure adopted by the respondents is found to be correct approach, otherwise the candidates can ^{B always R} allege malafides etc. It is seen that the deceased had left behind six major educated sons and as per the applicant's own averments made in para 4 ^{B age of R} that the sons are 30 years, 28 years, 24 years, 22 years, ^{and} 20 years, 18 years, respectively which means that in normal course that they would have been employed by now and if they have not got any employment, compassionate appointment cannot be sought as an easy way to get entry into Government Service. The Hon'ble Supreme Court has held that if the son/daughters of the deceased employee are educated, their cases do not fall within the parameter as laid down in the scheme notified by the Government of India from time to time. They must compete with others in a normal course as per the recruitment rules. The Government of India has also made it clear that compassionate ^{B upto R} appointment can be given only after 5% ceiling on direct recruitment, therefore, the respondents are bound by that. It is seen that the respondents have considered applicant's ^{B Sub B} case ~~for~~ four times, when his case was compared with other cases seeking compassionate appointment, his merit was quite low in the panel and did not come within the ceiling of 5% vacancies meant for compassionate appointment. As the Hon'ble Supreme Court has held that compassionate appointment cannot be sought as a matter of right and can be given only in exceptional cases, definitely, if there are any cases which are more deserving than the applicant, they have to be given

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preference over ^{less} the most deserving cases and the person whose condition is better off than the others cannot have any grievance if the compassionate appointment is given to those persons whose cases ~~are~~ more deserving than the applicant. I cannot give any direction to the respondents to give appointment to the applicant over and above 5% ceiling and in any case since ^{there are} ~~the~~ number of persons above the applicant in the merit list, definitely they would have a better claim than the applicant and simply because they have not approached the court, their rights cannot be taken away by giving a direction to the respondents to grant compassionate appointment to the applicant ^{ignoring their claim B}.

4. In view of the above discussions, I find no interference is called for in this case. Accordingly, the O.A. is dismissed with no order as to costs.



Member-J

/Girish/