

Open Court.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD.

...

Original Application No. 801 of 2003

this the 28th day of January 2004.

HON'BLE MRS. MEERA CHHIBBER, MEMBER(J)

1. Smt. Usha Nagar, W/o late Sri K.K. Nagar.
2. Ajay Nagar, S/o late Sri K.K. Nagar, R/o 28/44 3,
Chhatta Gali, Gokulpura, Agra.

Applicant.

By Advocate : Sri B.N. Singh.

Versus.

1. Union of India through its Secretary, Archaeological Survey of India, Ministry of HRD, Department of Culture Govt. of India, New Delhi.
2. Director General, Archaeological Survey of India, New Delhi.
3. Supdt. Archaeologist, Archaeological Survey of India, Agra Circle, Agra.

Respondents.

By Advocate : Sri R.C. Joshi.

O R D E R

This O.A. has been filed by widow and son of the deceased employee seeking compassionate appointment in favour of applicant no.2. M.A. no. 2578/2003 is allowed for filing joint application.

2. Applicants have filed this O.A. challenging the order dated 10.6.2003 (page 18) whereby request for grant of compassionate appointment has been rejected. They have further prayed for a direction to the respondents to appoint the applicant no.2 on any suitable post on compassionate grounds incase he is found suitable in all respects and fulfills the conditions and provisions of the scheme on compassionate grounds.



3. It is submitted by the applicant that late K.K. Nagar died on 14.7.2000 while working as Conservation Asstt. Gr.I. He left behind his widow and three sons, out of which two sons are living separately, therefore, applicant no.1 gave an application on 11.11.2000 to the respondents for grant of compassionate appointment in favour of applicant no.2. The request of the applicant was rejected by a non-speaking order dated 5.7.2002, therefore, applicants filed O.A. no. 1338 of 2002 which was disposed off vide order dated 1.11.2002 directing the respondents to pass a detailed and reasoned order within a period of three months from the date of receipt of the order. However, since respondents did not comply with the directions, the applicant filed contempt petition and it was due to the contempt petition filed by the applicant, respondents were annoyed with them and have rejected the claim of the applicants once again on the ground of lumpsum amount received by the applicant vide order dated 10.6.2003 which has been impugned in the present O.A.

4. Respondents, on the other hand, have submitted that contempt petition was filed on 16.7.2003, whereas detailed order has been passed by the competent authority on 10.2.2003, therefore, it is absolutely wrong to say that his case has been rejected due to any annoyance. They have further stated that the applicants are maintaining themselves within the monthly amount of pension Rs. 3250/- and the applicant had also received an amount of Rs.1013964 towards death-cum-retirement entitlements of her deceased husband and both the sons of the deceased are gainfully employed under different establishments. Even otherwise applicant's name figured at sl. no. 16 and prior to him there were 15 persons who were above the applicant no.2 seeking compassionate appointment. It was seen that financial circumstances of the applicant is much better than those of the other applicants, so priority had to be accorded to those who were ¹² ~~are~~ more needy. More-over after the death of the husband,

the first claimant for compassionate appointment is legally married wife of the deceased Govt. employee and incase she refuses to accept, then the eldest surviving son or daughter becomes claimant for consideration. In the instant case, neither widow nor the eldest son has sought compassionate appointment, but compassionate appointment was sought ^{for the} ~~as~~ third son, which cannot be claimed as a matter of right. They have further submitted that compassionate appointment is not to be given as ~~right~~ ^{a matter of} rules in every case, but has to be given within 5% quota to the most deserving candidates looking at the financial condition of the family. Since applicants' case was not one of those cases where applicant ~~no.2~~ ^{could be said to be} was in total ~~in~~ indigent condition, therefore, his case has rightly been rejected by the competent authority.

5. Applicant's counsel, however, relied on the judgment given in the case of Ashok Kumar Vs. State of Haryana decided by Punjab & Haryana High Court reported in 2003 (1) ATJ 492 wherein respondents were directed to consider the case of the applicant by not counting the income of brother who is living separately and maintaining his own family while computing the income of the family of the petitioner.

6. I have heard both the counsel and perused the pleadings as well.

7. It is not disputed by the applicant/that both his brothers are already gainfully employed. On the contrary he has submitted that they have their own family and are living separately, therefore, they were of no assistance to the widow and the third son of the deceased employee. In this connection, it would be relevant to quote the judgment given by the Hon'ble Supreme Court in the case reported in JT 2001 (4) SC 73, wherein it was held that if one heir is already in employment, compassionate appointment cannot be provided to others. In view of the judgment given by the apex court, judgment relied-upon by the applicant

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given by Punjab & Haryana High Court loses importance. Even otherwise by now it is well settled that compassionate appointment cannot be sought as a matter of right by the dependents of the deceased employee, nor can the same be sought as a line of succession. Infact compassionate appointment is to be granted in exceptional circumstances where due to the sudden death of the sole bread earner of the family, dependents are left in a total indigent condition and, ^{the} therefore, financial condition is so bad that it will not be possible for them to survive, unless ^{the} immediate ^{is provided} succour to them by the respondents. In the instant case, it is seen that the deceased employee had left behind his widow and three sons, out of which two were already gainfully employed and his family has been given a sufficient amount by way of terminal benefits and they are also getting family pension. Since the only widow and third son were dependents on him, in these circumstances, definitely it cannot be said that the family of the applicants was in indigent condition. In an organisation where 16 applications for compassionate appointment as explained by the respondents in their Counter affidavit, definitely compassionate appointment could be given to most deserving candidates whose case fell within 5% limited vacancies meant for compassionate appointment. Applicant no.2 has not made out a case where he should have been granted compassionate appointment by ignoring the ~~Qua~~ or in preference to others. I am fully satisfied that in these circumstances, order passed by the respondents cannot be said to be illegal. Since case of the applicant no.2 has already been considered and rejected by the competent authority, no good ground has been made out by the applicants for interference. O.A. is accordingly dismissed. No costs.


MEMBER (J)

GIRISH/-