

(Reserved)

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD**

ORIGINAL APPLICATION NO. 996 OF 2006

Allahabad this the 21st day of ~~Nov~~ Oct, 2011

CORAM:

HON'BLE MR. SANJEEV KAUSHIK, JUDICIAL MEMBER

1. Smt. Kismatiya Devi, wife of late Phool Chand.
2. Rajesh Kumar Son of Late Phool Chand.

Both are resident of Village Bhat Ka Bhatwalia,
Post office Ratsia Kothi, District-Deoria.

.....Applicants.

By Advocate : Shri R.A. Prasad
Shri A.K. Gupta

V E R S U S

1. Union of India through Secretary,
Ministry of Surface Transport, Border Roads Development
Board, Room No.418 'B' Wing, 4th Floor, Sena Bhawan, New
Delhi.
2. Director General Borders Roads, Kashmir House,
Head Army Post Office, New Delhi-110011.
3. Commander, Grafe Center, Dighi Camp, Pune, Maharashtra.

.....Respondents

By Advocate: Shri Himanshu Singh

ORDER

By way of this instant Original Application filed under section 19 of the Administrative Tribunal's Act, 1985 the applicants seeks a writ in the nature of certiorari quashing the order dated 05.04.2005 (Annexure-8) passed by respondents no.3 with further prayer to issue direction to the respondents to appoint applicant no.2 on compassionate grounds as per rules.

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2. The Skelton facts of the case are that the husband of the applicant no.1 and father of applicant No.2 Late Phool Chand was working as Ex.GS-120607 Pioneer died on 14.05.1990 (wrongly mentioned as 14.5.1950) while he was in service. Immediately after the death of her husband the applicant no.1 applied for compassionate appointment as she was unable to look after his children on the demise of the bread earner of their family. The deceased employee was having one son Rajesh Kumar and two daughters who were minor at the time of death of deceased employee and legally wedded wife/applicant no.1. By a letter dated 22.6.1990 the applicant was informed that she cannot be given appointment as appointment to a women are completely prohibited (Annexure -1). Thereafter the applicant no.1 made request for appointment to his son after attaining the age of majority as at that time he was minor. The same was accepted by respondent no.3 vide letter dated 29.8.1990 (Annexure-2). After attaining the age of majority on 29.6.2004, the applicant made a representation on 3.8.2004 requesting the respondents to appoint him under the dying in harness scheme. All the relevant papers were also submitted with the representation to the respondents. The respondent no.3 rejected the case of the applicant by an order dated 5.4.2005 stating therein that the government policy is changed now and the claim cannot be considered at this belated stage (Annexure-8). Hence, the OA.

3. Pursuance to the notice respondents appeared, filed detailed counter affidavit and contested the claim of the applicant. Under the heading of preliminary submissions the respondents submitted

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that the husband of applicant no.1 and father of applicant no.2 died on 14.5.1990. The request of applicant no.1 for appointment was considered and she was informed by a letter dated 22.06.1990 that GREF is an integral part of Armed Forces and recruitment of female in GREF is banned at that time. She was requested to nominate any other relative for appointment. The applicant was informed by letter dated 29.8.1990 by respondent no.3 to apply for compassionate appointment as and when her son attains the age of 18 years. After attaining the age of majority the applicant no.2 moved an application, which was considered by the respondents in terms of the guidelines by D.O.P.T. and the same was rejected. The case of the applicant was rejected by the impugned order in terms of the instructions issued by the D.O.P.T. which was approved by the highest court of the law. The respondents have also taken an objection with regard to maintainability of the OA in terms of Section 21 of Administrative Tribunals Act 1985. In this regard they have also relied upon the judgment which is reported as (1997) 2 SLJ (CAT) 543 titled as *Bhagmal Vs. UOI*, in the case of *Mohd. Khalil Vs. U.O.I.* reported as (1997) SLJ (CAT) 54. The respondents have also relied upon the judgment passed by the Apex Court in the case of *Umesh Kumar Nagpal Vs. Station of Haryana and Others* reported in JT 1994 (3) SC 525 in the case of *Sanjay Kumar Vs. State of Bihar* reported in (2000) 7 Sec 192, in the case of *Life Insurance Corporation of India Vs. Mrs. Asha Ramchandra Ambekar and Others* (JT 1994 (2) SC 183), *Himanchal Road Transport Corporation Vs. Dinesh Kumar* (JT 1995 (5) SC 319 on May 7, 1996 and *Hindustan Aeronautics Limited Vs. Smt. A. Radhika Thriumalal* (JT 1996(9) S.C. 197 on October 9, 1996.

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4. The applicant has also filed rejoinder affidavit in which the applicant has contradicted the averments made by the respondents in the counter affidavit.

5. I have heard Shri R.A. Prasad, learned Counsel for the applicant and Shri Himanshu Singh learned counsel representing the respondents. Shri R.A. Prasad, learned counsel for the applicant has vehemently argued that the respondents have acted contrary to their own assurance given by them for considering the case of the applicant, as and when the applicant attains majority. Once the respondents have assured the applicant no.1 for considering the case of applicant no.2 on attaining the age of majority then at this stage the respondents cannot reject the claim of the applicant on the ground that the earlier instructions have been superseded. He further argued that there was no delay on the part of the applicant in seeking compassionate appointment on the demise of her husband and father of the applicant no.2. On the other hand Shri Himanshu Singh learned counsel for the respondents submitted that the earlier instructions have been superseded and in view of the latest instructions issued by the Nodel Ministry D.O.P.T. the case of the applicant at this belated stage cannot be considered. He also argued that the compassionate appointment cannot be claimed as a matter of right. It is exception to the main rule. It is to be given within the four corners of the instructions issued by the D.O.P.T. He placed reliance upon the judgment of Apex Court reported in the *JT 1994 (3) SC 525*, (*JT 1994 (2) SC 183*) and (*JT 1996(9) S.C. 197 (Supra)*).

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5. I have considered the rival submissions, gone through the pleadings and the judgment cited by the respective parties.

6. The controversy involved in the instant case revolve around that whether the dependants of the deceased employee can be given appointment on attaining the majority. Now I proceed to examine the facts of the instant case. Admittedly the applicant no.2 was minor at that time. Applicant no.1 was not appointed being women. Though the assurance was given but the concession flows from the instructions are to be granted in view of the criterion laid down in the instructions. Subsequent to that the instructions were modified which was approved by the court of law that compassionate appointment is only be given immediately to meet out the financial crisis on the demise of Bread Earner of the family.

7. It is also now well settled that appointment on compassionate grounds is not a source of recruitment. On the other hand it is an exception to the general rule that recruitment to public services should be on the basis of merit, by an open invitation providing equal opportunity to all eligible persons to participate in the selection process. The dependants of employees, who died in harness, do not have any special claim or right to employment, except by way of the concession that may be extended by the employer under the Rules or by a separate scheme, to enable the family of the deceased to get over the sudden financial crisis. The claim for compassionate appointment is

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therefore traceable only to the scheme framed by the employer for such employment and there is no right whatsoever outside such scheme. In case of "**Umesh Kumar Magpal Versus State of Haryana, (1994) 4 SCC 138**, their Lordships of the Supreme Court held as under:-

"The whole object of grant of compassionate employment is thus to enable the family to tide over the sudden crises. The object is not to give member of such family a post much less a post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or public authority concerned has to examine the financial condition of the family of the deceased and it is only if it is satisfied that but for the provisions of employment, the family will not be able to meet the crisis that job is to be offered to the eligible member of the family.

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The object being to enable the family to get over the financial crisis which it faces at the time of death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over.

As has been held by Hon'ble the Supreme Court in the cases of **National Hydro Electric Power Corpn. Vs. Nanak Chand, (2004) 12 SCC 487** and **Hindustan Aeronautics Limited Vs. Smt. A Radhika Thirumalal, JT 1996 (9) SC 197**, such an appointment cannot be secured as a matter of right as it is an exception to Articles 14 and 16(1) of the Constitution.

8. The similar view has been taken in the case of **State of J & K and others Vs. Sajad Ahmed Mir (2006 (5) SCC 766** wherein the Hon'ble Apex Court observed as under:-

11. It is that such an appointment is an exception to the general rule. Normally, an employment in the Government or other public sectors should be open to all eligible candidates who can come forward to apply and compete with each other. It is in consonance with Article 14 of the Constitution. On the basis of competitive merits, an appointment should be made to public office. This General rule should not be departed

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from except where compelling circumstances demand, such as, death of the sole breadwinner and likelihood of the family suffering because of the set back. Once it is proved that inspite of the death of the bread winner, the family survived and substantial period is over, there is no necessity to say !! goodbye !! to the normal rule of appointment and to show favour to one at the come of the interests of several others ignoring the mandate of Article 14 of the Constitution."

The Apex Court in **I.G. (Karmik) Vs. Prahalad Mani Tripathi** [(2007) 6 SCC 162 carved out an exception to the ordinary rule of recruitment, stating:-

"6. An employee of a State enjoys a status. Recruitment of employees of the State is governed by the rules framed under a statute or the proviso appended to Article 309 of the Constitution of India. In the matter of appointment, the State is obligated to give effect to the constitutional scheme of equality as adumbrated under Articles 14 and 16 of the Constitution of India. All appointments, therefore, must conform to the said constitutional scheme. This Court, however, while laying emphasis on the said proposition carved out an exception in favour of the children or other relatives of the officer who dies or who becomes incapacitated while rendering services in the Police Department.

7. Public employment is considered to be a wealth. It in terms of the constitutional scheme cannot be given on descent. When such an exception has been carved out by this Court, the same must be strictly complied with. Appointment on compassionate ground is given only for meeting the immediate hardship which is faced by the family by reason of the death of the bread earner. When an appointment is made on compassionate ground, it should be kept confined only to the purpose it seeks to achieve, the idea being not to provide for endless compassion."

The same view is again reiterated by the Hon'ble Supreme Court in recent decision in Civil Appeal No.3242 of 2009 titled as State of Chhatisgarh & Ors. Versus Dhirjo Kumar Sengar decided on 5.5.210 reported as 2010(1) Recent Service Judgment 22. The Hon'ble Apex Court in number of cases has repeatedly held that the compassionate appointment is not a mode for appointment. Not only this it is further lay down by the Hon'ble Apex Court that the vacancy under the said quota is referred from the quota of

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direct recruitment. Therefore, especially in these circumstances the appointment cannot be made casually as right of general public in seeking appointment in public employment has been affected. Therefore, they have formulated a scheme under different headings and thereafter to make a comparative merit of those candidates who were seeking appointment under the said quota and to give them appointment to a family whose case is more indigent than others because each family cannot be accommodates/given appointment as against the limited quota of vacancy.

9. In view of the above, I feel that the impugned order does not deserve any interference by this court. Accordingly the OA is dismissed. No order as to costs.

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MEMBER (J)

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