

Open Court

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD**

(THIS THE 27TH DAY OF April, 2011)

HON'BLE MR. A.K.BHARDWAJ, MEMBER (J)

Original Application No. 1066 of 2006
(U/S 19, Administrative Tribunal Act, 1985)

Mohd. Naeem, S/o Late Ilahi Baksh,
Resident of House No. 64, Lal Kurti Bazar,
Cantt. Faizabad.

..... Applicant

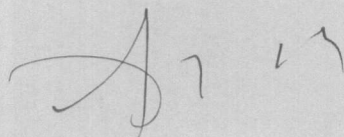
Present for Applicant : Shri S. Mukharjee, Advocate

Vs.

1. Union of India, through Secretary, Ministry of Defence, South Block, New Delhi.
2. General Manager, Small Arms Factory. Kalpi Road, Kanpur - 208009.
3. Chief Controller of Defence Accounts (Pensions) Draupadi Ghat, Allahabad.

..... Respondents

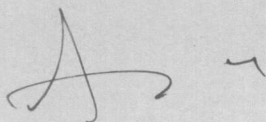
Present for Respondents: Shri R.D.Tiwari, Advocate



ORDER
(Delivered by Hon. Mr. A.K. Bharwaj, Member-J)

Mr. S. Mukherjee, learned counsel for the applicant has sent ailment slip. Mr. Anil Kant Tripathi holding brief of Mr. R.D. Tiwari, learned counsel appearing for the respondents.

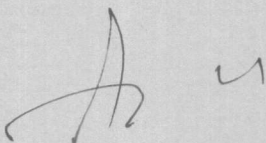
2. As can be seen from the impugned order, the respondents have rejected the plea of the applicant for employment on compassionate ground, taking the view that only such family which scored minimum 52 points are considered deserving for appointment of one of dependents of deceased employee on compassionate ground while the family of the applicant could earn only 49 points. The applicant has contended that the points are allotted to bereaved family not as on the date of death of deceased employee i.e. on 23.12.1999, but are awarded on the basis of circumstances prevalent in the year 2006.
3. The respondents have not controverted the contention of the applicant, i.e. rather they have contended that in view of the decision of Hon'ble Supreme Court in the case of Umesh Nagpal Vs. Haryana & others JT 1994 (3) SC 525 compassionate appointment cannot be granted after the lapse of a reasonable period and is not a vested right. Respondents have also contended that the employment on compassionate ground can be offered only against the vacancies in group 'C' and group 'D' category in direct recruitment quota to the extent of 5% of the same. Referring to decision of Hon'ble Supreme Court in the case **L.I.C. Vs. Asharam Chhandra Ambekar JT 1994 (2) SCC 718**, it is contended by the respondents that the High Court and



Tribunal cannot give directions for compassionate appointment of a person but can direct consideration for such appointment. Making reference to the decision of Hon'ble Supreme Court and the case of **Himachal Transport corporation Vs. Dinesh Kumar JT 96 (5) SC 319 and Hindustan Aeronautics Ltd. Vs. A. Radhdika Thirumalai (1996) 6 SCC 394**, the counsel for the applicant submits that appointment on compassionate appointment can be made only against vacancies available for the purpose. From the afore mentioned judgments of Hon'ble Supreme Court it is clear that,

- (i) Compassionate appointment cannot be claimed as a matter of right.
- (ii) Hon'ble High Court and Tribunal cannot give direction for appointment of a person on compassionate ground but can direct for consideration claim for such appointment.
- (iii) Appointment on compassionate ground can be made only if a vacancy is available for the purpose.

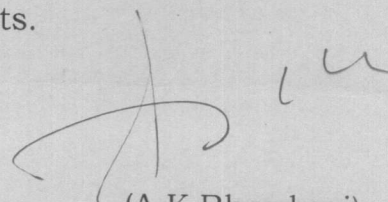
4. As can be seen from the impugned order, respondents have not rejected the claim of the applicant on the ground that the employment was not claimed with a reasonable time or was claimed after lapse of considerable period. While stating that the employment on compassionate ground can be restricted only against 5% vacancies in group 'C' and 'D' category against the direct recruitment quota they have not categorically stated that they do not have any vacancy even said 5% quota.



5. In view of afore mentioned, impugned order dated 02.5.2006 cannot be sustained and the same is quashed. The matter is remitted back to respondents to consider the claim of the applicant for employment on compassionate ground afresh. While doing so respondents would take into account the condition family on the basis of circumstances existed on the date of death of the deceased employee.

6. While arriving at the conclusion on the issue availability of vacancy, the respondents would calculate the total number of vacancy in group 'C' and group 'D' category in the office where applicant is eligible for appointment on compassionate ground. They will also calculate the number of vacancies within 5% quota to be filled up by direct recruitment in group 'C' and group 'D' category. They will also do the exercise of finding out the total number of posts in Group 'C' and group 'D' category occupied by those given employment on compassionate ground. If after having done the said exercises the respondents come to conclusion that the family of late Ilahi Bux does not qualify for employment of one of its member on compassionate ground, they will communicate the decision to applicant by passing a detailed order.

7. OA disposed of. No order as to costs.


(A.K. Bhardwaj)
Member (J)

Shashi