

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH,
ALLAHABAD

Original Application No. 1149 of 2006

Allahabad this the, 1ST day of Sept., 2011

Hon'ble Mr. Justice S.C. Sharma, Member (J)

Seema Devi Widow of Late Sri Babu Lal ex driver under Director, National Research Centre for Agro-Forestry, Jhansi a unit of Indian Council of Agricultural Research Gwalior Road Jhansi U.P. R/o H.No. P-73, Chhatoo Ka Bagicha.

Applicant

By Advocate: Mr. R.K. Nigam

Vs.

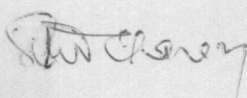
1. Indian Council of Agricultural Research under Ministry of Agriculture Government of India through its Secretary, Krishi Bhavan, New Delhi.
2. Director National Research Centre for Agro-Forestry, Gwalior Road, Jhansi.
3. State Election Commission through Chief Election Office State of Uttar Pradesh.

Respondents

By Advocate: Mr. N.P. Singh

O R D E R

Under challenge in this O.A. is the order dated 30.03.2005 passed by respondent No. 2 (annexure A-1). Further prayer has also been made for giving direction to the respondents to re-consider the case of the applicant at the level of the competent authority higher than



the respondent No. 2 i.e. respondent No. 1 without any further delay.

2. The pleadings of the parties, in brief, are as follows: -

It has been alleged by the applicant that husband of the applicant namely Babu Lal was employed as Motor Vehicle Driver under the respondents on regular basis, and was posted under respondent No. 2-Director National Research Centre for Agro-Forestry, Gwalior Road, Jhansi under the Ministry of Agriculture, Government of India. The applicant's husband was deployed for election duty as Driver from 09.06.2000 as per order dated 07.06.2000 issued by the Director, NRCAF. The husband of applicant reported for duty on 09.06.2000 to the District Magistrate, Jhansi. On 12.06.2000, husband of the applicant expired due to heart failure while on election duty at Jhansi. The deceased employee was survived by the applicant-his widow, three minor daughters, two minor sons and old dependent parents. The applicant is facing acute financial distress in maintaining her family. The applications were submitted to the District Magistrate, Jhansi

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and the Commissioner, Jhansi for granting compassionate appointment to the applicant considering the financial condition. But the representation of the applicant was rejected by the District Magistrate, Jhansi, and Commissioner Jhansi. Thereafter, application was submitted to the respondent on 17.08.2001 for compassionate appointment. The representations were sent to the Director, NRCAF, Jhansi. The applicant was aged about 36 years, and educated up to 5th class and, as such, she is qualified for Group 'D' post only and none of the children of the applicant is major. Earlier O.A. No. 1598 of 2001 was also instituted before the CAT, and the O.A. was disposed of by the Tribunal on 18.11.2004 with a direction to the respondents to dispose of pending representation of the applicant, and to consider the case of the applicant. The case of the applicant was considered as per direction but case of the applicant was rejected due to non-availability of vacancy against 5% quota as per the instruction of Department of Personnel and Training hence, the O.A.

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3. The respondents have contested the case and filed the Counter Affidavit, and denied from the allegations made in the O.A. It has been alleged in the Counter Affidavit that husband of the applicant Babu Lal, Ex Driver joined the service on 24.11.1998, and he was deputed for U.P. Panchyat Election duty on 07.06.2000, and he died on 12.06.2000 due to heart failure. Application was submitted by the applicant on 04.07.2000 to the Director, NRCAF for compassionate appointment but as there was no sanctioned vacant Group 'D' post under 5% quota meant for compassionate appointment as prescribed in the scheme, hence candidature of the applicant was rejected. It is denied that numerous vacancies occurred in the Institute and the respondents ignored the compelling circumstances of the applicant. The case of the applicant was considered sympathetically but due to non-availability of vacancy, appointment could not be offered to her. It is stated that the Department of Personnel and Training issued an instruction and in view of the instructions, the candidate is to be considered for a period of three years subject to the condition that the prescribed committee

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has reviewed and certified the penurious condition of the applicant at the end of the first and the second year. After three years, if the compassionate appointment is not possible to be offered to the applicant, his case will be finally closed. It is further stated that a sum of ₹ 1,21,518.00 was paid to widow of the deceased employee under various heads. The O.A. lacks merits and is liable to be dismissed.

4. I have heard Mr. R.K. Nigam, Advocate for the applicant and Mr. N.P. Singh, Advocate for the respondents, and perused the entire facts of the case.

5. Annexure A-1 is copy of the impugned order passed by the respondents on 30.03.2005. It is undisputed fact that case of the applicant was considered as per direction of the Tribunal in O.A. No. 1598/2001 dated 18.11.2004. It has been alleged in the impugned order (annexure A-1) that case of the applicant was considered in accordance with rules but the compassionate appointment cannot be offered to the applicant as no vacancy is available against 5% quota

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meant for compassionate appointment. Under these circumstances, according to the respondents, case of the applicant was rejected mainly on the ground that no vacancy is available against 5% quota, meant for compassionate appointment. Otherwise it has not been alleged by the respondents that case of the applicant was considered, and the applicant was not considered eligible or she is not in indigent condition. The case was rejected only due to non-availability of vacancy.

6. Learned counsel for the respondents placed reliance on a circular letter issued by the Department of Personnel and Training regarding time limit for compassionate appointment dated 05.05.2003. Annexure CA-2 is the circular of Govt. of India, Department of Personnel and Training, wherein in para-3, it has been provided as under: -

"The maximum time a person's name can be kept under consideration for offering Compassionate Appointment will be three years, subject to the condition that the prescribed Committee has reviewed and certified the penurious condition of the applicant at the end of the first and second year. After three years, if Compassionate

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Appointment is not possible to be offered to the Applicant, his case will be finally closed, and will not be considered again."

It has been argued by learned counsel for the respondents that in view of requirement of the circular of the DOP&T appointment can be made subject to availability of clear vacancy within 5% quota. It has also been mentioned in this circular of DOP&T that if on scrutiny by the Committee, a case is considered to be deserving, the name of such a person can be continued for consideration for one more year. It has not been disputed by the respondents that case of the applicant was not considered deserving for compassionate appointment but the case was rejected mainly on the ground that vacancies were not available against 5% quota for compassionate appointment. This is the sole ground for rejection of claim of the applicant. In case vacancy was not available against 5% quota, and case of the applicant was deserving then the case of the applicant ought to have been considered for one more year but there is no mention in the impugned order (annexure A-1) that case of the applicant was considered for more than once, as provided in

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the circular of DOP&T, and in the absence of specific assertion of this fact, it will be presumed that case of the applicant was most deserving. Even in the Counter Affidavit it has not been alleged by the respondents that case of the applicant was not deserving but the respondents have not considered the case of the applicant in proper perspective.

7. Moreover it has also been alleged by the respondents in the Counter Affidavit that as per circular of the DOP&T case of an employee for compassionate appointment is to be considered maximum up to 03 years and after expiry of 03 years, case is to be closed. Firstly there are certain conditions provided for keeping pending the case for three years. It has not been alleged by the respondents in the impugned order that case of the applicant was considered as per the circular of DOP&T for three years. No separate orders were passed during these three years. The case of the applicant ought to have been considered during subsequent years, and in case condition of family was penurious at the end of first and second year then it must have been considered

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in 3rd year, and thereafter case of the applicant can be closed. There had been indifferent attitude of the respondents in giving compassionate appointment to the applicant firstly case of the applicant was not considered suo moto in spite of the fact that the application was submitted by the widow of the deceased employee well within time after the death of her husband. The case of the applicant was considered when a direction was given by the Tribunal in the O.A. No. 1598/2001 on dated 18.11.2004, and at this time also the case of the applicant was rejected mainly on the ground that no vacancy was available against 5% quota, as required by the Circular of DOP&T. So far as regards keeping pending maximum for a period of three years a case for compassionate appointment, learned counsel for the applicant cited a Judgment of the Hon'ble High Court of Allahabad. The Hon'ble High Court, Allahabad in the case of Hari Ram vs. Food Corporation of India and others reported in 2009 (6) ADJ 90 declared the circular letter of DOP&T as irrational, arbitrary and violative of Article 14 and 16 of the Constitution of India. Hence, this contention of the

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respondents is not justified that as per circular letter of DOP&T dated 05.05.2003 case of the applicant was to be considered maximum for a period of three months, and thereafter it is to be closed. Firstly as I have stated above that nothing was shown by the respondents that case of the applicant was considered thrice continuously and moreover in view of the Judgment of the Hon'ble High Court, this circular letter of the Ministry of DOP&T has been declared as irrational, arbitrary, unreasonable and violative of Article 14 and 16 of the Constitution of India hence the respondents cannot be permitted to drop the case of the applicant for compassionate appointment after expiry of three years.

8. Only contention of counsel for the respondents is that due to non-availability of vacancy against 5% quota in Group 'D', appointment could not be offered to the applicant. But in this connection, learned counsel for the applicant placed reliance on a letter issued by the Indian Council of Agricultural Research, Krishi Bhavan, New Delhi dated 09.02.1989 (annexure A-10). It is

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relevant to reproduce the relevant portion of the circular letter, which is as under: -

"As a result, the families of the deceased employees are put to acute financial hardship. It is, therefore, once again urged that the cases of compassionate appointments may kindly be dealt with on top priority basis and settled invariably within 3 months of the death of the employee to ameliorate the hardship of the bereaved families. In case no vacancies exist at that time, the appointments may be made on daily paid basis as an interim measure for immediate relief and subsequently appointments regularised as soon as the vacancies become available. It may please be ensured that compassionate appointments are made only in really genuine cases."

Hence in view of the circular issued by the respondents it has been provided that case of compassionate appointment must be dealt with on top priority basis and settled invariably within two months of the death of the employee to ameliorate the hardship of the bereaved family. In the present case, matter of the applicant was not considered as per the instruction of the respondents-concerned Ministry. It has also been provided in the same circular that in case no vacancy existed at that time, appointment may be made on daily wage basis as an interim measure for immediate relief, and subsequently appointment may be

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regularised as soon as vacancy became available. Much welfare provisions had been made by the respondents in order to give expeditious relief to the bereaved family, and in the present case I am convinced that case of the applicant was most deserving as she has got unmarried daughters and sons to maintain, besides herself and parents of the deceased employee, and a very meager amount was paid to the applicant as a consequence of death of her husband. She was in dire need of financial help and as there is a provision in the circular letter dated 09.02.1989 for giving immediate assistance to the bereaved family, and provision is also there that in case there is no vacancy available at the relevant time, then appointment is to be given to such a candidate on daily wage basis as an interim measure, and this direction under the circular letter was not utilized by the respondents in the case of the applicant. Under these circumstances, inference can be drawn that case of the applicant was not considered properly by the respondents in accordance with latest law and circulars of the respondents. In case, case of the applicant might have been

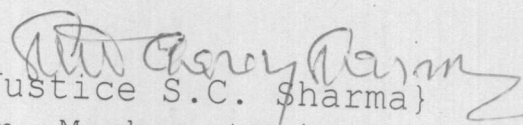
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considered properly then as an interim measure applicant should have been offered appointment on daily wage basis as vacancy was not available at that time. I can only ^{be paid D} ~~say~~ that case of the applicant was most deserving, and her case must be reviewed till appointment is to be given to her, and interim relief must be given to her.

9. For the reasons mentioned above, I have come to the conclusion that case of the applicant was not considered by the respondents in correct perspective. The case of the applicant was rejected only on the ground that appointment cannot be offered on Group 'D' post as no vacancy was available against 5% quota for compassionate appointment, and the circular dated 09.02.1989 has been implemented in the case of the applicant. The case of the applicant ought to have been considered continuously till vacancy is available, and as an interim measure, daily wage employment should have been given as per circular letter of the Indian Council of Agricultural Research dated 09.02.1989.

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10. O.A. is allowed. Order dated 30.03.2005 (annexure A-1) is quashed and set aside. The respondents are directed to consider the case of the applicant for compassionate appointment as per law and moreover if no vacancy is available against 5% quota for compassionate appointment, then her case must be considered in accordance with the circular letter of the respondents dated 09.02.1989. The case of the applicant shall be considered within a period of three months from the date when a copy of this order is produced before the respondents. The applicant shall also produce a copy of the order before the respondents at the earliest. No cost.


{Justice S.C. Sharma}
Sr. Member (J)/HOD

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