

(OPEN COURT)

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

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

Original Application Number. 1286 OF 2006.

ALLAHABAD this the 23rd day of *October*, 2008.

Sushma Pandey, D/o Late Balram Pandey, Resident of 439-H/1, Buxi Khurd, Daragang, Allahabad.

.....Applicant.

VER S U S

- 1. Union of India through Secretary, Ministry of Defence, New Delhi.
 - 2. The Controller General of Defence Accounts, West Block- 5, R.K. Puram, New Delhi.
 - 3. The Principal Controller of Defence Accounts, Headquarter, G-Block, New Delhi.
 - 4. The Senior Accounts Officer (Admn.) in the office of Principal Controller Defence Accounts, Headquarter, G- Block, New Delhi.
-Respondents

Advocate for the applicant: Sri A.K. Upadhyay
Sri Sanjeev Shukla

Advocate for the Respondents : Sri Saurabh Srivastava

ORDER

By this O.A filed under section 19 of Administrative Tribunals Act, the applicant has prayed for a writ, order or direction in the nature of certiorari quashing the order dated 07.02.2006 passed by the respondent No. 3 and order dated 19.04.2002 passed by the respondent No. 4 on behalf of the respondent No. 3 coupled with the prayer to appoint the applicant on the post of Auditor in pay scale of Rs. 4000-6000/- in pursuance of the letter dated 05.12.2000 passed by the respondent No. 3 with all consequential benefits .

2 The facts, in brief, are that the father of the applicant died on 14.04.1999 while in service. She preferred an application for appointment on compassionate grounds on 12.10.2000. The request of

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the applicant had been considered by the competent authority and who, vide order dated 19.04.2002, had rejected the claim of the applicant for want of vacancy under 5% of direct recruitment quota meant for compassionate appointment. Aggrieved the applicant filed O.A No. 922/02 challenging the order 19.04.2002, which this Tribunal vide order dated 16.12.2004 had disposed of finally directing the respondents to reconsider the case of the applicant for appointment on compassionate grounds, if necessary by according relaxation as provided in the scheme of compassionate appointment. As regards the non-availability of vacancy, by the said order dated 16.12.2004 (referred to above), the respondents were further directed to take appropriate action under para 7 (e) and 7(f) of the relevant scheme for compassionate appointment and pass a detailed and speaking order under intimation to the applicant. Respondents filed Review Application No. 30/2005 before this Tribunal, which was dismissed vide order dated 16.08.2005. Against the said order, the respondents' department approached the Hon'ble High Court by filing Writ Petition No. 73850/05, which was also dismissed vide judgment and order dated 05.12.2005.

3. Denying the claim of the applicant, respondents have file Counter Affidavit, in which it has been stated that in compliance of the order dated 16.12.2004 passed by this Tribunal in O.A No. 922/02, the office of Controller General of Defence Account referred the matter to the Central Government vide letter dated 26.12.2005 followed by reminder dated 10.01.2006 for taking appropriate action in accordance with para 7(e) and 7(f) of the relevant scheme for compassionate appointment. However, only three Central Government Departments/offices were contacted and vide letter dated 31.01.2006 and 01.02.2006 respectively have intimated that 'there is no vacancy in Group 'C' under compassionate quota'.

4. I have heard rival contentions and also gone through the entire material on record as well.

5. It has been contended by the learned counsel for the applicant that the direction given by this Hon'ble Tribunal has not been followed by the competent authority in letter and spirit. The respondents have given

complete go by to the observations made by Hon'ble High court in the writ petition (referred to above). Learned counsel has categorically submitted that the para 7(e) and 7(f) has not been followed in strict sense as in the instant case, this Tribunal has recorded a definite finding that 'in my considered view the applicant has been duly subjected to a written examination in which she had succeeded. Accordingly, the letter dated 05.12.2000 was issued by the office of Principal Controller of Finance, Accounts, New Delhi informing the applicant that she has been selected for appointment as Auditor in the scale of Rs. 4000-6000/- subject to completion of pre-employment formalities.

6. I find force in the contention of the applicant that the order dated 05.12.2002 was issued to the applicant conveying her appointment on the post of Auditor. It is also not the case of the respondents that at that time, there was no vacancy for appointment on compassionate grounds. The respondents were fully aware of the direction of this Tribunal and considering the seriousness of the matter they approached the High Court by filing Writ Petition, which was dismissed by the High Court rejecting the contention of the respondents that 'there is no vacancy'. Hon'ble High Court has clearly observed in its order dated 05.12.2005 passed in Writ Petition No. 73890/2005 that no attempt had been made by the respondents to explain before the Tribunal why the vacancy was filled up.

7. Having given anxious consideration to the pleas raised by the parties counsel, I am firmly of the view that the defence taken by the respondents in not considering the case of the applicant for appointment on compassionate for want of vacancy is a 'subterfuge' and no credence could be attached to the same. It is apposite to mention here that the office of Principal Controller of Defence Accounts on one hand by letter dated 05.12.2000 had intimated the applicant with regard to her appointment on compassionate ground as Auditor in pay scale Rs. 4000-6000, and after lapse of more than one year had intimated the applicant that her appointment on compassionate ground was not feasible for want of vacancy. The stand taken by the respondents does not inspire confidence. There must be a positive stand by the respondents. In view of the directions given by this Tribunal, it was

incumbent upon the respondents to explore all possibilities for considering the case of the applicant for appointment on compassionate grounds. The action taken by the respondents in accordance with para 7(e) and 7(f) of the relevant scheme (referred to above) for compassionate appointment appeared to be wholly inadequate. For strict compliance of the direction of this Tribunal as well as High Court in Writ Petition (referred to above), the respondent ought to have consulted with other Ministries/departments of Central Government. In a latest decision reported in **2007 Supreme Today (2) 519 (Abhishek Kumar Vs. State of Haryana and others)**, the Hon'ble Supreme Court has held that where a person was entitled to appointment on compassionate grounds in terms of Rules and there was a statewide list of vacancies, appointment could not be denied on the ground that there was no vacancy in a particular district where he was sought to be appointed. When state-wise list is prepared, it does not lie in the mouth of an authority incharge to disobey the order passed by a higher authority. There might not be any post available at a particular place, but there cannot be any doubt or dispute that such a post would be available in some other district within the state of Haryana.

8. In view of the aforesaid observation, the impugned order dated 07.02.2006 deserves to be quashed and set aside. Accordingly the O.A is allowed. Impugned order dated 07.02.2006 is quashed and set aside. The respondents are directed to reconsider the matter in the light of decision rendered by this Tribunal in O.A No. 922/2002 and by the Hon'ble High Court dated 05.12.2005 in Writ Petition No 73890/2005 as well as following the provisions contained in para 7(e) and 7(f) of the relevant scheme of compassionate appointment. The entire exercise shall be completed within two months from the date of receipt of certified copy of this order and communicate the decision by registered post to the applicant

9. There will be no order as to costs.

Anand
MEMBER- J.

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