

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Dated : This *Monday*, the *28*th day of February, 2011

Original Application No. 1458 of 2006

Hon'ble Mr. Sanjeev Kaushik, Member (J)

1. Smt. Durgeshwari, W/o late Shyam Lal, Ex-Leather Worker, O.E.F., Kanpur, R/o Golaghat Nai Basti, Cantt: Kanpur.
2. Ashish Kumar, S/o late Shyam Lal, Ex-Leather Worker, O.E.F., Kanpur, R/o Golaghat Nai Basti, Cantt: Kanpur.

. . . Applicants

By Adv : Sri R.K. Shukla and Sri M. Lal

V E R S U S

1. Union of India through the Secretary, Ministry of Defence, Deptt. of Defence Production & Supplies, Govt. of India, New Delhi-11.
2. The Addl. D.G.O.F., O.E.F. Group of Fys HQrs., 'Ayudh Upaskar Bhawan', G.T. Road, Kanpur.
3. The General Manager, Ordnance Equipment Factory, Kanpur.

. . . Respondents

By Adv: Shri R.K. Srivastava

O R D E R

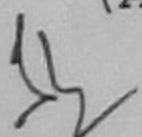
By way of instant OA filed under Section 19 of the A.T. Act, 1985 the applicant seeks quashing of the impugned order dated 30.06.2000 (Annexure A-1 to the OA).

2. The brief facts of the case are that the applicant herein is the widow of late Shyam Lal who was working as leather worker in leather Section (Boot

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Plant) of Ordnance Equipment Factory (in short OEF), Kanpur. He died on 10.11.1999 while he was in service. It is stated that the death of the applicant's husband was also notified by respondent No. 3 in publication of factor order No. 2346 dated 07.12.1999. The applicant No. 1 (Smt. Durgeshwari) made a representation before respondent No. 3 seeking appointment on compassionate grounds for her elder son namely Manish Kumar (Annexure A-5 to the OA). It is further submitted that respondent No. 3 vide letter dated 30.06.2000 intimated the applicant that her case has been rejected. Hence, the instant OA.

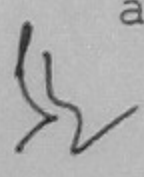
3. Upon notice, the respondents have filed detailed counter affidavit as well as Supplementary counter affidavit. In the supplementary Counter affidavit the respondents have raised preliminary objection with regard to delay and laches in terms of Section 21 of the A.T. Act, 1985. Even on merit also the claim of the applicant has been opposed by the respondents. It is stated in the counter affidavit that the respondents have considered the case of the applicant vis-à-vis the other similarly situated persons who are claiming appointment on compassionate grounds in terms of various instructions issued by the Department of Personnel and Training (in short DOPT). It is further submitted that the case of the applicant was considered by the Board of Officers on 27.05.2000 (Annexure SCA-7). It is submitted that the appointment



of the applicant could not be given for want of vacancies and lower score point compared to those who were recommended for appointment (Annexure SCA-8).

4. I have heard Sri R.K. Shukla, learned counsel for the applicant and Sri D. Tiwari brief holder of Sri R.K. Srivastava, standing counsel, Govt. of India, on behalf of the respondents. Learned counsel for the applicant vehemently argued that the impugned order is totally non-speaking and has been passed on stereo type proforma and thus it seems to have been passed without application of mind. Therefore, the same is liable to be quashed and set aside on this ground alone. He further submitted that the family condition of the applicant is very diligent as reflected from the representations made by the applicant. Moreover, it seems that the family condition has not been considered by the Committee/Respondents while dismissing her case. He further submitted that the Tehsildar of the village has also made report to the effect that the applicant is not having sufficient means of livelihood and they are not having source of income.

5. By placing reliance on Annexure CA-10, learned counsel for the applicant submitted that even offices of the respondents who have conveyed the impugned order had earlier recommended the case of the applicant for consideration sympathically. On the

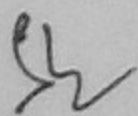


basis of this he submitted that despite the recommendation her case has been rejected.

6. On the other hand learned counsel for the respondents argued that the instant OA be dismissed on the ground of delay and laches as the impugned order is dated 30.06.2000 and the OA has been filed after more than 06 years from the date of cause of action. He further submitted that to cover up the delay appeal was preferred in the year 2006. Learned counsel for the respondents relied upon the following judgment:-

- i. (1986) ATC 514 : Paramu Vs. Union of India
- ii. ATR (1987) 1 CAT 625 : Charan Vs. Union of India
- iii. (1197) SLJ (CAT) 54 : Mohd. Khalil Vs. Union of India


7. On merit also he stated that the case of the applicant has been considered in terms of the OM issued by the Nodal Agency i.e. DOPT and after evaluating the merit of the applicant vis-à-vis other similarly situated persons he could not wake up on merit. He referred to Annexure CA-10 and stated that under different hands marks were allotted to the applicant by the Committee and he supported the impugned order. Considering also the relied upon judgments passed by the Apex Court, wherein it is held that compassionate appointment cannot be claim as a matter of right and it is no source of recruitment. The department is bound to consider the case under



compassionate scheme in terms of instructions from time to time.

8. I have considered the rival submission of learned counsel for the parties and perused the record and have also considered the judgment referred by the learned counsel for the respondents. It is an admitted fact that the husband of the applied died on 10.11.1999. The case was also considered by the Committee constituted by the respondents in this regard. From perusal of the proceedings of the Committee it is clear that the Committee has given marks under different heads and ultimately Committee did not found any merit in the case of the applicant for appointment on compassionate grounds vis-à-vis other similarly placed persons. It is also clear that the respondents are to consider the case of all candidates seeking appointment under the said quota against limited vacancies i.e. 5% of total direct recruitment vacancies. No explanation has been given by the applicant with regard to preliminary objection raised by the respondents i.e. time barred. Therefore, the instant OA deserves to be dismissed on this ground alone.

9. 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 die 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 therefore traceable only to the scheme framed by the employer for such employment and there is no right whatsoever outside such scheme. In case *"Umesh Kumar Nagpal 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 for 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.

10. In case *Jagdish Prasad versus State of Bihar, (1996) 1 SCC 38*, the Hon'ble Supreme Court rejected the claim of a minor dependent to be appointed on

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compassionate ground after attaining the age of majority by making the following observation:-

"The very object of appointment of a dependent of the deceased employee who died in harness is to relieve unexpected immediate hardship and distress caused to the family by sudden demise of the earning member of the family. Since the death occurred way back in 1971, in which year the appellant was four years old, it cannot be said that he is entitled to be appointed after he attained majority long thereafter. In other words, if that contention is accepted, it amounts to another mode of recruitment to the dependent of a deceased government servant which cannot be encouraged, de hors the recruitment rules."

11. In *Steel Authority of India Ltd. v. Madhusudan Das and Ors.* [2008 (15) SCALE 39], the Hon'ble Court held:

"...This Court in a large number of decisions has held that the appointment on compassionate ground cannot be claimed as a matter of right. It must be provided for in the rules. The criteria laid down therefore, viz., that the death of the sole bread earner of the family, must be established. It is meant to provide for a minimum relief. When such contentions are raised, the constitutional philosophy of equality behind making such a scheme be taken into consideration. Articles 14 and 16 of the Constitution of India mandate that all eligible candidates should be considered for appointment in the posts which have fallen vacant. Appointment on compassionate ground offered to a dependant of a deceased employee is an exception to the said rule. It is a concession, not a right."

12. 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 Ltd. (supra)* and. 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.

13. The similar view has been taken in the case of *State of J & K and others Vs. Sajad Ahmed Mir* (2006

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(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 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 cost of the interests of several others ignoring the mandate of Article 14 of the Constitution.

14. The Apex Court in I.G. (Karmik) v. Prahalad Mani Tripathi [(2007) 6 SCC162 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."

15. In view of the above, at this belated stage, no relief can be granted to the applicant. The Hon'ble Supreme Court in the case of Mumtaz Yunus Mulani vs. State of Maharashtra & Ors., 2008 (2) S.C.T., 669, has held as under:-

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"16. Furthermore, about 12 years have passed. Appellant's son is aged about 20 years and daughter is aged 16 years. Therefore, they have become major. Appellant herself would be aged about 38 years now. She cannot be given any appointment at this age."

16. In another case also the Hon'ble Apex Court has retreated same view which is reported as 2006 Supreme Court Cases 766 and 2008 AIR SCW 3642.

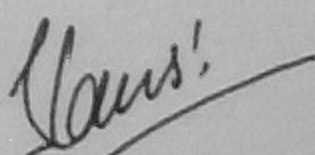
17. The Punjab and Haryana High court also consider point of giving appointment after attaining majority in *State of Haryana and others*, 2005(2) SCT 478, has held to the following effect:-

"We are of the view that the normal procedure for appointment is open recruitment following a lawful and legal procedure. Such a procedure means that appointment is made after vacancies are identified and then they are advertised calling for applications from the public at large. Upon receipt of such applications, the candidates are screened, interviewed and short-listed in a rational and reasonable manner. Legally there are only two known methods/modes of recruitment. One of them being open recruitment as indicated above and the other is filling up the vacant posts by promotion. The concept of compassionate appointment is a third source which has been developed on the basis of compassion but such compassion cannot be allowed to gallop like an unruly horse in favour of one or other member of the family of the deceased because if it were to be so allowed, then such a consideration would go against the expectations of millions of other families which have been subjected to similar unforeseen miseries on account of the death of their bread-winner. The concept of compassionate appointment virtually obliterates an elaborate and transparent procedure of open recruitment but in the opinion of this Court, following the observations of the Apex Court, such a procedure cannot be allowed to keep the consideration alive for a period ad finitum. If it is allowed to do so, it will encroach and create inroads into an otherwise transparent procedure commonly known as open recruitment. The effect would be that all of a sudden, when other persons are in the queue waiting for their turn for regular appointment, their legitimate expectations would abruptly be snatched away by a seeker of compassionate appointment at a time when the consideration for such appointment had become non-existent - the deceased parent having died 4/5 years ago - an event which can hardly be said to be reasonable vis-à-vis persons waiting for regular appointment. We are, therefore, of the view that there cannot be continuity of cause of action in matters of compassionate appointment.

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18. 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 5.5.2010 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 laid down by the Hon'ble Apex Court that the vacancy under the said quota is referred from the quota of 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 accommodated/given appointment as against the limited quota of vacancy.

19. In view of the above I feel that the impugned order deserves no interference by this Tribunal. Hence the OA is devoid of merit and accordingly dismissed. No cost.


Member (J)

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