

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH:
ALLAHABAD(THIS THE 19 DAY OF 5 2010)

PRESENT

HON'BLE MR. A.K. GAUR, MEMBER (J)ORIGINAL APPLICATION NO. 1477 of 2006

Pappu Lal Son of Late Sri Birtu, Resident of Village-Singhpur, Post Office-Sarnath, District-Varanasi.

.....Applicant

By Advocate: *Ms. Rinkey Gupta*
Shri A.K. Srivastava

Versus

1. Union of India through Secretary, Horticulturist and Archaeological Department.
2. Director General of Indian Horticulturist and Archaeological Survey of India New Delhi.
3. The Deputy Superintendent Horticulturist Archaeological Survey of India, Horticulturist Division No.1, Taj Mahal Agra, 282001.

..... Respondents

By Advocate: *Shri Anil Dwivedi*ORDER

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

Through this O.A., the applicant has challenged the order-dated 13.10.2006 passed by Respondent No.3 by which his claim was rejected for being appointed under the provisions of Dying in Harness Rules. It is further prayed that the respondents be directed to provide suitable compassionate appointment to the applicant.

2. The brief facts of the case are that the father of the applicant, who was working on the post of Chaukidar died on 31.05.2004. On

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14.06.2004, the applicant moved an application claiming appointment on compassionate ground and also requested for grant of family pension, gratuity and provident fund. The applicant received a letter-dated 21.02.2005, directing him to submit the complete form. The mother of the applicant submitted her reply on 15.03.2005. Vide letter dated 17.05.2005 the mother of the applicant was directed to submit necessary documents. In pursuance of letter dated 17.05.2005, necessary documents were sent through registered post on 27.05.2005. The respondent No. 3 again issued a letter dated 09.06.2005 asking the mother of the applicant to supply certain more informations and same was duly complied with by the mother of the applicant vide letter dated 16.06.2006. It is stated that Sri Rajesh Kumar Mishra, Member of Parliament also wrote a letter to Smt. Ambika Soni, the concerned Minister, Govt. of India for considering the request of the applicant for compassionate appointment. It is alleged that the applicant sent a number of representations for considering his case but no heed was paid by the respondents and every time he was told that the matter is under consideration and very shortly the respondents are going to issue appointment letter to the applicant.

3. It is further stated by the applicant that on 23.05.2006 the respondent no.3 arbitrarily and illegally rejected the case of the applicant for appointment on compassionate ground. Aggrieved against the order-dated 23.05.2006 the applicant approached this Tribunal and filed an *Original Application No.916 of 2006 Pappu Lal Vs. Union of India & Ors.* This Tribunal finally passed the Order directing the respondent no.3 to take appropriate action for compassionate appointment of the applicant within a period of 2 months from the date of production of the certified copy of order. It is further alleged that again the respondent

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no.3 rejected the case of the applicant for compassionate appointment vide its order-dated 13.10.2006. By the present O.A. the applicant has challenged the order dated 13.10.2006, which was served on the applicant through covering letter dated 18.10.2006.

4. Refuting the case of the applicant, respondents have filed counter affidavit and submitted that in compliance of the direction of the Tribunal dated 05.09.2006 in O.A. No.916 of 2006, the claim of the applicant for compassionate appointment had duly been considered keeping in view the relevant guidelines on the subject. The name of the applicant was not found as most deserving case for being appointed on compassionate ground by the competent authority. Further case of the respondents is that family pension was also granted to the family of deceased Govt. Servant. According to the respondents the case of the applicant was duly placed before the meeting of Board of Officers held under the Chairmanship of Joint Director, Archaeological Survey of India, New Delhi, who after taking into consideration each and every aspect i.e. *assets and liabilities and all other relevant factors such as the presence of an earning member*, size of the family, age of the children and the essential needs of the family of the deceased Government servant, found the applicant not suitable for being appointed on compassionate grounds and the decision of the Committee was communicated to the applicant vide letter dated 05.04.2006. According to the respondents, the order-dated 13.10.2006 has been passed by the Committee at its meeting held on 26.09.2006, after considering each and every aspects of the case, and decided the matter in accordance with the DOPT guidelines and several judicial pronouncements of the Apex Court on the subject. The respondents have submitted that under the

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scheme of compassionate appointment as contained in Government of India Ministry of Personnel, Public Grievances and Pension (Department of Personnel and Training) O.M dated 9.10.1998, and 3.12.1999, the appointment on compassionate ground can be made to a dependent family member on compassionate grounds dying in harness or who is retired on medical ground thereby having his family in penury and without any means or livelihood. To relieve the family of the Government servant concerned from financial destitution and to help it get over emergency. It is further stated that after due consideration of the case of the applicant a detailed and speaking order was passed and communicated to the applicant vide the impugned order.

5. Learned counsel for the applicant argued that by means of impugned order dated 13.10.2006 (Annexure A-1), the representation of the applicant has been rejected by the respondents without looking into the merit of the case of the applicant and without assigning any reason regarding merit and status of the applicants in 5% reserved quota. Learned counsel for the applicant vehemently argued that the applicant has three young daughters, so the consideration of four young women dying of hunger should be accorded the top priority while making the merit of the case and should be given appointment immediately on compassionate grounds, especially in the modern age where upliftment of women has become a necessity and matter of high concern as Human Right.

6. Learned counsel for the applicant made a contention that in the case of compassionate appointment, the most aggrieved class is the women. If the bread winner man dies in harness, his widow and children become orphan, because in the present social setup women are

not supposed to be the bread-winner of the family so long as the men are alive and the conditions deteriorate exceedingly with the expiry of the bread-winner who can be replaced by either his wife or by the son as the case may be.

7. Learned counsel for the applicant further argued that the DOPT vide O.M dated 09.10.1990 has issued instructions for giving compassionate appointment to a member of the family of an employee who has either died in harness or has been retired or boarded out on medical ground. Learned counsel for the applicant further contended that the respondents have not refused to give the appointment due to short fall of vacancies under 5% quota of direct recruitment.

8. Learned counsel for the respondents argued that impugned order is well reasoned and speaking and has been passed after due consideration of the case of the applicant in accordance with Rules, instructions and various decisions of the Hon'ble Supreme Court. Learned counsel for the respondents stated that the case for appointment of the applicant along with other similarly situated cases was considered by the Board of Officers by allotting points for various parameters like Family Pension, terminal benefits received by the Widow, Monthly income of the earning members, number of dependents and availability of vacancy within a year, that too within the ceiling of 5% of direct recruitment quota meant for the purpose. Learned counsel for the respondents submitted that in the case of **Himachal Road Transport Corporation Vs. Dinesh Kumar - J.T 1996 (5) S.C. 319 and Hindustan Aeronautics Ltd. Vs. Smt. Radhika Thirumulai - JT 1996 (9) S.C. 197**, Hon'ble Supreme Court has held that

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appointment on compassionate grounds can be made only if a vacancy is available for the purpose.

9. The Applicant has filed rejoinder affidavit in which nothing new has been added except what has been stated in the Original Application.

10. We have heard counsel for both the sides and perused the pleadings as well as its Annexures filed by the counsel for the applicant.

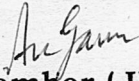
11. Having heard learned counsel for the parties, we are firmly of the view that the request of the applicant has duly been considered and after completing requisite formalities, it was placed before the Board of Officers, who decided that since no vacancy meant for compassionate appointment is available at present, the request of applicant for her appointment on compassionate grounds cannot be considered. It is settled principle of law that the High Court and Tribunal cannot give direction to give appointment on compassionate ground and can only issue direction to consider the case of appointment on compassionate ground. Hon'ble Supreme Court in ***M.T Latheesh's case reported in 2006 (7) SCC 350 and State of J&K and Ors. Vs. Sajad Ahmad Mir (2006) 5 SCC 766 as well 2007 (1) SCC (L&S) 668, National Institute of Technology Vs. Manoj Kumar Singh*** has clearly held that appointment on compassionate ground cannot be granted after lapse of sufficient time.

12. In view of the above observations, we are firmly of the opinion that the order-dated 13.10.2006 (Annexure A-1) is perfectly just and proper. No notice or opportunity is required to be given to the applicant any more. As per the decision of Hon'ble Apex Court rendered in Manoj

Kumar Singh's case (supra) and State of J & K (supra), in which it has been held that *'once it is proved that inspite of death of the breadwinner, the family survived and substantial period is over, there is no need to make appointment on compassionate ground at the case of the interest of several others ignoring the mandate of Article 14 of the Constitution'*.

13. In view of the aforesaid observation and law laid down by the Apex Court, the applicant has failed to make out any case for interference. Accordingly the O.A. is dismissed being devoid of merit.

14. There will be no order as to costs.


Member (J)

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