

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Dated : This the **05TH** day of **April** 2010

Original Application No. 279 of 2006

Hon'ble Mr. S.N. Shukla, Member (A)

Smt. Poonam Devi, W/o late Raji, D/o Sanjay Kumar, R/o Ganga Nath Jha Hostel servant Quarter Campus, Allahabad University, Allahabad.

...Applicant

By Adv : Sri Ram Chandra and Sri U. Nath

VERSUS

1. Union of India, through Secretary, Ministry of Defence, North Block, New Delhi.
2. Commandant, Ordnance Depot, Fort, Allahabad.
3. Personnel Officer (Civil Ordnance) Depot, Fort Allahabad.

...Respondents

By Adv: Sri Anil Dwivedi

ORDER

Heard Shri Ram Chandra, learned counsel for the applicant and Sri Anil Dwivedi, learned counsel for the respondents.

2. This OA is filed seeking following reliefs:-

- "i. to issue a suitable order or direction quashing the impugned orders dated 13.6.2003 passed by the respondent no. 2.*
- ii. to issue an order or direction commanding the respondents to appoint the petitioner on suitable post as per her eligibility on compassionate ground.*
- iii. to issue such order and further orders or direction which this Hon'ble Tribunal may deem fit and proper in the nature and circumstances of the case.*
- iv. to ward the cost of the present application to the applicant."*

3. The impugned order reads as under:-

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"1. Please refer to our letter no. 114516/2/Relax/PD/Est dated 17JULY 2000 and your application dated 25th August, 2000, regarding employment in relaxation to normal rules.

2. It is to inform your case for employment in relaxation to normal rules was forwarded to His central command Lucknow/Army his new Delhi, for obtaining approval for time bare sanction from men if def. Army HQ/Hs cc Lucknow intimated his depot. That it is not possible to take up time bare sanction approval for men of Dep. Due to policy constraints. Your case stands rejected finally."

4. The applicant approached the Hon'ble Allahabad High Court.

The Hon'ble High Court vide its order dated 24.08.2005 directed as under:-

"In view of the aforesaid fact, this petition is dismissed on the ground of alternative remedy to approach the Central Administrative Tribunal, Allahabad. It is expected that if the petition is filed for appointment under the Dying in Harness Rule by the petitioner, the same will be decided on merits without taking into consideration the limitation as the writ petition was kept pending for a period of two years before this Court."

5. Learned counsel for the applicant vehemently argues that the respondent No. 2 rejected the claim of the applicant only on the ground of delay. He placed reliance on CCS (Pension) Rules, wherein instructions have been issued from time to time dealing with the question of waving the delay in such matters. However, since all such instructions issued from time to time have finally been consolidated into recent DOP&T instructions last one being No. 14014/2002-Estt (D) dated 05.05.2003, has been strucked down by Hon'ble High Court in a case of **Hari Ram Vs. Food Corporation of India and others : 2009 (6) ADJ 90** as ultravious to the Constitution with the following observations:-

".....The instructions contained in the Office Memorandum dated 5th May, 2003 of the Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pension, Government of India fixing time limit of three years for offering compassionate appointment is declared to be irrational, arbitrary, unreasonable and violative of Article 14 and 16 of the Constitution of India....."

6. In the instant OA the husband of the applicant died on 21.06.1999. The application for compassionate appointment was made on 20.06.2000 which was acknowledged on 17.07.2000

(Annexure A-3) and the final rejection conveyed on 13.06.2003 (Annexure A-1). Learned counsel for the applicant vehemently urged that there is no delay on the part of the applicant.

7. Learned counsel for the respondents on the other hand pointed out para L of the counter affidavit, wherein certain discrepancies regarding variation in the name of her father as shown in High School certificate. No adverse findings are, however, indicated in the counter affidavit. Para M relates to the delay of more than one year having been caused which finally resulted in the rejection of the applicant's case.

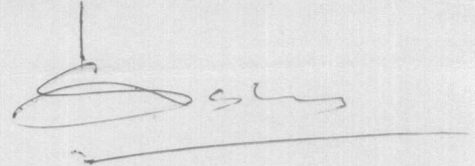
8. The Tribunal has heard parties counsel, carefully considered the facts of the case and direction of Hon'ble High Court. Para L of the counter affidavit is of no consequence, it only tries to explain why the delay has caused. Para M again of no consequence because it only states that the matter was forwarded to the higher authorities.

9. Considering that this Tribunal has mandated to decide this case on merit by the order of the Hon'ble High Court. It is important that the authorities first pass the orders dealing with the applicant's case on merit, more so it is also held by the Hon'ble High Court that limit of three years rule is ultravirus to the Constitution. Accordingly, the impugned order dated 13.06.2003 (Annexure A-1 to the OA) is quashed and set aside with direction to the competent authority to pass a fresh, ~~and~~ reasoned and speaking order on merit within a period of three months from the

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date of receipt of copy of this order. The order shall be communicated to the applicant forthwith.

10. With the above order/direction the OA is disposed of. No cost.

A handwritten signature in dark ink, consisting of a stylized 'A' followed by some illegible characters, positioned above a horizontal line.

Member (A)

/pc/