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Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

Original Application No. 311 of 2006

____ day, this the 18 day of October 2007

Hon'ble Mr. K.S. Menon, Member (A)

Lakhan Singh Son of Late Roshan Lal DES/FGM I, Resident of: 467/A, Sadar Bazar (Yadav Mohalla) Bareilly Cantt., District Bareilly.

Applicant

By Advocate **Sri A.K. Singh**
Smt. R. Singh.

Versus

1. Union of India through Joint Secretary In-Charge of Administration in the Ministry of Defence, New Delhi.
2. The Chief Engineer, G.E. No.1, Bareilly Zone, District-Bareilly.
3. Garrison Engineer No.1, Bareilly Cantt., Bareilly.

Respondents

By Advocate Sri Saurabh Srivastava

ORDER

By K.S. Menon, Member (A)

This O.A. has been filed against the in action of the respondents on the application dated 24.11.2000 and 10.05.2001 filed by the mother of the applicant and the applicant himself respectively for obtaining appointment under the "Scheme for Compassionate Appointment 1998". The relief sought is for the Tribunal to issue an order directing the respondents to consider the case of the applicant for appointment on compassionate grounds under the provisions of the said Scheme.

2. The case of the applicant in brief is that the father of the applicant Shri Roshan Lal posted as D.E.S. in the Military Engineering Service Department, Bareilly Cantt. died in harness on 20.11.2000. The wife of the deceased Roshan Lal, Smt.

Somwati submitted an application to respondent No.2 on 24.11.2000 informing about her husband Roshan Lal's death. She also gave details about the family stating that the deceased Roshan Lal left behind three sons and a daughter. Out of the three sons, two are deaf and dumb, while the applicant is the only son who is healthy and requested the respondents to employ him on compassionate grounds under 'Dying in harness Scheme' (Annexure-1). In reply she received a letter dated 08.12.2000 from the Office of the respondent No.3 asking her to submit an application from her son for employment enclosing documents like Death Certificate, family details verified by Civil authorities, Property Certificate from the Tehsildar, Income Certificate and Educational/Transfer Certificate (Annexure-2). Smt. Somwati submitted her son's application along with all requisite documents vide her covering letter dated 10.05.2001 (Annexures No.3 to 9).

3. The applicant submits that he is fully eligible for appointment under the Scheme for compassionate appointment issued by the Central Government and adopted by the Ministry of Defence. He states despite this and his best efforts, there was no response from the respondents. He then submitted some additional documents like a notarized affidavit from his mother dated 26.09.2005, certificate of heirs dated 12.08.2004 Backward Class Certificate dated 10.9.2002; and Employment Exchange Identity Card. (collectively marked as annexure-10).

4. The applicant avers that since none of his above efforts elicited any response from the respondents, he was forced to file Writ Petition No. 73858 of 2005 on 22.11.2005 (Lakhan Singh Vs. Union of India and others) in the High Court of Allahabad. The same was disposed of by the High Court on 06.12.2005 with liberty to initiate appropriate proceedings before the Central Administrative Tribunal, with directions to the Tribunal to ensure early disposal of the O.A. of the applicant (Annexure-11). He has therefore filed the present O.A. seeking directions of this Tribunal to the respondents to consider his case for appointment on compassionate grounds.

5. The learned counsel for the respondents Shri Saurabh Srivastava refutes the arguments of the applicant's counsel Smt. R. Singh. Shri Srivastava reiterates the respondents' submission in paragraph No.7 of the Counter Affidavit that in reply to the respondents' letter dated 08.12.2000 seeking certain documents, the applicant in a most insincere manner submitted incomplete documents. He states that complete documents are essential for the case to be examined in accordance with Ministry of Defence ID No. 19 (4)/824-99/1998-D(Lab) dated 09.03.2001 wherein all aspects like family size with ages, amount of movable/immovable property left behind by the deceased employee to determine actual financial distress are to be examined in detail to arrive at the most deserving cases. These cases are then considered within the ceiling of 5% direct recruitment vacancies within a year. The respondents submit that the applicant had not submitted complete documents despite being reminded by the respondents vide their letters dated 09.09.2005, 20.03.2006 and 20.07.2006. Complete documents were submitted only on 22.08.2006, which was processed and submitted to higher authorities for placing before the Board of Officers for the Quarter ending September 2006.

6. Refuting the applicant's contention in paragraph No.4 (12) of the O.A. that the applicant has a right to be appointed under the Scheme of Compassionate Appointment, 1998 and the respondents have a corresponding duty to give the applicant employment under the said scheme, the respondents counter it stating cases for compassionate appointment are processed in accordance with D.O.P.T. instructions on the subject. The scheme does not envisage employment generation or giving guaranteed compassionate employment to dependents as a matter of routine but talks of employment assistance only. Besides various Judgments of the Apex Court have also held that compassionate appointment cannot be given as a matter of right. The D.O.P.T. instructions also lays down a time limit for giving such compassionate appointments. The applicant has himself submitted incomplete documents and hence stretched this beyond five years

and, therefore, his case is heavily time barred and is liable to be dismissed with costs.

7. Heard the counsels for both parties and examined the documents on record.

8. Admittedly, the applicant's mother Smt. Somwati applied for an appointment for her son-the applicant on compassionate grounds immediately (24.11.2000) after her husband's Sri Roshan Lal's death on 20.11.2000. The point of dispute is whether the applicant furnished all relevant records as asked for by the respondents in complete shape. While the applicant states that there were submitted alongwith the formal application on 10.05.2001 the respondents vehemently deny this saying that the documents submitted were incomplete. It can, therefore, be reasonably presumed that while some documents were submitted, as claimed by the applicant, it was perhaps not in the manner as required by the respondents to enable them to process the case for consideration of the Board of Officers. The respondents were compelled to issue reminders to the applicant vide their letters dated 09.07.2005, 20.03.2006 and 20.07.2006. The respondents contend that all documents in complete shape were finally received on 22.08.2006, thus, rendering the case heavily time barred. One of the principles laid down by the Supreme Court for grant of compassionate appointment in its Judgment dated 04.05.1994 in Umesh Kumar Nagpal Vs. State of Haryana and Others is that compassionate appointment cannot be granted after a lapse of a reasonable period and it is not a vested right which can be exercised at any time in future. Supreme Court in (1998) 2 SCC 412 [paragraph No.5] State of U.P. and others Vs. Paras Nath has held "----- The purpose is to provide immediate financial assistance to the family of a deceased Government servant. None of these considerations can operate when the application is made after a long period of time as seventeen years in the present case". In the present case, the applicant has submitted his case with complete documents after a

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lapse of more than five years. In view of this, the applicant has no case.

9. Perusal of the pleadings shows that the case of the applicant complete in all respect was put up to the Board of Officers in September 2006. It, however, transpires that the respondent No.2 returned the case on 29.09.2006 to respondent No.3 indicating that the applicant had only passed 5th standard while the recruitment rules stipulate 8th standard pass for recruitment to the post of Group 'D'. The applicant was also asked to clarify/confirm that he had only passed 5th standard and to forward an undertaking that he would pass the 8th standard within two years from date of appointment if he offered an appointment, failing which his services would be terminated. This communication was sent to the applicant by respondent No.3 on October 2006 (date not clear). On receipt of the above the case was to be processed further. This letter of the respondents dated October 2006 is annexed as Annexure-1 to the applicant's Rejoinder Affidavit. It is strange that the respondents have not referred to this important letter either in their counter or supplementary counter in support of their arguments. Nevertheless it is evident that the applicant sent all relevant documents in complete shape after a lapse of more than five years and even at that point in time he was not educationally qualified to seek a compassionate appointment.

10. In response to the respondents' letter of October 2006, instead of complying with the requirement contained in the said letter, the applicant vide his letter dated 07.12.2006 questioned the validity of seeking such an undertaking from him as the Compassionate Appointment Scheme notified in D.O.P&T letter dated 09.10.1998 did not provide for such an undertaking. He further mentioned that there were rulings of the High Court and Supreme Court, which held that compassionate appointments should be given unconditionally in relaxation of normal rules. The respondents have very rightly asked him vide letter dated 13.01.2007 to furnish copies of the said rules and citations

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referred to and relied upon in support of his contention in his letter dated 07.12.2006 for further action on their part. Applicant in his rejoinder reply dated 08.03.2007 has not indicated whether he has complied with the requirement of the respondents. The applicant's contention that no body can be asked to give an undertaking that he would pass the 8th standard within two years from the date of appointment is without any merit. From the applicant's own submission he was 21 years of age when he applied for an appointment hence there is no reason why the applicant cannot pass the said examination within two years from the date an appointment is offered to him.

11. Government of India Instructions do provide for grant of compassionate appointment with relaxation of the educational qualifications of 8th standard pass. Applicant was permitted to pass 8th class within a period of two years from the date of appointment subject to an undertaking to be furnished by him. It, therefore, transpires that the applicant being educationally unqualified is not entitled to any compassionate appointment.

12. The counsels for the applicant have relied on the following citations in support of their arguments: -

"{I} Chief General Manager, S.B.I., Lucknow and others Vs. Durgesh Kumar Tewari [(2004) 3 U.P.L.B.E.C. 2244]

{II} Ram Pratap Singh Vs. State of U.P. and others [(2004) 2 U.P.L.B.E.C. 1673]

{III} Smt. Sushma Gosain Vs. Union of India AIR 1989 SC 1976

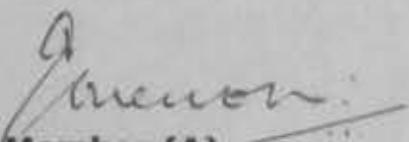
{IV} Umesh Kumar Nagpal Vs. State of Haryana & Others J.T. 1994 (3) SC. 525.

I have perused the citations and hold the view that these Judgments were delivered in the context of facts and circumstances, which are different from this case hence not relevant. Besides some of the Judgments goes against the applicant's case.

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13. In conclusion it is seen that the applicant has applied for compassionate appointment more than five years after the death of his father besides he is educational unqualified. The entire case of the applicant does not conform to the instructions of the D.O.P.T. vide their Office Memorandum dated 09.10.1998 and Judgment of the Supreme Court in Umesh Kumar Nagpal's case. The O.A. therefore lacks merit and is liable to be dismissed.

14. In view of the above, the O.A. being without merits is accordingly dismissed. No costs.


Member (A)

/M.M./