

(Reserved on 03.10.2012)

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD**

ALLAHABAD this the 19th day of October 2012

Present:

HON'BLE MR. SANJEEV KAUSHIK, MEMBER- J

ORIGINAL APPLICATION NO. 694 OF 2006

Bhola Nath Yadav, S/o Late Shri Mithai Lal, Resident of Village-
Dulhapur, Post Office - Hanumanganj, District- Allahabad.

.....Applicant.

VERSUS

1. The Union of India through the Secretary of Defence, North Block, New Delhi .
 2. The Commandant, Ordnance Depot, Fort, Allahabad .
-Respondents

Present for the Applicant:

Sri Chandrika Prasad

Present for the Respondents:

Sri Anil Kumar Dwivedi

ORDER

By way of instant Original Application filed under section 19 of Administrative Tribunals Act 1985 the applicant seeks quashing of Communication letter dated 04.09.2001 (Annexure -1) whereby the claim of the applicant for appointment on compassionate grounds has been rejected.

2. The case set up by the applicant that the father of applicant died on 27.10.1999 leaving behind his wife and three sons. Thereafter the applicant moved an application for appointment under dying in harness scheme on 01.06.2000. As the applicant did not receive any response from the respondents, he filed Writ Petition No. 15281/2001 which was disposed off on 23.04.2001 with

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direction to the respondent No. 2 to take appropriate decision in respect of the petitioner's claim for compassionate appointment. After that the applicant moved another application alongwith certified copy of the order passed by the Hon'ble High Court. Thereafter the respondent No. 2 vide letter dated 04.09.2001 intimated the applicant about rejection of his claim, hence the O.A.

3. Upon notice the respondents filed detailed counter affidavit and contested the claim of the applicant. In the C.A it is stated that the father of the applicant died on 27.10.1999 while working as Mazdoor after serving for more than 36 years leaving behind his wife and three sons. The family of the deceased employee has already been paid Rs. 1,58,697/- as Gratuity, Rs. 81,321/- as G.P. Fund, Rs. 20,822/- as CGIES and Rs. 6733/- as leave encashment. The family is also getting family pension. It is further submitted that as per the income certificate submitted by the applicant the income of the deceased family is Rs. 500/- per month from other sources. However, the applicant for compassionate appointment submitted by the mother of the applicant was forwarded on 03.01.2001 to HQ, Central Command, Lucknow for consideration by a Board of Officers, who considered the case of the applicant and rejected on the ground that there was no vacancies for employment under dying in harness rules. Decision to this effect was again communicated to the applicant vide letter dated 04.09.2001.

4. The applicant also filed Rejoinder Affidavit contradicting the averments of the respondents.

2

5. I have heard Sri Chandrika Prasad, counsel for the applicant and Sri Anil Kumar Dwivedi, counsel for respondents and have gone through the record.

6. The stand taken by the respondents while rejecting the case of the applicant for the first time is that when his case was considered there was no vacancy. Consequently due to change of policy his case could not be considered. The new Policy stipulates that the case for appointment in relaxation to normal rules has to be considered within a year from the date of death of the Government servant. Hence the claim of the applicant has been closed being time barred. Averments to this effect has been made in para 'K' of the Counter Affidavit.

7. It is the law of land that compassionate appointment is to be given to a destitute family for recovering from financial crisis on account of sudden death of the sole bread earner. But is also equally important that the case of a dependent is to be considered as per policy prevailing when the employee died. The Government of India has issued instruction dated 09.10.1998 clearly providing therein that compassionate appointment is to be given to a deserving candidate amongst the eligible candidates. Therefore, it gives a right to a dependent for consideration against the available vacancy under 5% quota of direct recruitment. In the instant case, admittedly the case of the applicant was firstly rejected as there was no vacancy and in second time it was closed being time barred on account of change of Policy. Therefore, it is clear that on both occasions the case of the applicant has not been considered on merits.

2

8. In view of the above the impugned 04.09.2001 is set aside. The matter is remitted to the respondents to reconsider the case of applicant for appointment on compassionate grounds in the light of O.M. dated 09.10.1998. No costs.

Anand
Member-J

Anand/