

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 8th day of Oct 2010

Original Application No. 716 of 2006

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

Imtiyaz Ahmad S/o late Sri Mustaq Ahmad, R/o 479, Faithfulganj Cantt.
Kanpur.

..... Applicant.

By Advocate: Sri P. Mathur

VERSUS

1. Union of India through Director General, Employees State Insurance Corporation, Panchdeep Bhawan, CIB Road, New Delhi.
2. Regional Director, ESI, Corporation, Panchdeep Bhawan, Sarvodaya Nagar, Kanpur-5.
3. Assistant Director, Administration, Rajya Karchari Bima Nigam, Sarvodaya Nagar, Kanpur-5.

..... Respondents.

By Advocate: Shri P.K. Pandey

ORDER

This OA has been filed seeking the following reliefs:-

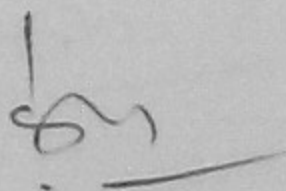
- "i. To issue writ, order or direction in the nature of certiorari quashing the order dated 24.4.2006 as communicated vide letter dated 28.4.2006 passed by respondent No. 1 and 3 respectively rejecting the claim of the applicant for compassionate appointment.*
- ii. To issue writ, order or direction in the nature of mandamus commanding the respondents to provide the compassionate appointment to the applicant.*
- iii.*
- iv."*

2. Briefly stated the facts of the case are that the father of the applicant late Mustaq Ahmad passed away on 04.01.1999 while working as Office Superintendent in the Employees State Insurance Corporation. The late

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employee had left behind few other survivors in addition to the applicant. Earlier the applicant had approached this Tribunal for quashing the earlier order dated 1/5.02.2001 (Annexure A-8 to the OA). The Tribunal vide its judgment and order dated 13.01.2006 has held that the OA succeeds on merit and allowed the same. The impugned order dated 1/5.02.2001 was quashed and set aside. The respondents were directed to reconsider the case of the applicant for appointment on compassionate ground taking into view the legal position and parameters laid down in the O.M. dated Oct., 9, 1998. The entire exercise should be completed within a period of three months from the date of receipt of a copy of the order. While arriving at these findings this Tribunal took into account various factors as may have been raised in the Counter Affidavit inter-alia discussed few points reproduced from the order as under:-

- "i. The perusal of the impugned order would indicate that the order is very cryptic and no reason has been given by the respondents for rejecting the claim of the applicant for compassionate appointment.*
- ii. From the Counter Affidavit, it has emerged that only two grounds were taken to reject the claim of the applicant. First ground is relating to receipt of retiral benefits, which is more than seven lakhs and the monthly pension, which is being received by the widow of the deceased. In my considered opinion, the respondents have committed a grave error as this ground is against the decision of the Apex Court in case of Govind Prakash Verma Vs. L.I.C. of India & Others, 2005 SCC (L&S) 590 and the head notes of this Judgment is reproduced below :*
"Compassionate appointment – Nature of and entitlement to – Grounds for refusal – Service ground – Held, scheme of compassionate appointment of respondent is over and above whatever is admissible to legal representatives of deceased employee as benefits of service which they get on death of the employee – Hence compassionate appointment cannot be refused on ground that any member of family had received such benefits."
- iii. The second ground, taken by the respondents for rejecting the claim of compassionate appointment is that the elder brother of the applicant is practicing as a lawyer and he could support the family is not at all convincing. This view is taken by them despite that he has been living separately even during the lifetime of the deceased and he still continued to live separately and is not supporting the members of the deceased family. Even Para 10 (1) of the O.M. dated Oct. 9, 1998 by which scheme for compassionate appointment has been circulated, stipulates that in deserving cases even where there is already an earning member in the family, a dependant family member may be considered for compassionate appointment and before approving such appointment, the appointing authority will be justified to grant the compassionate appointment having*



regard to the number of dependants, assets and liabilities left by the Govt. servant, income of the earning members as also his liability including the fact that the earning member is residing with the family members of the Govt. servant and whether he should not be a source of support to the other members of the family. Even this O.M. does not create any bar for giving compassionate appointment where there is already a family member who is earning. What is to be seen in this case is the fact whether that member of the family is living separately or he is supporting the family or not. In the instant case, they have got the affidavit from the elder brother of the applicant who has stated that he lives separately. I have gone through the original records also and the report of the Regional Director has clearly stated as under:

“स्व० मुश्ताक अहमद का बड़ा पुत्र श्री शमशाद अहमद, उम्र 30 व इस परिवार से पिछले कई वर्षों से अलग हैं जो 585, फेतफुलगंज, कैण्ट में रहते हैं तथा वकालत का पेशा करते हैं। बातचीत से ज्ञात हुआ कि उनकी रुचि नौकरी करने में नहीं है वे वकालत के पेशे से संतुष्ट हैं। साथ ही साथ यह भी ज्ञात हुआ कि वह इस परिवार की कोई मदद नहीं करते हैं। इस प्रकार पूरा परिवार मृतक की पेन्शन पर आश्रित है। मृतक के द्वितीय पुत्र श्री इम्तियाज अहमद, उम्र 26 वर्ष इस परिवार के साथ रहते हैं इनकी शैक्षिक योग्यता एम०एस०सी है, को कारुण्य आधार पर नियम में निम्न श्रेणी लिपिक के पद पर नियुक्त किया जा सकता है।”

3. It is submitted by the learned counsel for the applicant that on plain reading of the order should leave no doubt on anybody's mind that the Tribunal had concluded that the appellant succeeds on merits. As is the practice and language of the Court, the Tribunal directed the competent authority to consider the appointment of candidate who had otherwise succeeded on merits. While directing the authorities to reconsider, the court does not expect the competent authority to reject the case of the applicant once again on the same very grounds which have been found to be unsustainable. The competent authority is certainly not expected to sit over the judgment of the order of this Tribunal on issues already adjudicated and settled. At this stage the competent authority is not left with much option except to put to verification requisite qualifications such as academic qualification, age of entry including relaxation, if any, etc.

4. Learned counsel for the respondents relied upon the Counter Affidavit which is largely a repetition of the impugned order and talks of retiral benefits and doubts the affidavit of the elder brother only as a ploy.

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Reliance was also placed on the Hon'ble Supreme Court decision dated 04.05.1994 in the case of *Umesh Kumar Nagpal Vs. State of Haryana and others : JT 1994 (3) SC 525*. In his oral submissions learned counsel for the respondents also argued that no body has right for appointment on compassionate grounds. Took support from the decision of the Hon'ble Apex Court that the objective of giving appointment on compassionate grounds is to render immediate assistance of the family from distress, indigence and provide caption against unexpected shock.

6. Heard learned counsel for the applicant and perused the material on record. This Tribunal is constrained to observe that the impugned order dated 24.04.2006 (Annexure A-1 to the OA) is as contemptuous and arrogant as they come. The portion of the extracts of the impugned may be referred order underlined below are referred to:-

"The application of the younger son Sh. Imtiyaz Ahmad for appointment on compassionate ground was examined by the Corporation in accordance with the Govt. of India Instructions on the subject and it was not found to be fit case for appointment on compassionate ground as no compassion was found to be involved in the case. The applicant was accordingly informed of the decision.

As per Govt. of India Instructions on the subject, the object of the Scheme is to grant compassionate appointment to a dependent family member of a Govt. servant dying in harness leaving behind his family in "penury" and "without any means of livelihood", to relieve the family from financial destitution and to help it get over the emergency. Compassionate appointments can be made only in really deserving cases, if vacancy meant for appointment on compassionate grounds within a year that too within the ceiling of 5% of vacancies falling under Direct Recruitment Quota. The maximum time for considering such cases is three years.

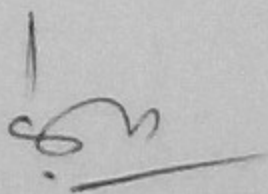
7. The above order is dated 24.04.2006. It is not clear if competent authority is aware of to subsequent Office Memorandum of DOP&T dated 05.05.2003. Vide latter memorandum the period for consideration was enhanced to 03 years. Even this Office Memorandum putting a ceiling of 03 yeas has been held ultravirus of Constitution in a decision of Hon'ble

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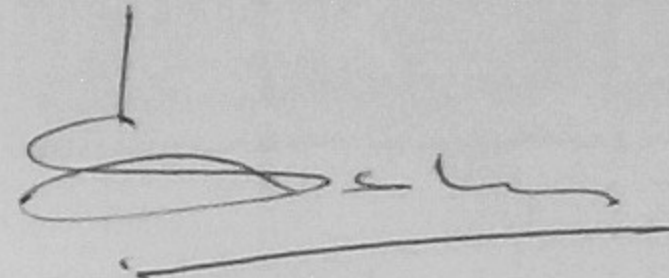
Allahabad High Court in case of *Hari Ram Vs. Food Corporation of India and others* : 2009 (6) ADJ 90 and also in *Civil Misc. Writ Petition No. 13102 : Union of India and others Vs. Smt. Asha Mishra and Anr. decided on 07.05.2010*. Perhaps the competent authority failed to fathom that the ratio of the Hon'ble Supreme Court's judgment in the case of *Govind Prakash Verma Vs. LIC and others* 2005 SCC (L&S) 590 delivered much after Umesh Kumar Nagpal's case has been discussed by this Tribunal in judgment and order dated 13.01.2006. Without delving much on the correctness of the impugned order it will suffice to hold that after this Tribunal gave a finding in Diary No. 2512/02 that the applicant succeeds on merit and the OA stood allowed, it was not open for the competent authority to pass a speaking order as though he was sitting over in judgment of the order of this Tribunal.

The scope of functions to be performed by the competent authority did not go beyond ascertaining the availability of vacancies at that point of time within the prescribed ceiling and verification of essential requirements of qualification etc. and pass an order disclosing the relative merit of the applicant on objective considerations if the number of applicants were more than one. The authority has no competence to dilate on his subjective view about the financial conditions of the survivors contrary to a definite finding of this Tribunal having been already given in favour of the applicant.

8. With the above observations the OA is allowed and the competent authority i.e. Regional Director, ESI, Corporation, Punchdeep Bhawan, Sarvodaya Nagar, Kanpur (respondent No. 2) is directed to pass a reasoned



and speaking order on the application of the applicant purely on objective consideration, if any, existed in the organization. If not, the applicant will be straight away put in the list of candidates waiting for appointment on compassionate grounds with effect from the same date when his application was submitted for the first time. While doing this, however, any candidate who may have been appointed during this period will not be disturbed. The time taken between filing of the first application and passing of this order will be excluded from the computing the entry of age if at all the applicant is found to have crossed the threshold of the entry age. Lastly, as a consequence of decision of Hon'ble Allahabad High Court cited supra, the case of the applicant will be kept alive to be considered on his turn on the basis of list of waiting candidates in order of date of application is expected to be published and put out by the competent authority for public knowledge of all the applicants within a period of three months from the date of receipt of a certified copy of this order. No cost.



Member (A)

/pc/