

(RESERVED)

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

ALLAHABAD this the 3 day of February, 2011.

HON'BLE MR. JUSTICE S.C. SHARMA, MEMBER- J.

ORIGINAL APPLICATION NO. 582 OF 2007

Jeewan Lal, S/o Sri Bhagwan Das, Resident of 17/70, Maithan, B.P. Oil,
Near Tail Mill, Agra.

Advocate for applicant : Sri L.M. SinghApplicant

VERSUS

1. Union of India through the Secretary, Ministry of Defence, New Delhi.
2. Chief Engineer, Air Force, Bamrauli, Allahabad.
3. Garrison Engineer, Air Force, Kheria, Agra.

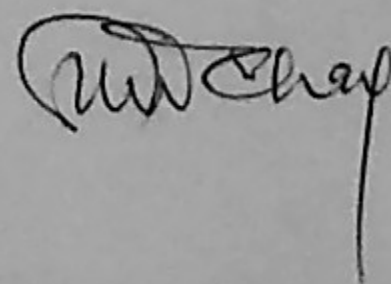
Advocate for the respondents : Sri S.P. SharmaRespondents

ORDER

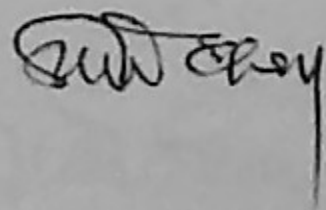
Under challenge in this O.A is the order dated 27.03.2002 and 27.10.2005 (Annexure A-1 and A-2 respectively to the O.A) passed by the respondent No 3. Further prayer has also been made for giving direction to the respondents to consider the appointment of the applicant under dying in harness rules against Group 'D' post.

2. The facts of the case are summarized as follows: -

The father of the applicant Late Bhagwan Das was working on the post of Chaukidar and continued to be on the post till his death on 05.01.1992. Father of the applicant died in harness leaving behind the applicant, four unmarried daughters as well as widow. All the four daughters were getting education at Agra. After the death of the father, the applicant and entire family had been facing financial problem and



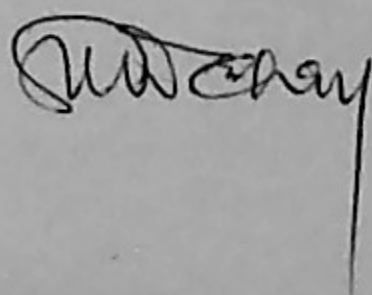
there were no source of livelihood in order to survive the family. The entire family was dependent on the father. Mother of the applicant mostly remain ill. Lot of money is required for meeting out the expenses of the education of children and it is difficult to arrange the education of the daughters as well as to arrange their marriage. The condition of the family has become worst and without financial assistance the family cannot survive. The applicant is aged about 30 years at present. He submitted an application for appointment in class IV post after death of the father. In response to the application the respondent No. 3 vide office order dated 02.01.1993 directed the mother of the applicant to report the office of Garrison Engineer, Kheria with all documents. As per the direction of respondent No. 3, the applicant reported with all documents alongwith mother. Respondent No. 3 again sent a letter on 12.05.1993 directing the applicant to attend the office on 17.05.1993 in connection with his appointment. Again all the documents were handed over to the respondent No. 3 for appointment on compassionate grounds. Respondent No. 3 also informed the mother of the applicant that the case for compassionate appointment has been submitted to the higher authority for consideration. Again a letter was sent by respondent No. 3 on 22.01.1998 directing the applicant to attend the office on 29.01.1998 in connection with the employment. It was also informed by the respondent No. 3 that name of the applicant stands in waiting list at Sl. No. 22 of Mazdoor category for compassionate appointment. But ultimately an order was passed on 27.03.2002 by which the claim of the applicant was rejected summarily. Assurance was given by the respondents in order to give him compassionate appointment. As the respondents had illegally rejected the claim of the applicant hence this O.A.



3. Respondents filed Counter Reply and denied from the allegations in the O.A. It has further been alleged that candidature of the applicant was considered for compassionate appointment by the Board constituted for this purpose and it was observed that looking into comparative merit of the applicants claiming appointment on compassionate grounds and further availability of the vacancies under 5% quota, the applicant was not found most deserving for appointment and accordingly the order was communicated on 27.03.2002. Thereafter an O.A No. 1253/2002 was preferred by the applicant and it was decided on 20.04.2005 and certain direction was given by the Tribunal to consider the claim of the applicant and as per direction of the Tribunal the case of the applicant was considered and detailed order was passed on 27.10.2005. Entire facts were narrated in the order and the direction of the Tribunal was complied with hence there was no justification for filing the second O.A.

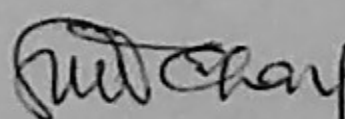
4. It has further been alleged by the respondents that as per rules, the educational qualification for appointment on Group 'D' post is class VIII pass and as no proof of education qualification was furnished by the applicant in earlier application, his application was not considered and after words in pursuance of the order of the respondents' dated 13.09.1997, the proof of educational qualification was submitted and after words the application of the applicant was considered against 5% quota. As more deserving candidates were available hence application of the applicant was rejected.

5. Rejoinder Affidavit was also filed by the applicant after the Counter Affidavit of the respondents.



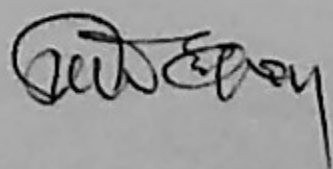
6. I have heard Sri L.M. Singh, Advocate for the applicant and Sri S.P. Sharma, Advocate for the respondents and perused the entire facts of the case.

7. It is undisputed fact that father of the applicant Late Bhagwan Das was the Chaukidar with the respondents and he died on 05.01.1992 while in service. As the father of the applicant was the only earning member and there was no source of livelihood of the family and the family is at the verge of starvation as has got no source of livelihood. The application for compassionate appointment was submitted to respondent No. 3 in the year 1992. The respondents directed the mother of the applicant on 02.01.1993 to furnish all the documents and in response to this letter, all the documents were submitted to the respondent No. 3. Again a letter of respondent No. 3 was received on 12.05.1993 and in this letter also applicant was directed to attend the office on 17.05.1993 in connection with his appointment. Annexure A-4 is the copy of the order dated 12.05.1993. The applicant attended the office of Garrison Engineer on 17.05.1993 and at this time also all the documents were submitted to the respondent No. 3 for appointment on compassionate grounds. Vide letter dated 30.11.1993 respondent No. 3 informed the mother of the applicant that entire documents regarding appointment of the applicant on compassionate grounds has been submitted to the higher authority. Again an order was received from the respondent No. 3 on 22.01.1998 regarding attending the office on 29.01.1998 in connection with his employment. The direction of the respondent No. 3 was followed each time and it was also informed by the respondents on 26.03.2000 that the name of the applicant stands in waiting list at Sl. No. 22 of Mazdoor category and after words informed on 27.03.2002 that the case of the applicant was not

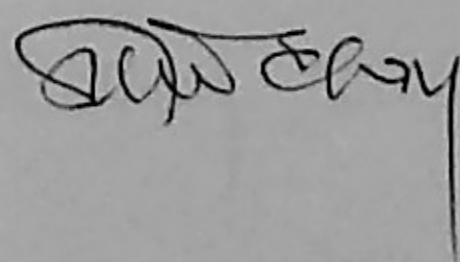


found fit for compassionate appointment. The respondents alleged that at the time of submitting the application for compassionate appointment no educational certificate was submitted by the applicant. For group 'D' category class VIII certificate is required and as the applicant did not produce the certificate of educational qualification and hence the applicant was required to submit the educational qualification certificate vide letter dated 13.09.1997. Annexure -A to the Counter Affidavit is the copy of letter dated 13.09.1997. It is also material to state that when appointment was not given to the applicant inspite of submitting application in the year 1992, O.A No. 1253/2002 was instituted by the applicant and the O.A was decided on 20.04.2005. Certain directions were given in the judgment of that O.A and it was in pursuance of the direction speaking order was passed, which is Annexure A-2 dated 27.10.2005. It will be material to reproduce the operative portion of the judgment of O.A No. 1253/2002 : -

"8. However, in view of the decision of the Division Bench in the case of 2004 (1) ATJ 54 - Kishan Das Vs. U.O.I and others (CAT Jabalpur) wherein the question that came up for consideration is identical, it would be appropriate to direct the respondents to peruse the records relating to compassionate appointments for the year 1993 onwards to see whether there were any vacancies and whether the applicant could have been covered within the vacancy position and if so, the applicant be considered for compassionate appointment in the next available vacancy. In case, the case could not be covered in the past years, details thereof (such as year-wise vacancies and number of candidates appointed) be intimated to the applicant. This exercise shall be conducted within a period of four months from the date of communication of this order."



8. It is material to examine the order dated 27.10.2005 that whether the order passed by the respondents is in conformity with the direction in O.A No. 1253/2002. Firstly, a direction was given to the respondents in order to peruse the record relating to compassionate appointment for the year 1993 onwards to see whether there were any vacancies and whether the applicant could have been covered within the vacancy position and if so, the applicant be considered for compassionate appointment in the next available vacancy. The vacancy position is to be perused for the year 1993 onwards. It is also material to state that application was rejected due to non-availability of vacancy under 5% quota, as has been laid down in the policy. But this policy was framed later on. In the year 1993, 5% quota for compassionate appointment was not fixed. From perusal of the order it appears that the vacancies were not considered and not carved out since 1993 and there was no proper compliance of the order of the Tribunal. A direction was given in order to ascertain the otherwise vacancies, which were not carved out. It has been mentioned in para 7 of the order dated 27.10.2005 " ...As regards intimation of vacancy position and appointment offered from year 1993 is concerned, it is submitted that your application duly completed in all respect was received in this office during Jun. 1999 and accordingly your name was placed before the board in QE Oct.99 and Dec. 99 as stated above and you could not be considered for compassionate appointment due to non availability of vacancy and low merit.". Under these circumstances no compliance was made of the direction given in O.A No. 1253/2002. The Tribunal directed the respondents to consider the claim of the applicant for compassionate appointment from the year 1993 and vacancies were to be counted from the year 1993 and not during the year 1999.

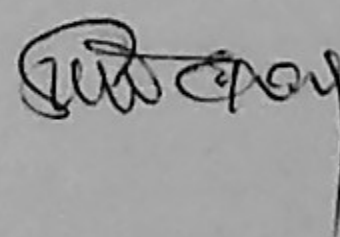


9. It has been alleged by the respondents in the order that the application submitted in the year 1992-93 was incomplete in all respect and hence after completion of the application it was considered in October 1999 and December 1999. Learned counsel for the applicant argued that this contention of the respondents is incorrect to allege that in the year 1992-93 the application submitted by the applicant was incomplete. He attracted my attention towards Annexure A-3, a letter sent by the respondents in January 1993. The contents of this letter are reproduced herein under: -

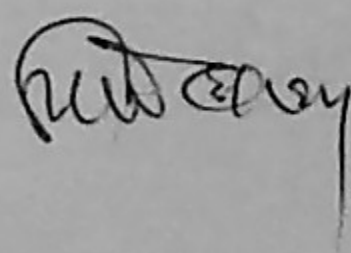
“ Reference this office letter o. 1053/Bhagwan Dass/05/EIC(2) dated 16 Dec 92.

Please report to this office immediately alongwith the documents mentioned in our above quoted letter.”

10. On the basis of above letter learned counsel for the applicant agued that it is an after thought contention of the respondents that alongwith application submitted in the year 1992-93 the educational qualification certificate was not submitted. Although the complete application alongwith education qualification certificate was submitted but it may be presumed that educational qualification certificate was not submitted alongwith application then a direction might have been given to the applicant to attend the office of the respondents alongwith all the documents mentioned in the above quoted letter. Under these circumstances it was but natural for the applicant to present in the office of the respondents alongwith all the documents including educational qualification certificate. It cannot be believed that the applicant failed to submit the educational qualification certificate in pursuance of this letter. Moreover, the respondents could have required submitting certificate regarding educational qualification in



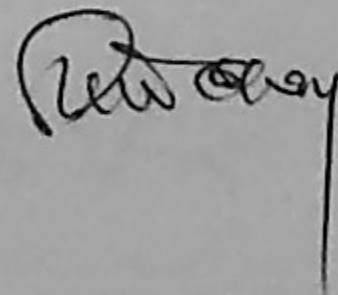
the year 1993, but nothing has been alleged that application was incomplete or the education qualification certificate was not enclosed. This fact ought to have been stated in the letter of January 1993 and the letter is silent on this point hence it can be presumed that the application was complete in all respect and in order to circumvent the compliance of the order of this Tribunal this false fact has been alleged by the respondents. Learned counsel for the applicant also attracted my attention towards Annexure A-4/letter dated 12.05.1993. By this letter also the applicant was required to attend the office on 17.05.1993 in connection with his appointment. Learned counsel regarding this letter also argued that all the documents were submitted and it was not alleged that the application is defective as not containing the required educational qualification certificate. Moreover, Annexure A-5 is also most relevant. Information was furnished by the respondent No. 3 by letter dated 30.11.1993 regarding appointment of son Sri Jeevan Lal stating that his application has already been submitted to the higher authority for consideration. It means that the application was complete in all respect in the November 1993. Thereafter, after gap of 5 years a letter dated 22.01.1998 (Annexure A-6 of O.A) was sent for attending office on 29.01.1998 in connection with appointment of the applicant. All these developments show that this contention of the respondents is false that the application was incomplete. In order to cover up the delay after a gap of 8 years, the respondents alleged that the application was defective as it was not containing the educational qualification certificate whereas, in the earlier letter when the applicant was forwarded to the higher authority, this fact was not pointed out. Under these circumstances it appears that when the application was forwarded and recommended to the higher authority for consideration then naturally the application was complete in all respect. An incomplete



application is not expected to be submitted to the higher authority for consideration. As per the direction of the Tribunal in earlier O.A, vacancies were not considered since 1993. The respondents are liable to explain as to why the appointment could not be made since 1993 and why the application was kept pending up to 1998 onwards. In my opinion, the order passed by the respondents on 27.10.2005 is not in compliance of the order passed in O.A No. 1253/2002.

11. Learned counsel for the applicant argued that the application was completed in all respect in the year 1992-93 and at that time no policy was framed by the DOPT requiring 5% vacancies to be offered for compassionate appointment. It was framed lateron. In the year 1993 onwards there was no such policy for 5% quota for compassionate appointment. The respondents were not justified in considering the application of the applicant in the year 1999 when the policy has come in existence requiring 5% quota for compassionate appointment and at that time alleged that earlier application was defective and hence the application of the applicant was not considered for compassionate appointment. This was most unjust on the part of the respondents. The application of the applicant ought to have been considered as per the direction in O.A No. 1253/2002. The vacancy should have been considered from the year 1993 onwards.

12. Learned counsel for the respondents only argued that earlier the application of the applicant was defective and hence it was not considered and when the application was completed then it was considered under 5% admissible quota for compassionate appointment as per the policy of DOPT. But nothing has been argued regarding receiving incomplete

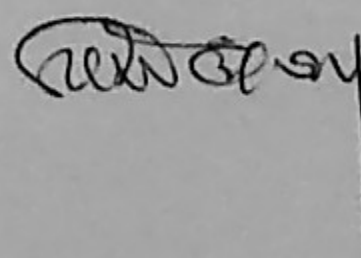


application. It is very easy for the respondents to say that the application submitted earlier was defective or incomplete but it is difficult to substantiate this fact. The correspondence which took place in the year 1993 shows that the application was not incomplete otherwise it should have been alleged by the respondents earlier in the year 1993 onwards. In this connection learned counsel for the applicant cited a judgment reported in Education and Service Cases 2007 (2) ESC page 1268 – Smt. Sheela Devi Vs. Managing Director, Union Bank of India, Bombay (Mumbai) and others. It has been held by the Hon'ble High Court, Allahabad : -

“15. Normally , the Court is very loath to grant a mandate itself for appointment but as has been noted hereinabove, twice the Bank has raised the same bogey and misleading grounds to reject the claim of the widow. Since the Bank appears to have a closed mind on the issue and is harassing a young widow by forcing her to approach the Court time and again it would be against the interest of justice to remand the matter for decision afresh. Applying the ratio of a Division Bench of this Court rendered in the case of Dr. Sangeeta Srivastava Vs. University of Allahabad and others , 2002(3) ESC 320 (All), which has been affirmed by the Apex Court, remand would be futile.”.

13. Hence in view of the judgment of Hon'ble High Court, if the respondents have raised the misleading grounds to reject the claim of the widow or the applicant, then it can be presumed that it is harassing the applicant and forcing him to approach the Court again and again and order can be passed for giving appointment to the applicant.

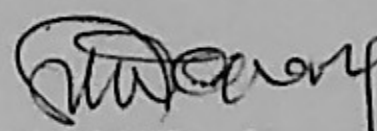
14. For the reasons mentioned above I am of the opinion that the respondents are most unjustified in rejecting the candidature of the



applicant vide order dated 27.10.2005 on the ground that earlier the application was defective and subsequently when in the year 1999 the application of the applicant was considered for compassionate appointment then vacancies were not available in order to give him appointment. The candidature of the applicant ought to have been considered since 1993 onwards and the respondents should have calculated the vacancies year to year in order to consider the case of the applicant against those vacancies. Consequently the O.A deserves to be allowed and the order dated 27.03.2002 and 27.10.2005 deserve to be quashed.

15. O.A is allowed. The orders dated 27.03.2002 and 27.10.2005 (Annexure A-1 and A-2 of O.A) are hereby quashed. Respondents are directed to consider the claim of the applicant for compassionate appointment regarding availability of the vacancies since 1993 onwards taking into account that the application submitted at that time was complete in all respect. Respondents shall decide the application of the applicant within a period of three months from the date when copy of this order is produced before them. The applicant shall also produce the copy of this order before respondent No. 3 forthwith.

16. There will be no order as to costs.


MEMBER- J

Anand/