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CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH; JODHPUR

Original Application No. 226/2003

Date of Decision: 09.07.2004

Hon'ble Mr. J.K. Kaushik, Judicial Member.

Chhagani Devi, Widow of Shri Moti Ram Nayak, aged about 39 years r/o village Pabupura, District Jodhpur. Shri Moti Ram son of Shri Suraja Ram Ex- Mate in the office of Garrison Engineer, MES, Air Force, Jodhpur.

: Applicant.

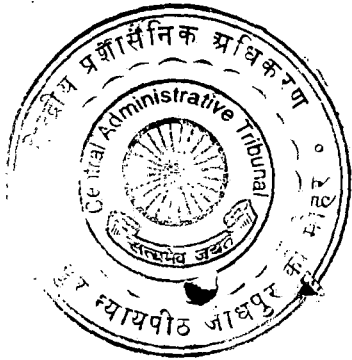
Rep. By Mr. Vijay Mehta: Counsel for the applicant.

Versus

1. Union of India through the Secretary to the Government Ministry of Defence, Raksha Bhawan, New Delhi.
2. Chief Engineer (Air Force) Camp Hanuman, Ahmedabad.
3. Commander Works Engineer, MES, Air Force, Jodhpur.

: Respondents.

Rep. By Mr. Vinit Mathur: Counsel for the respondents.



ORDER

Mr. J.K. Kaushik, Judicial Member.

Smt. Chhagani Devi has filed this O.A assailing the order dated 10.3.2003 Annex. A.1 and has prayed for setting aside the same with a direction to the respondents to give her appointment on compassionate grounds forthwith.

2. The abridged facts considered material for resolving the controversy involved in this case are that Smt. Chhagani Devi is the widow of Shri Moti Ram. Shri Moti Ram was employed on the post of Mate in the office of Garrison Engineers, Jodhpur and died while in service on 18.5.2000, leaving the family in harness and in penury, and also without any means of livelihood. His widow, i.e. the applicant, six daughters, and two sons, survived the deceased Government servant. All the children except the eldest daughter, who is about 20 years of age, are minor and unmarried. The applicant received terminal benefits to the tune of Rs. 2,55,383/- and she is getting a family pension to the tune of Rs. 2400/-. The family does not possess any immovable property.



3. The further facts of the case are that the applicant immediately applied for appointment on compassionate grounds in respect of her son but she realised that her son was only minor and no appointment could be give to him, therefore she requested the respondents to consider her case for such appointment. She was asked to fulfil certain formalities and furnish the additional informations, which she did well in time. Finding no response, she filled an OA No. 51/2003 before this bench of the Tribunal and with the reply to the said O.A. the impugned order came to be annexed, rejecting her claim on the ground that there were more deserving cases. Hence the learned counsel for the applicant sought liberty to file fresh O.A challenging the order dated 10.03.2003, which was granted to him and hence the present O.A. Certain information regarding

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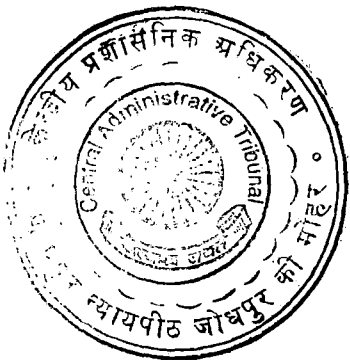
the constitution of the Board of officers for recommending candidates for appointment on compassionate grounds etc have been enunciated. The O.A has been filed on many ground mentioned in para 5 and its sub paras.

4. The respondents have filed a detailed reply and have averred that the case of the applicant was considered by the competent authority and since more hardship cases were pending, her case came to be rejected due to less number of vacancies and a speaking order to this effect has been passed. Further it has been averred that the case of the applicant was duly considered and it has been rejected. There is only right to consideration and one has no right as such for appointment. The death of Government has taken place on dated 18.5.2000 but the applicant applied for appointment only on dated 10.7.2001 i.e. after a lapse of one year from the date of death. The time limit for making the application is only one year. Since the applicant applied at belated stage, she is not entitled for consideration for such appointment. Further, the family has survived for a long time and must have got some means of livelihood as per the presumption enunciated in the policy in vogue.

5. I have heard the learned counsel for the parties at a considerable length and have also perused the pleadings and records of this case as well as the selection Board proceedings, which has been made available by the learned counsel for the respondents at the time of arguments.



6. The learned counsel for the applicant while reiterating the facts and grounds mentioned in the O.A. He has contended that as per the records made available by the respondents the applicant has got 88 marks as per the merit position and her name was placed at Sl. No. 7 whereas one Shri Mahender s/o late Prahalad who has secured 47 marks and placed at Sl. No. 9 of the selection panel has been recommended for appointment. In this way the case of the applicant has been neglected and she has been visited with hostile discrimination. He has further submitted that the case of the applicant has been rejected through a stereotype order and the reasons of the rejection indicated in the rejection letter are quite different from the reasons, which are indicated by the officers of Screening Committee and the Government, as a model employer cannot be permitted to practice such arbitrariness.



7. On the other hand the learned counsel for the respondents has also reiterated the facts and statements of their defence as set out in the reply. It has been stressed that the applicant did not apply for compassionate appointment within a period of one year from the date of death of the government servant as per the rules in force and that has been one of the prime reason for rejection of the case of applicant. The cases of all such persons were rejected and therefore no discrimination has been practiced in the case of the applicant; rather similar treatment has been given to all the similarly situated persons. The Original Application deserves to be dismissed.

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8. The learned counsel for the respondents was specifically confronted with a query as to whether there was any specific provision under the rules or instructions that one cannot apply for compassionate appointment and the application submitted beyond one year of the date of death cannot be considered at all. The learned counsel contended that as per para 5 to the Annexure to the scheme of compassionate appointment, such cases are to be considered against 5 % of the direct recruitment arising during one year from the date of death and that infers the proposition that no application for such appointment is to be considered in case filed beyond one year of death.



9. I have given my anxious thought to the controversy involved in this case. As far as the factual aspect of the matter is concerned there is absolutely no quarrel. I find from the records that a person named Shri Mahender who has secured 47 marks has been recommended for appointment on compassionate grounds. It is also a fact that the applicant has got 88 marks which is the highest marks in the in the selection. The only question, which requires my consideration, is as to whether merely one who has applied for compassionate ground appointment, after a year of the death of government servant, the case can be thrown. Firstly, in the case before me, such reason has not been indicated in the impugned order. Secondly, there is no rule to this effect. As per the policy in vogue, dependent member of a deceased Government servant can be

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considered for appointment on compassionate grounds against the vacancy 5% of the direct recruit quota during the one year after the death of the Government servant. This one year period has been subsequently modified as 3 years as per OM No. 14014/19/2002-Estt (D) dated 05.05.2003, issued by the Department of Personnel and Training. I am not impressed with the submissions of the learned counsel for the respondents that the application itself could not be considered in case filed after one year of the death of the Government servant. The bare perusal of the policy would reveal that no specific time limit has been provided for filing the applications. It is not the case of the respondents that no vacancy was available against the particular quota for the year 2000 and one year thereafter of the date of death as per policy in vogue. Therefore the action of the authorities is not only contrary to the rules but also unjust and offends the fundamental rights of the applicant enshrined under Art. 14 and 16 of the Constitution of India and the impugned order, therefore, cannot be sustained on any count.



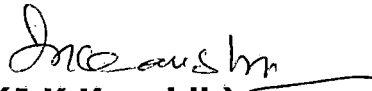
10. As far as the impropriety of Annex. A1 is concerned, a mere perusal of the same reveals that it is a mechanical order and all possible grounds for rejection of a case for compassionate appointment have been incorporated. Precisely, the actual reasons for the rejection of the candidature of the applicant are not reflected in the impugned order. The actual reason for rejection is that the applicant applied after one year from the date of death of her husband, which has been indicated in the reply as well as in the comparative chart prepared by the

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screening committee. But as noticed above different reasons have been adduced in the impugned order. In view of this the action of the respondents cannot be sustained and it does not stand to the scrutiny of law. In normal cases, this Tribunal cannot direct for making appointment on compassionate grounds. But in the instant case, a person lower in merit position had already been recommended for appointment on compassionate grounds and in this view of the matter while granting the relief this factor shall be taken care of.



12. In the result, the O.A has ample merits and the same is allowed. The impugned order dated 10.3.2003 is hereby quashed. The respondents are directed to proceed with giving her offer of appointment on a suitable post (i.e. Mazdoor), as per her merit within a period of three months from the date of receipt of a copy of this order. No costs.


(J.K.Kaushik)
Judicial Member.

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