

**CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR**

ORIGINAL APPLICATION NO.: 207/2002

Yasoda Kanwar W/o Sh. Kailash Singh, aged 35 years, C/o Shri Dalpat Singh Bhati, Mazisa Ka Nohra, Kabootron Ka Chouk, Jodhpur

...Applicant.

VERSUS

1. Union of India through Secretary,
Central Water Resources Ministry,
New Delhi.

2. Chief Engineer,
Central Water Commission,
Tapi Division, Athwalias Surat - (7).

Executive Engineer,
Central Water Commission,
Surat 395007.

... Respondents.

Mr. Hemant Shrimali, counsel for the applicant.
Mr. Vinit Mathur, counsel for the respondents.

CORAM:

HON'BLE MR. J.K. KAUSHIK, JUDICIAL MEMBER.

Date of order:

02.04.2003

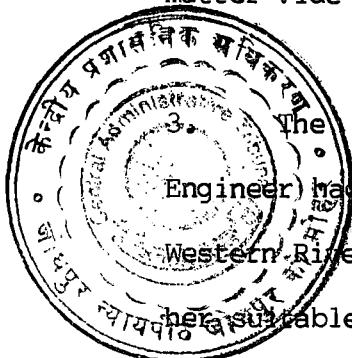
ORDER (oral)

Smt. Yasoda Kanwar has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985 praying therein that the direction may be given to the respondents to consider her

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case for providing the suitable appointment and her representation may also be considered and decided according to law.

2. The brief facts of the case are that the applicant is the wife of late Shri Kailash Singh. Late Shri Kailash Singh was employed as Driver in Central Water Commission, Tapi Division (C.W.C.) Surat and expired on 22.07.2003 while in service. The applicant immediately submitted her application on the prescribed form for consideration of compassionate appointment in the year 1993 itself. But her case was not considered and number of representations had to be made in the matter vide Annexure A/2, A/3 and A/4.



The further case of the applicant is that the Executive Engineer had sent the recommendation to the Superintending Engineer, Western Rivers Circle, Nagpur vide letter dated 18.01.1994 for giving her suitable appointment. In the year 1998, the applicant was asked to send an undertaking for serving on any suitable post in India and accordingly the needful was done vide letter dated 15.10.1998. Further a communication dated 13.01.2001 was made to XEN Planning Parimandal Faridabad, it was followed by a representation dated 10.03.2002 but no reply was received.

4. The salient grounds which have been averred in support of the contentions are that the representation of the applicant was considered and was recommended by the concerned authorities, therefore, it was bounden duty to give her appointment and the higher authorities assured her to give appointment at any place in India and therefore, as and when the vacancies arose she should be given appointment.

5. The Original Application has been contested by the respondents and a detailed reply to the Original Application has been filed. In

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the counter reply, the respondents have asserted that her case was duly considered and recommended in the year 1994 itself with a request that she will be posted in Chambal Division CWE, Jaipur, which is nearer to her home town, but the applicant avoided submitting an undertaking to serve anywhere in India and in October 1998 such an undertaking was submitted. After receipt of the undertaking the case was considered against the vacancy in the year 1998-99 but by that time the new policy came into force and due to non-availability of the vacancies and under restricted quota of 5% meant for compassionate appointment, she could not be given appointment. It has also been averred that posting nearer in Jodhpur

Division was beyond the jurisdiction of the respondents as the respondents are not within the vicinity of Jodhpur. Hence, the applicant does not have any case and the Original Application deserves to be dismissed.

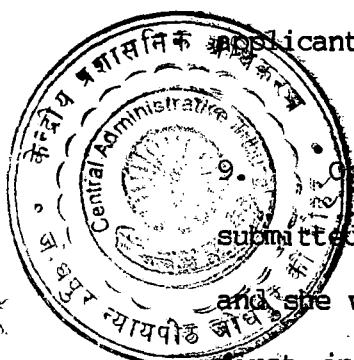
With the consent of both the learned counsel for the parties, the case was finally heard at the admission stage.

7. I have considered the arguments, pleadings and records of the case very carefully.

8. The learned counsel for the applicant has reiterated the facts and grounds raised in the Original Application and has invited my attention towards the pitiable condition to the petitioner. It has also been submitted that the applicant has been consistently insisting the respondents to consider her case but her case was not considered and it was only in the year 1998 that she was asked to submit her representation to serve anywhere in India. Prior to this she was never informed regarding such undertaking. He has also emphatically submitted that she has never denied to serve anywhere in India, as such, no reliance can be placed on the submission made in

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the reply. The family of the deceased government servant is in indigent condition and the applicant has always been willing to undertake the employment at any place despite her peculiar problems in as much as she is young lady and the deceased government servant was survived with a child 5 years of age who is totally handicapped. In the present time of price spiral it is difficult to maintain the family from meager family pension. The hardship faced by the applicant can hardly be expressed.



On the contrary, the learned counsel for the respondents has submitted that the respondents have been very very fair in her case and she was in fact not inclined to serve anywhere in India. In the first instance and it is only in the year 1998 she has given a willingness otherwise her case was considered in the year 1994 itself and it was recommended to post her in Chambal Division, CWC, Jaipur. In any case her case was sympathetically considered in the year 1998-99 also but unfortunately there was no vacancy to the said division and as per the verdict of the Hon'ble Supreme Court in catena of cases the vacancy cannot be created. The learned counsel for the respondents has further contended that it is not possible for this Hon'ble Tribunal to order for creation of the vacancies and since there is no vacancy it is not possible to offer any compassionate appointment at this stage. He has also contended that the Government servant expired in the year 1993 and by now the 10 years have elapsed there would be presumption that the family deceased Government servant have some source of living since it survived for such a long period. In this respect also he has submitted that the compassionate appointment can not be granted after lapse of number of years and in fact it is meant to tide over the immediate crisis which is not the case here since the deceased Govt. servant has expired about 10 years back and the family has survived. He has also submitted that considering the applicant's case first time in 1994 and second time

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in 1998-99 would not run counter to the defence of respondents. She would have approached this Tribunal as early as in the year 1994. However, her case has been considered and rejected vide order dated 11.12.2002 (Annexure R/1), for the reason that since there is no vacancy, she cannot be given appointment. Thus, there is no infirmity or illegality in the action of the respondents.



I. have considered the rival contentions advanced learned counsels appearing on behalf of both the parties.

As far as the contention of the learned counsel for the respondents that her case was duly considered in the year 1994 and again in the year 1998-99 is concerned. There can be no quarrel on this since no ^{is} rebuttal made on behalf of the applicant and similar is the position regarding the vacancy. As far as vacancy is concerned the issue have been settled by the Supreme Court and it has been held by their Lordships in Sunjay Kumar v. State of Bihar 2000 (5) SLR SC 265 that there can be no reservation of vacancies after number of years for the purpose of grant of compassionate appointment. In another case of Himachal Road Transport Corporation vs. Dinesh Kumar AIR 1996 SC 2226, the Supreme Court dealing with two cases where applications had been submitted by the dependents of the deceased employees for appointment on compassionate grounds and both of them were placed on the waiting list and had not been given appointment. They approached the Himachal Pradesh Administrative Tribunal and the Tribunal directed the Himachal Road Transport Corporation to appoint both of them as Clerk on regular basis. Setting aside the said decision of the Tribunal, the Apex Court has observed as under:-

".....In the absence of a vacancy it is not open to the Corporation to appoint a person to any post. It will be a gross abuse of the powers of a public authority to appoint persons when vacancies are not available. If persons are so appointed and paid salaries, it will be mere misuse of public

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funds, which is totally unauthorised. Normally, even if the Tribunal finds that a person is qualified to be appointed to post under the kith and kin policy, the Tribunal should only give a direction to the appropriate authority to consider the case of the particular applicant, in the light of the relevant rules and subject to the availability of the post.

It is not open to the Tribunal either to direct the appointment of any person to a post or direct the concerned authorities to create a supernumerary post and then appoint a person to such a post."

The perusal of the aforesaid observation, it is now the settled position that the Tribunal will not order for creating the supernumerary post for grant of the compassionate appointment. In the present case since there was no vacancy available for appointment of the applicant, the relief as prayed for cannot be granted and the action of the respondents cannot be faulted.

12. As regards the other contention that the applicant has survived and has been insisting the respondents to consider her case and also the case remained under consideration with respondents but was rejected in the year 2002, there was no fault of the applicant and indigent condition remains as they were. However, the contentions of the learned counsel for the respondents that family has survived for over 10 years, has to be given due weight in view of the judgement of the Supreme Court in Jagdish Prasad vs. State of Bihar [1996 (1) SCC 301] wherein their lordships have held as under:-

"The very object of appointment of a dependent of the deceased employees who die in harness is to relieve unexpected immediate hardship and distress caused to the family by sudden demise of the earning member of the family. Since the death occurred way back in 1971, in which year, the appellant was four years old. It cannot be said that he is entitled to be appointed after he attained majority long thereafter. In other words, if that contention is accepted, it amounts to another mode of recruitment of the dependent of a deceased Government servant which cannot be encouraged. de hors the



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recruitment rules."

The aforesaid decision squarely covers the whole controversy



in all four. Thus the applicant cannot be appointed on any pretext. The Court has every sympathy for the applicant and definitely it is a very hard case but there are limitation of the Tribunal and square pegs cannot be fitted into round holes. The identical issues have been settled by the Hon'ble Supreme Court and do not remain res integra. I am bound to follow the same.

14. Result is however very unfortunate, I have no alternate except to dismiss to this Original Application. Ordered accordingly. However, there shall be no order as to costs.

J.K. KAUSHIK
[J.K. KAUSHIK]

Judicial Member

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