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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ADDITIONAL BENCH, JODHPUR

.....

Date of Order : 12.3.2003.

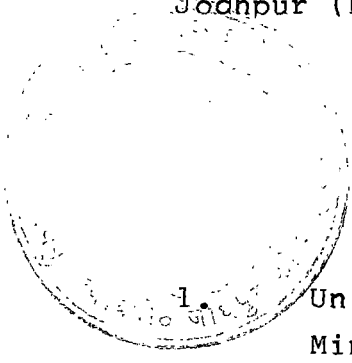
O.A. NO. 216/2002

.....

Dev Kishan S/o Late Sulja Ram, aged about 21 years,
Resident of Rasala Road, Prithvipura, Harijan Basti,
Jodhpur (Rajasthan).

.....Applicant.

versus



1. Union of India through Secretary,
Ministry of Defence, Raksha Bhawan,
New Delhi.

2. The Chief Engineer (Air Force),
Camp Hanuman, Ahmedabad 380 003.

3. The Garrison Engineer (M.E.S.),
Air Force, Jodhpur.

.....Respondents.

.....

CORAM :

Honourable Mr. J.K. Kaushik, Judicial Member

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Mr. K.K. Shah, Advocate, present for the applicant.

Mr. Vineet Mathur, Advocate, present for the respondents.

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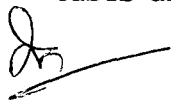
ORDERBY THE COURT :

Shri Dev Kishan, has assailed the impugned order dated 26.6.2002 (Annex.A/3), by which his case for consideration for appointment on compassionate ground has been turned-down. He has also prayed that the respondents may be directed to keep the case of applicant pending consideration till vacancy is arises.

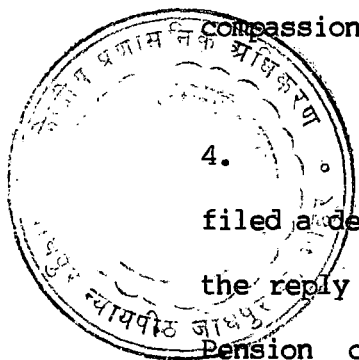
2.

The material fact leading to file this application is that the applicant's father was serving in the office of Garrison Engineer, Air Force, Jodhpur and expired on 5.7.1994 while in service. The deceased Government servant was survived by his wife, one son and seven daughters and out of them, three daughters have been married and four daughters and the son were minor at the time of his death. The mother of the applicant immediately submitted an application for consideration for appointment of the applicant on compassionate grounds but she was informed that such an application would be considered only when her son becomes major.

The further case of the applicant is that when the applicant became major, another application was made for appointment on compassionate ground and requisite formalities were also got completed by the department. The applicant was informed vide letter dated 22.3.2001 that the matter was pending consideration and also called for certain additional information from him which were duly submitted. But, his claim came to be rejected vide the impugned order dated 27.6.2002 on the grounds that there were more deserving cases and no new vacancies were available.



3. The O.A. has been filed on multiple grounds e.g. the compassionate appointment is not based on year-wise vacancies and the cases are considered as and when vacancy arises and more meritorious and deserving candidates are to be considered, but nothing has been done in the present case; the family is in an indigent condition and had to survive on the meagre amount of pension; the four unmarried daughters are to be married and applicant's mother had to clear the loan of about 70,000/- which was incurred in the marriages of three daughters prior to the death of applicant's father; the applicant not only deserves appointment but he has a reasonable chance to be considered for appointment on compassionate ground as and when vacancy arises etc.

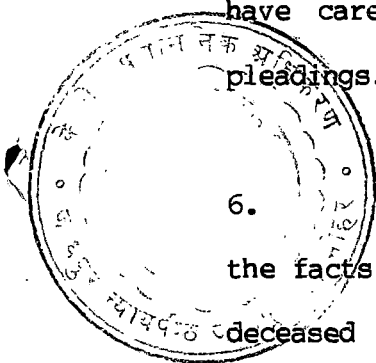


4. The respondents have contested the case and have filed a detailed counter reply to the O.A. The defence as set out in the reply is that the family was paid terminal benefits of Family Pension of Rs. 484/- now revised to Rs. 1945/-, Death-cum-Retirement-Gratuity Rs. 29,627/-, General Provident Fund Rs. 24,237/-, CGEIS Rs. 15,000/- and Leave Encashment Rs. 66/-. An application was made for compassionate appointment on 31.5.2000 by the applicant. As per the decision of the Apex Court in Umesh Kumar Nagpal Vs. State of Haryana and Others, compassionate appointment cannot be granted after a lapse of a reasonable period and it is not a vested right as per the O.M. dated 3.12.1999. The facts and grounds have been generally denied and it has been averred that such an appointment cannot be allowed as a matter of right inasmuch as the very scheme does not guarantee for any such appointment. Appointment is totally based on the available vacancies as against the relative merits of the cases under consideration. The case of the applicant was primarily screened by the Screening Committee/

22

Board before arriving at a decision. There is no point in giving special consideration. Hence, this application deserves to be dismissed.

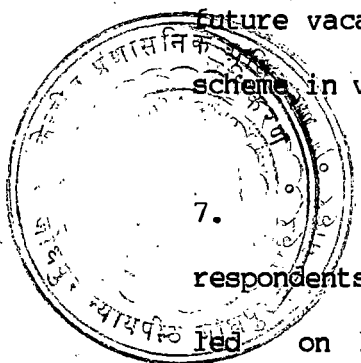
5. I have heard the learned counsel for the parties and have carefully perused the records of the case as well as the pleadings.



6. The learned counsel for the applicant has reiterated the facts and grounds raised in the O.A. and has submitted that the deceased Government servant i.e. the father of the applicant, was survived with a large family members and had much liability inasmuch as there was certain loan which was to be re-paid as well as four daughters were left to be married. He has further submitted that at the time of death of Shri Sulja Ram, the applicant was only a minor and after attaining majority in the year 2000, he immediately applied for grant of compassionate appointment and thereafter, the matter remained under consideration of the respondents. There was absolutely no delay on his part. He has also argued that even the mother of the applicant apprised the authorities concerned soon after the death of the government servant regarding appointment of the applicant and she was given an assurance that no sooner her son attains majority, her request for such an appointment may be considered. It has also been submitted that in case the respondents expresses inability regarding the vacancies against which the case of the applicant could be considered in the first year of the death of the government servant, the case would be get pending and as and when the vacancy available against 5% quota of direct recruitment, the case ought to have been considered but the said course has not been adopted by the

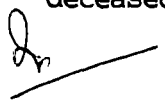
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respondents and the case has been turned-down by the impugned order in a sterio-typed manner without application of mind. He has also drawn my attention to the relief clause that applicant has made a very specific prayer that the case could be considered against any future vacancy which become available against 5% quota as per the scheme in vogue.



7. On the contrary, the learned counsel for the respondents has strongly opposed the contentions and the arguments led on behalf of the applicant. The learned counsel for the respondents has submitted that there is unanimity in the decisions of the Apex Court wherein it has been held that in similar circumstances i.e. a person being minor at the time of death of the government servant, the case is required to be considered within a reasonable time otherwise the presumption would be, the family has survived for such a long period and resultantly there is no need of immediate tie-over and the financial crisis must have been met by the time. He has submitted that despite this, the case was considered against 5% vacancies available after the death as per the policy in vogue. The claim has been duly considered as per the rules in force and there has not been any illegality or infirmity in the impugned order.

8. I have considered the rival contentions raised on behalf of both sides. There are mainly two points to be considered i.e. whether, where death of a government servant has occurred before number of years and the son of deceased was minor, it would be justified to consider the case of his ward and the next question would be regarding, against which vacancy the case of the ward of a deceased government servant could be considered i.e. whether the



vacancy arising during the first year of the death or the process is required to be continued till a vacancy becomes available.

9. As regards the first question is concerned, the position is set at rest and there are catena of judgements that if the family has survived for quite a long time, there would be no justification for granting appointment on compassionate ground. This controversy could be cut short by referring a very recent judgement of this very Bench in O.A. No. 145 of 2002 - Gopal Singh Versus Union of India and Others decided on 25.10.2002. That was also a case of a minor who could apply for such compassionate appointment only after attaining majority and the case was turned-down. I have no reason to take a different view and as far as this issue is concerned, it goes against the applicant, a copy of ibid order is taken on records of this case.

10. The next issue is related relating to consideration of the case against 5% of the vacancies against direct recruitment quota as to against which year vacancy, the case is required to be considered. The respondents in para 4 of the reply have categorically mentioned that as per the O.M. dated 3.12.1999, the time limit of one year has been prescribed in this respect and this position has not been disputed. This position is also evident from a perusal of the said O.M. and the relevant para of the same is extracted as under :-

"Accordingly, it has been decided that the Committee prescribed in Para 12 ibid for considering a request for appointment on compassionate grounds should take into account the position regarding availability of vacancy for such appointment and it should recommend appointment on compassionate grounds only in a really deserving case and only if vacancy meant for appointment on compassionate grounds will

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I/12

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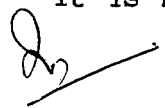
be available within a year, that too within a year, that too within the ceiling of 5% mentioned above. This would ensure grant of compassionate appointment within a year."

Thus, the position is clear and the respondents are right in their action since for want of vacancies the case of the applicant could not come within the vacancies limit keeping in view the comparative merit of various cases considered, in this view of the matter no case is made out.

11. Lastly, the learned counsel for the applicant has submitted that as per general practice, the cases of compassionate ground are considered three times but, the case of the applicant has been considered only once and on the last occasion, even the respondents were directed to ascertain this position. The learned counsel for the respondents has also categorically submitted that the case of the applicant has been considered only at one time and also there is a general practice of considering the case for three times as contended by the learned counsel for the applicant. However, he has submitted that the present case is not sustainable on the ground that the family of the deceased has survived for a long time and thus, it would not make any difference even if the case was to be considered second or third time as per the practice in vogue.

12. In view of what has been said and discussed above, the O.A. is devoid of any force and the same is hereby dismissed. However, in case, if there is any practice for consideration of the case on compassionate ground more than once, the respondents shall extend the similar consideration in the case of the applicant also.

It is however, scarcely necessary to mention that the peculiar /



I/13

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deplorable conditions coupled with the financial hardship faced by the family of the deceased, would be duly considered as expeditiously as possible. The parties are directed to bear their own costs.

J.K. Kaushik

(J.K. KAUSHIK)
Judicial Member.

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jrm

*forwarded from
K. K. S. S.
2013/11/3*

Part II and III destroyed
in my presence on 7/3/6-08
under the supervision of
section officer [signature] as per
order dated 5/11/8

NGD/A
Section officer (Record)

*R. H. M.
[signature]
2013*