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**CENTRAL ADMINISTRATIVE TRIBUNAL**

**JODHPUR BENCH.**

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O.A.No.02/2004

January 18, 2005.

CORAM : **HON'BLE MR.M.K.MISRA, MEMBER (ADM.)**

Rajendra S/o Late Sh.Ghishu Ram Ji, Aged about 28 years, R/o Plot No.36-B, Indira Colony, Ratanada, Distt.Jodhpur, (Rajasthan).

.... Applicant

By : Mr.S.K.Malik, Advocate.

Versus

1. Union of India through the Secretary, Ministry of Defence, Raksha Bhawan, New Delhi-110011.
2. Engineer-in-Chief Branch, Army Headquarters, Kashmir House, DHQ P.O.New Delhi-110011.
3. Chief Engineer, Jaipur zone, Power House Road, Bani Park, Jaipur (Rajasthan).
4. Commander Works Engineer (Army), Multan Lines, Jodhpur (Rajasthan).
5. Garrison Engineer (Army) Central Jodhpur (Rajasthan).

By: Mr. Jagdish Vyas, Advocate.

.... Respondents

**ORDER**

**M.K.MISRA,AM**

This O.A. has been filed by Mr. Rajendra who is physically handicapped and also belongs to S.C. community pleading that his father Late Shri Ghishu Ram Ji, Chowkidar under the respondent no.5, died on medical grounds on 29.1.1994, leaving behind his wife, two sons and three daughters. The family was sanctioned some pensionary benefits

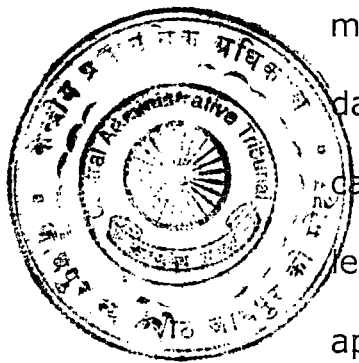
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including meager amount of family pension of Rs.477/-. One brother of the applicant is employed in Indian Air force.

2. The applicant submitted applications for appointment on compassionate grounds on 19.2.1994 (Annexures A-3 & A-4). The respondents prepared the case of the applicant for appointment on compassionate grounds with full details (Annexure A-5). A Board of Officers was constituted on 5.9.1994, which selected the three persons including the applicant for the post of Mazdoor (Annexure A-6). The other two persons namely Tej Singh and Nirmal Joshi whose names find mention at Sr.No.1 & 3 were given compassionate appointment whereas the applicant was left out on the ground that there was no vacancy but an assurance was given that his appointment letter will be issued shortly. By letter-dated 21.3.1997, mother of the applicant was asked to submit S.C. certificate and date of marriage of brother of the applicant (Annexure A-7). By letter dated 23.9.1997 (Annexure A-8), the family was informed that case is pending with the higher authorities, as reiterated by letter dated 28.10.1997 (Annexure A-9). The mother of the applicant was again asked to submit certain documents by letter dated 23.12.1997 (Annexure A-10) and 16.3.1998 (Annexure A-11). By letter-dated 3.6.1998 (Annexure A-12), the applicant was asked to present himself for interview despite the fact that he had already been selected. He was asked to perform the duties of Chowkidar without giving any appointment order. He worked there for 3 months as Chowkidar-cum-Peon. No payment was made to him for this working. The applicant again contacted the respondents and a letter-dated 8.12.2000 (Annexure A-13)



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was written to Respondent No.3 to intimate the position of appointment of the applicant. The applicant was again asked by letter-dated 7.6.2002. (Annexure A-14) to re-submit the documents so that his case can be expedited. The applicant complied with the requirement of the respondents and submitted the requisite documents. However, finding that respondents were sitting tight over the matter, he got served a legal notice dated 25.5.2002 (Annexure A-15). The request of the applicant has ultimately been rejected by orders dated 13.11.2003 (Annexure A-2) and 4.12.2003 (Annexure A-1) on the ground that no post is available with the respondents.

3. The ground raised by the applicant to challenge the impugned orders is that at the relevant time sufficient no. Of vacancies were available with the respondents against which he could be appointed. If there was no post, there was no fun in asking the applicant to submit the documents time and again. Rejection of his case under the new policy is illegal. The case of the applicant has not been referred to the other department of the Government of India to explore the possibility of giving him appointment. He has prayed for quashing the impugned orders, Annexure A-1 & A-2 and for issuance of direction to the respondents to consider his case for appointment on compassionate grounds on any Group 'D' post with all the consequential benefits or alternatively for circulation of his case to other departments of the Government of India to facilitate his appointment on compassionate grounds.

4. The respondents have filed a reply contesting the Original Application. Their stand is that the family was not indigent



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condition as it received a sum of Rs.55,880/- in addition to the family pension as per rules. The brother of the applicant was under employment in Indian Air Force before death of the deceased. The applicant has not disclosed as to on what date his brother got married and was living separately. The Board of Officers constituted in the year 1994 to scrutinize and consider compassionate employment to the dependent of the deceased Government employees could not consider all the applications, therefore, in the year 1995 all the applications received for appointment on compassionate grounds were considered by the Board of officers and merit list was prepared in which the applicant stood at Sr.No.11 but he could not be offered appointment on compassionate ground being less meritorious. Proceedings of the Board of Officers are at Annexure R-1. They deny that applicant was asked to discharge the duties of Chowkidar. The quota of compassionate appointment is limited to the extent of 5% of the total direct recruitment vacancies occurring in a year in Group 'C' and 'D' categories. Since there was no vacancy available within the ceiling of 5% direct recruitment vacancies, the case of the applicant was not recommended by the Board of Officers. The respondents had also rejected the case of the applicant by orders dated 31.1.2004, 21.4.2004 and 24.7.2004 (Annexures R-2 to R-4). The applicant has not arrayed S/Shri Tej Singh and Shri Nirmal Joshi, as respondents in this O.A. and as such he cannot challenge their appointment. The family has been able to pull on for 10 years by now and as such the element of urgency is not available in this case.

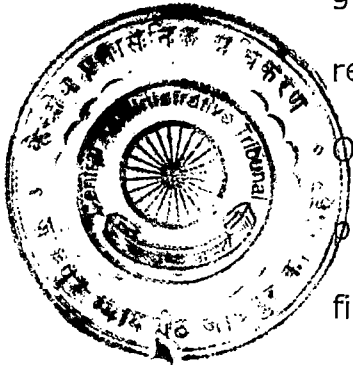


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5. I have heard the learned counsel for the parties at length and perused the material brought on record.

6. From the pleadings and arguments advanced by learned counsel for the parties, it becomes clear that the case of the applicant has been rejected primarily on the ground that there was shortage of vacancy and there were no. of other cases more deserving than the applicant, which were to be considered for appointment on compassionate grounds. Undisputedly, under the scheme for compassionate appointment, the appointment on compassionate ground can be given to the extent of only 5% that too against direct recruitment quota. In this case the respondents have taken a specific plea that the cases of all the eligible applicants for appointment on compassionate ground were considered and only the most deserving candidate was given appointment. For offering such appointment the respondents had constituted a Board known as "Board of Officers". This committee considers the cases of the eligible persons based on different types of information including the financial position of the family and on no. of topics marks are awarded to the applicants and the person getting the most marks is offered appointment on compassionate ground. This is in the shape of competition for the simple reason that the applications are much more than the posts available for the purpose which forces the Department to consider the case of the applicants by awarding marks on different points. Undisputedly, this is an expert body. After considering all the relevant facts and circumstances of the case and comparative analysis of the cases, the most deserving cases were chosen for offering



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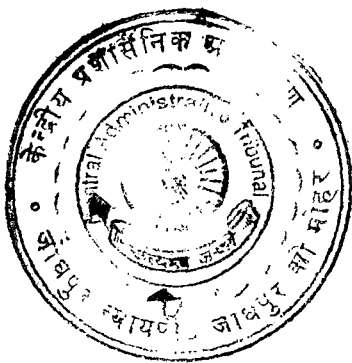
appointment on compassionate grounds. The case of the applicant was considered not once <sup>but on more</sup> no. of times. However, every time the number of applications were more and the applicant was down below in the waiting list. A perusal of the impugned orders would show that the respondents have not rejected case of the applicant on the grounds that the family was in a sound financial position. The basic reason is that no post was available under the quota meant for the purpose, which could be offered to the applicant. The respondents have offered the appointment to the most deserving persons and this Bench does not find any illegality in the action taken by the respondents. There is no personal allegation against the members of the Committee or any other authority. Even though it has been submitted that applicant should have been granted appointed instead of the selected candidates, but the applicant has not taken pains to implead the selected candidates as party-respondents and thus, this Bench cannot adjudicate on the issue. Moreover, I find another reason to accept the plea of the respondents. Undisputedly, the respondents have filed a reply taking specific pleas that case of the applicant was not most deserving. Such pleas have gone un-rebutted, as the applicant has not filed any rejoinder. The Bench is left with no alternative but to accept the plea of the respondents, considering the law of pleadings. In any case, the respondents had to walk a tight rope as no. of candidates was more and the vacancies were less. If the most deserving candidate has been offered appointment, I don't find any fault in such action of the respondents. In addition to this, the respondents have rejected the claim of the applicant by



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impugned orders, Annexures A-1 and A-2 which are under challenge. However, the respondents have annexed Annexures R-2 to R-3 which are communications dated 31.1.2004, 21.4.2004 and 24.7.2004, which indicate that the case of the applicant has been rejected by these impugned orders, which have not been challenged by the applicant till date. In the absence of challenge to such orders, the applicant cannot be granted any benefit even otherwise.

7. Even though learned counsel for the respondents submitted number of judgements in support of his arguments, but the most relevant is in the case of **Smt. Urmilaba Subhash Jadeja Vs. Engineer in Chief's etc. etc.** O.A.No.448/2003 decided on 29.1.2004, delivered by Ahmedabad Bench of the C.A.T. Para 5 of the judgement being relevant is reproduced as under: -



"....The Ministry of Defence has already issued guidelines and has laid down criteria for judging the comparative merit position of the persons who claim appointment on compassionate ground for the limited posts available under 5%. The respondents have filed the guidelines as annexure R/2 with their reply. The case of the applicant alongwith others was considered as per the guidelines laid down by the Ministry of Defence. The applicant's position comes at Sl.No.16. Even if the case of the applicant is deserving, if more deserving cases are there, so the more deserving candidates have to be given appointment. with regard to the limit of appointment on compassionate ground to the extent of 5% of direct recruits vacancies only, the apex Court has in the case of UOI v/s. Joginder Sharma reported in 2002(2)SC, SLJ Page 359, has held that the 5% limit can not be relaxed by any Court or Tribunal. Thus, the respondents have no alternative but to make appointment to most deserving cases within the available vacancies only. Judging from that angle, if the applicant's position comes at Sl.No.16, at least 15 more deserving cases were with the respondents for giving appointment. Consequently, the respondents' action in not giving appointment to the applicant for non availability of the vacancies, can not be assailed".

It is apparent from the above observations that the same position exists in this case also where even though the applicant has been held to be eligible for appointment on compassionate

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grounds but in the waiting list, there are other persons who are more deserving than him. Even otherwise, the family has received pensionary benefits and is in receipt of the family pension. The brother of the applicant is already in government employment i.e. in Indian Air Force. Moreover, the family has been able to pull for the last 10 years. The basic aim of offering appointment on compassionate grounds is to help the family in indigent condition in which it may have fallen into due to sudden demise of the earning member of the family. So, the element of urgent help to the family is totally missing in this case. The case of the applicant has been considered from 1995 onwards and at this stage his case cannot be chosen for circulation to other Central government Departments for offering him appointment on compassionate ground, in view of the new policy of the respondents. Thus, he is not entitled to alternative prayer also as made in para 8 of the O.A.



6. In view of what has been discussed above, this O.A. turns out to be devoid of any merits and is rejected accordingly with no order as to costs.

  
(M.K.MISRA)  
Member (A)

HC\*

January 2005.



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Section officer (Record)