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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

Original Application No. 217/2004

Date of Decision: 01.06.2005

CORAM

**THE HON'BLE MR. J.K. KAUSHIK, JUDICIAL MEMBER
THE HON'BLE MR. G.R. PATWARDHAN, ADM. MEMBER**

Richard Massey son of late Shri Vinod Kumar Masih, aged 19 years, r/o care of Shri R Wehels, 4/2 Pal Link Road, Jodhpur. Shri Vinod Kumar Masih son of Shri Patrik Masih, Ex-Electrician HS II in the office of the Garrison Engineer (Air Force), MES, Jodhpur.

.....Applicant.

Mr. Vijay Mehta, counsel for the applicant.

Versus

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

.....Respondents

Mr. Mahendra Godara, Proxy counsel for
Mr. Vinit Mathur, counsel for respondents.

ORDER (Oral)

Shri Richard Massey has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985 and has inter alia assailed the validity of order dated 13th February 2003 at Annexure A/1 in addition to a prayer for setting aside the same as well as giving for a direction to the respondents to give appointment to applicant on compassionate grounds.

2. With the consent of learned counsel for both the parties, the matter was heard for final disposal at the stage of admission, keeping in view the urgency in the matter. We have also carefully perused the pleadings and records of this case.



3. The factual score of this case falls within a very narrow compass. The applicant is the son of late Shri Vinod Kumar Masih. Late Shri Vinod Kumar Masih was a permanent Government servant and was last employed on the post of Electrician HS II at Jodhpur in the office of Garrison Engineer, Air Force. He expired while in service on 10.11.2001. Late Shri Vinod Kumar Masih was survived by the applicant and one minor daughter Nidhi studying in class 12th. The applicant attained the age of 18 years on 30.10.2003. The applicant as well as his sister is living with their maternal grand father. None of the family members are in the employment and they have no other source of income. The family was wholly dependent on the deceased Government servant and there is an acute economic crisis and is in urgent need of employment. An application was moved on 02.12.2001, on behalf of the mother of the applicant (who had already divorced the deceased Government servant), for release of the terminal benefits as well as giving the appointment on compassionate grounds in favour of the applicant on attaining the age of majority. The case of the applicant was turned down vide communication dated 13.02.2003 informing that the applicant was only 17 years old and was not eligible for appointment and the request could only be considered within one year after the death. The applicant took up the matter with the respondent No. 2 vide



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communication dated 22.05.2004 but no decision has been taken so far.

4. The Original Application has been grounded on numerous grounds. It has been mentioned that as per the Scheme in vogue issued on 09.10.1998, the case of the applicant was required to be considered at higher level but the case has been turned down by the Subordinate Authorities vide impugned order, which is without jurisdiction. The case of the applicant was never put up to the Board of Officers. The scheme also provides that the case can be considered as late as 5 years after the death of the deceased Government servant. The applicant is a dependent family member, therefore, entitled to the relief claimed in the Original Application. There is neither delay in making application nor there is any provision that such requests can be considered only within one year of the death.



5. The respondents have contested the case and have filed a detailed reply to the Original Application. It has been indicated that an amount of Rs. 2,30,879.00 has been paid to the applicant as terminal benefits. His case was duly considered but it was found that he was under age, as he had not completed 18 years of age, which is essential requirement for appointment in Central Government service. Applicant's mother has got the service as a divorced woman in State Government and she is earning about 7583/- rupees per month. It has been mentioned

that vide order dated 3rd December 1999 the compassionate appointments could be given within the ceiling of 5% of total vacancy available for the year. The case of the applicant was examined and considered according to rules and since the applicant was not within the age limit, his case had to be rejected. It has also been mentioned that no relaxation could be given in age in respect of persons who are below 18 years of age. The grounds raised in the Original Application have been generally denied.

6. Both learned counsel for the parties have reiterated the facts and grounds raised in their respective pleadings of the parties. Our attention was specifically drawn to para 8 of the Scheme for appointment on compassionate grounds and learned counsel for the applicant has submitted that even belated request could be considered. He has submitted that the applicant's case was required to be considered for compassionate appointment after he has completed 18 years of age and it is for that reason the provision for belated request for compassionate appointment has been made but the respondents have not found it expedient to adhere to their own policy. On the other hand, the learned counsel for the respondents has submitted that the case of the applicant could be considered for appointment only against the vacancies which had fallen vacant during the period of one year from the date of death of the Government servant and that is precisely the reason that case of



the applicant could not be considered since he was not under age during such period.

7. We have considered the rival submissions put forth on behalf of both the parties. We find that the office memorandum dated 09.10.1998 came to be issued by DOP&T on the subject of compassionate appointment, does not prescribe for any time limit for submitting the application. It also does not provide that the case of the individual could be considered only against the vacancy which fell within one year of the date of death and as regards the belated request for compassionate appointment, the following provision has been made:

"8. Belated requests for Compassionate Appointment



- (a) Ministries/Departments can consider requests for compassionate appointment even where the death or retirement on medical grounds of a Government servant took place long back, say five years or so. While considering such belated requests it should, however, be kept in view that the concept of compassionate appointment is largely related to the need for immediate assistance to the family of the Government servant in order to relieve it from economic distress. The very fact that the family has been able to manage somehow all these years should normally be taken as adequate proof that the family had some dependable means of subsistence. Therefore, examination of such cases would call for a great deal of circumspection. The decision to make appointment on compassionate grounds in such cases may, therefore, be taken only at the level of the Secretary of the Department/Ministry concerned.
- (b) Whether a request for compassionate appointment is belated or not may be decided with reference to the date of death or retirement on medical ground of a Government servant and not the age of the applicant at the time of consideration."

8. However, subsequently, OM dated 03.12.1999 has been issued where a time limit for making appointment on compassionate grounds has been prescribed as one year.

Incidentally, we find that another OM dated 05.05.2003 has

[Signature]

been issued where the Government decided to enhance the said time limit of one year to three years, to genuine and deserving cases. Para 2 of the OM, dated 05.05.2003 prescribes that when it is not possible to grant compassionate appointment in the first year due to non-availability of regular vacancy, the prescribed Committee should make a review of such cases to evaluate the conditions of the family, arrive at a decision as to whether a particular case warrants extension of one or more years, for consideration for compassionate appointment. If on scrutiny by the Committee, a case is considered to be deserving, the name of such a person can be continued for consideration for one more year and subject to the maximum period of three years. After 3 years, if compassionate appointment is not possible to be offered, the case will be finally closed and will not be considered again.



9. It is the admitted fact of this case that the applicant's father expired on 10.11.2001 and the applicant attained the age of majority on 30.10.2003. It is also a fact that there is a specific provision of considering the belated request for compassionate appointment for reasonable cause; one could seek compassionate appointment even beyond the period of one year. In any case even before completion of three years period from the date of the death of the applicant, the another policy has come into force with effect from 05.05.2003 wherein the case can be considered for a period to 3 years against the

vacancies for a period of 3 years and therefore, the case of the applicant ought to have been considered after he has attained the age of 18 years. Keeping in view of all the Scheme/clarifications and by applying harmonious construction of interpretation, we are of the considered opinion that the case of the applicant ought to have been considered for compassionate appointment against the vacancies for a period of 3 years as per the subsequent office memorandum dated 05.05.2003. We do not find any necessity of debating on other grounds.

10. In view of what has been said and discussed above, we dispose of this Original Application with a direction to the respondents to consider the case of the applicant for grant of appointment on compassionate grounds afresh on merits against the vacancies which have arisen after the date on which he has attained the age of 18 years but limited to the period of 3 years thereof. The impugned order dated 13th February 2003 at annexure A/1 stands quashed. This order shall be complied with within a period of three months from the date of receipt of a copy of this order. However, the parties are directed to bear their own costs.

SRP
(G.R. Patwardhan)
Adm. Member

J K Kaushik
(J K Kaushik)
Judicial Member

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