

10
16

**CENTRAL ADMINISTRATIVE TRIBUNAL
ODHPUR BENCH: JODHPUR**

Original Application No. 266/2004
Date of decision: 31.8.2006

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

Parwati Devi, w/o Late Shri Rajendra Kumar aged 40 years, 58-A, Indira Colony, Ratanada Road, Jodhpur. Rajendra Kumar Ex-Mason HS II in the Office of the Garrison Engineer Air Force Jodhpur.

: Applicant.

Rep. By 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. Commander, Works Engineer, MES, Air Force, Jodhpur.
3. Garrison Engineer, MES, Air Force, Jodhpur.
4. Chief Engineer, MES, Air Force Camp Hanuman, Ahmedabad
5. Shri Vinod Son of Shri Rajendra Kumar C/o Shri Madho Ram, 58, Shakti Colony, Near Khadi Bhandar, Ratanada, Jodhpur.
6. Smt. Prabhati Wife of Shri Dharmendra, Class IV Servant, Shri Lal Bahadur Shastri School, Subhash Chowk, Ratanada, Jodhpur.

: Respondents.

Mr. M. Godhara proxy counsel for: Counsel for respondents
Mr. Vinit Mathur : No. 1 to 4
None present for respondents 5 & 6.

ORDER

Per Mr. J K Kaushik, Judicial Member.

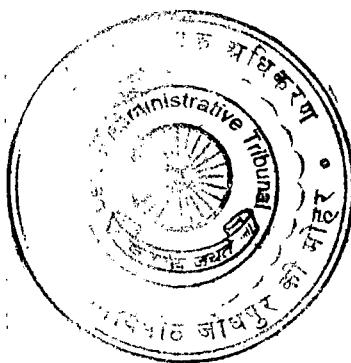
Smt. Parwati Devi has filed this Original Application for seeking a mandate to the official respondents to give her appointment on compassionate grounds. I have heard the learned counsel representing the contesting the parties and perused the pleadings and records of this case

2. The material facts considered necessary for resolving the controversy involved in the instant case are that the applicant is the legally wedded wife of late Shri Rajendra Kumar. Shri Rajendra Kumar was employed as Mason HS Gr. II in the office of the respondent No. 3

and expired on 04.12.2002 while in service. He was survived with large family consisting of his widow i.e. the applicant, three daughters and two sons. One of his sons born from wedlock of earlier marriage and is residing with his divorcee mother who had remarried. It has been pleaded that the family of the deceased Government servant is in indigent conditions. The case of the applicant was taken up for consideration and appointment on compassionate grounds, but the same was turned down vide order dated 10.04.2003 on the ground that she is not eligible for such appointment being over-aged.

3. Detailed reply has been filed on behalf of the official respondents wherein it has been stated that the applicant is the second wife of the deceased government servant. There is no divorce deed available on the records. It has also been submitted that Shri Vinod (son born from the wedlock with the first wife) has claimed the terminal benefits as well as the real and only dependent family member of late Shri Rajendra Kumar and for this purpose a succession certificate was produced. It has been averred that as per the scheme for grant of appointment on compassionate grounds, a widow from SC class cannot be appointed after crossing the age of 40 years. Applicant had crossed 48 years of age at the time the death of her husband, therefore she is not eligible for the said consideration and the Original Application deserves to be dismissed with costs.

4. Both the learned counsel representing the contesting parties have reiterated the facts and grounds enumerated in their respective pleadings. The learned counsel for the applicant made me traverse through the Scheme of appointment on compassionate grounds as well as the rules for relaxations and tried to demonstrate that the



DR
18

competent authority has ample power to relax age and therefore, the action of the respondents in rejecting the applicant's claim cannot be sustained in the eye of law. From the side of official respondents reliance was placed on the defence version as set out in the reply noticed above.

4. I have considered the rival submissions put forth on behalf the contesting parties. As far as the factual statistics relating status of the applicant is concerned the same has been elaborately dealt with in O.A. No. 267/2004 Smt. Parwati Devi. Vs. UOI and ors- decided today (31.08.2006) by this very Bench and the contents of the same may be read as a part of this order.

5. Now I advert to the relevant instructions relating to the requirement of age and relaxation in appointment on compassionate grounds. The relevant provision is envisaged in para 11 of letter dated 30.07.1999 (Annex. A/6) at page 29 of the paper book and the contents of the same are extracted as under:

"11. Relaxation of Age:

The persons below the age of 18 years will not be considered for compassionate appointment. Age eligibility shall be determined with reference to the date of initial application (part 'A' of Appx'A') and not the date of appointment. Prescribed age limit in respect of different categories are as under:

- (i) 25 years for son/daughter of General category.
- (ii) 30 years for son/daughter belonging to SC/ST category.
- (iii) 28 years for son/daughter belonging to other Backward classes (OBC)
- (iv) 35 years for widow of General category.
- (v) 38 years for widow belonging to OBC
- (vi) 40 years for widow belonging to SC/ST category.

The selected cases beyond the above prescribed age limit require sanction of DG OS for relaxation of upper age limit. In this connection, duly attested copy of SC/ST/OBC certificates issued by competent authority will be enclosed with Appx 'A' separate recommendation signed by MG AOC/Commandant (for Central Depots only) with the initial date of application (part 'A' of Appx'A') will be attached with the



Board proceedings while forwarding the same to Army HQ wherein age relaxation is required."

6. A bare perusal of the aforesaid instructions reveals that a widow from SC category is eligible for consideration for compassionate appointment upto 40 years and beyond this upper age limit there is a requirement of sanction for the relaxation of age from higher authority. The question of such relaxation only arises after a candidate has been selected for such appointment. The instructions seem to be based on a sound principle in as much as if one were not selected for appointment, sanction of any age relaxation in his/her favour would be an exercise in futility. In the instant I find that the applicant's candidature has not at all been considered and the same has been turned down by misconstruing the rules in force. Consideration for appointment on compassionate grounds is a legal right created by the very scheme and the action of the official respondents has not been in consonance with the rules in force. Therefore, the claim of the applicant is well founded and has to be sustained.

7. In the premises, the Original Application stands allowed. The official respondents are directed to consider the case of the applicant for grant of compassionate appointment in accordance with the rules in force including para 11 of the rules of relaxation supra and the observations made within a period of three months from the date of receipt of a copy of this order. No costs.

J K KAUSHIK
JUDICIAL MEMBER

Jsv.

Blanchard

1910

1910