

I/S

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR.**

Original Application No. 96/2004

Date of decision: 29.04.2004

**The Hon'ble Mr. J K Kaushik, Judicial Member
The Hon'ble Mr. M K Misra, Administrative Member.**

Suresh Kumar Bhati s/o late Shri Vijay Shankar, MTD, Jawahar Colony, Near Sardar Club, Jodhpur.

: Applicant.

Rep. By Mr. Rajesh Bhati, adv. Brief

Holder for Mr. P.S. Bhati
applicant.

: Counsel for the

VERSUS



1. The Union of India through the Secretary, Ministry of Defence, Government of India, Raksha Bhawan, New Delhi.
2. The Chief Engineer, Jaipur Zone, Headquarters, Power House Road, Bani Park, Jaipur-302 006.
3. The Commander Works Engineer (A). Multan Lines, Jodhpur.
4. The Garrison Engineer, (Engineer Park) Army Area, Jodhpur.

: Respondents.

ORDER

Per Mr. J K Kaushik, Judicial Member:

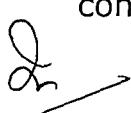
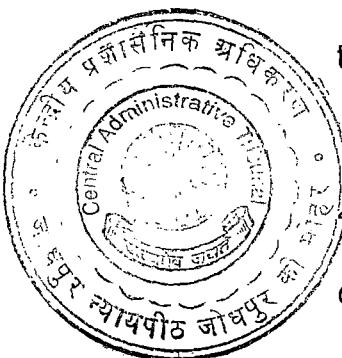
Suresh Kumar Bhati has invoked the jurisdiction of this Bench of the Tribunal for seeking a direction to the respondents to give him the appointment on compassionate appointment as per his educational qualification.

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2. The Original Application was listed for admission today and we have heard the learned counsel for the applicant and have thoughtfully considered the pleadings and records of this case.

3. The factual panorama of this case as may be succinctly put up, is that the applicant is the son of Shri Vijay Shankar. Shri Vijay Shankar served the respondent department since 30.11.71 on the post of Driver and expired on dated 29.12.2002, while on active service. Late Vijay Shankar was survived with his widow and three sons. None of the sons of the deceased government servant is in government service and all of them were dependent on him at the time of death. The other two sons as well as the widow gave their willingness for compassionate appointment to the applicant.

4. The further facts of the case are that representation for grant of appointment on compassionate appointment was made but the respondents on the ground that there is no vacancy have turned the same down. The salient grounds on which the impugned order has been challenged are numerous; main of them being that if there is no vacancy, it was incumbent on the respondent to create the post as per the verdict of Apex Court in case of **Sushma Gosain V. Border Road Organization AIR 1989 SC 976.** Another ground on which the applicant has racked his claim is that the terminal benefits cannot be considered as a substitute to the compassionate appointment.

5. The learned counsel for the applicant has reiterated the facts and grounds mentioned in the pleadings of the applicant. He has endeavoured us to persuade that the applicant was entitled to get the employment irrespective of the existence of any vacancy in view of the decision in Sushma's case supra. But he has been denied without any rhythm or reason.

6. We have considered the submissions made by the learned counsel for the applicant. The facts have already been noticed above. The basic question for our consideration in this case is whether it is incumbent upon the respondents to give appointment to the ward of a government servant even in absence of any vacancy. As per the rules in force the compassionate appointment can be considered against the 5% of the vacancies of the total vacancies against direct recruitment quota for a particular year. It is not in dispute that during the particular year there was no vacancy for group D post for which the case of the applicant could have been considered. The respondents have also fairly informed that applicant that his case will be considered as per rules against the future vacancies.

7. Now we would advert to the law position applicable to the controversy involved in this case. As regards the case of **Sushma Gosain** supra is concerned the apex court has held as under (para 9):




"9. We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant."

8. The submissions of the learned counsel looks plausible and attractive but the same is not so. The aforesaid decision came for consideration in a subsequent judgment of the Apex Court in case of In Umesh Kumar Nagpal vs. State of Haryana 1994 (2) SCC 718 wherein their Lordships has observed as under:

"We are also dismayed to find that the decision of this Court in Sushma Gosain v. Union of India' has been misinterpreted to the point of distortion. The decision does not justify compassionate employment either as a matter of course or in employment in posts above Classes III and IV."

The consideration for such employment is not a vested right which can be exercised at any time in future."

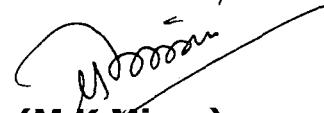
Thus in Umesh Kumar's case supra, it has been indicated that the decision of Sushma Gosain [supra] has been misinterpreted to the point of distortion and that the decision does not justify compassionate appointment as a matter of course. The observations on which reliance has been placed by the learned counsel for the applicant in Sushma Gosain's case [supra] have to be read in the light of the facts of that particular case. In that case the appellant, Smt. Sushma Gosain, after the death of her husband, who was working as Storekeeper in the

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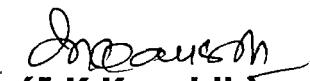


Department of Director General Border Road, sought appointment as Lower Division Clerk on compassionate grounds. In January 1983 she was called for the written test and later on for interview and had passed the trade test. She was, however, not appointed till January 1985 when a ban was imposed on appointment on ladies in the said Department. But the facts of the instant case are quite distinguishable. Therefore, the same does not in any support the case of applicant. No other ground has been urged on behalf of the applicant.

9. The result is very unfortunate but we are left with no other option except to dismiss this Original Application in limine and we do so accordingly. However, this order shall not preclude form considering the case of applicant for compassionate appointment against vacancies for subsequent years as per rules in force for which the respondents have also apprised him.


(M.K. Misra)
Administrative Member

Jsv


(J K Kaushik)
Judicial Member

Recd. 2-2 Copy & order

with petition copy send

To R-1 & R-4. Mdeane

163 To 166 M.3-6-04

R-1 & R-4. Second Despatch

Re

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Henry
24.10.13
Govt. P.S. Bhati
3-6-04

Part II and III destroyed
in my presence on 24/10/13
Under the supervision of
Section Officer (1) as per
order dated 18/10/13

S.P. Singh
Section Officer (Records) 24.10.2013