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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

ORIGINAL APPLICATION NO. 180 OF 2004

Jodhpur, this the 21st day of July, 2005

CORAM:

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

Smt. Antar Kanwar w/o Late Sh. Madan Singh, aged about 31 years, resident of Village Binykiya, Tehsil & District Jodhpur (Raj.)

..... Applicant

(Mr. R.S. Shekhawat: counsel for the applicant).

VERSUS



1. The Union of India through the Secretary, Ministry of Defence, Government of India, New Delhi.
2. Commandant, 6 Field Ordnance Depot, C/o 56 A.P.O.
3. Personnel Officer (Civil), 6 Field Ordnance Depot, C/o 56 A.P.O.

.... Respondents

Mr. M. Godara, proxy counsel for
Mr. Vinit Mathur: counsel for the respondents

ORDER (ORAL)

Smt. Antar Kanwar has, inter alia, questioned the validity of order dated 1st April 2004 at Annexure A/1 and has prayed for a direction to the respondents to consider her case for appointment on compassionate ground against Group 'D' post with all consequential benefits in addition to quashing of the impugned order at Annexure A/1.

2. With the consent of learned counsel for both the parties, the case was taken up for final disposal at the stage of admission; keeping in view the urgency in the matter and the

pleadings being complete. I have, accordingly, heard the arguments advanced at the bar and have very carefully perused the records of this case.

3. The factual matrix of the case is within a very narrow compass. The applicant is the widow of late Shri Madan Singh. Late Shri Madan Singh was employed in the respondent-department on the post of Mazdoor and expired on 06.04.2003 in harness. The applicant moved an application to the respondent-department showing her indigent conditions for grant appointment on compassionate grounds as per the Scheme in vogue. Her case has been turned down vide Annexure A/1 on the ground that she has not been selected for appointment on the basis of laid down criteria keeping in view the relative hardships; there being more deserving cases with vacancies constraints. The D.P.C. is said to have been held for the quarter ending December 2003.



4. In the reply, it is very specifically come in para 3 of para (A) to the brief facts and the contents of the same are extracted as under:

"3. That the case of the applicant was considered by the Board of Officers three times till the quarter ending December 2003 and on objective assessment of the case and looking into all the relevant factors, the respondents found that the case of the applicant does not fall in the ambit of the most indigent candidates and the name of the applicant was figured in the merit list at serial number 15, hence, the case of the applicant was not recommended and rejected by the Board of Officers held in the month of December 2003 at Headquarter Southern Command, Pune and accordingly, on the last rejection i.e. third time, the applicant was informed about his rejection of his case vide letter dated 1st April, 2004. "

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5. Both the learned counsel for the parties have reiterated the facts and grounds enumerated in their respective pleadings of the parties. At the very outset, it has been contended by the learned counsel for the respondents that the case of the applicant was duly considered three times as per the Scheme in force and for that purpose I was made to traverse through the aforesaid para of the reply. On the other hand, the learned counsel for the applicant has submitted that the case of the applicant has not been considered as per the rules in force and even the respondents have not disclosed the criteria which have been followed by them. In this view of the matter so called consideration of the applicant does not meet the scrutiny of law.



6. I have considered the rival submissions put forth on behalf of both the parties. While the facts are not in dispute, there is no reason to disbelieve the version of the respondents that the case of the applicant has been considered three times. Incidentally, I find that the case of the applicant has been considered against the vacancies for one year following the date of death, the date of death being on 06.04.2003. I take the judicial notice of the O.M. dated 05.05.2003 wherein the time limit for Compassionate Appointment has been prescribed/extended. The para 2 and 3 of the said OM is relevant and the contents of the same are extracted as under:

"2. It has, therefore, been decided that if Compassionate Appointment to genuine and deserving cases, as per the guidelines contained in the above OMs is not possible in the first year, due to non-availability of regular vacancy, the prescribed Committee may review such cases to evaluate the financial conditions of the family to arrive at a decision as to whether a particular case warrants extension by one more year, for

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consideration for Compassionate Appointment by the Committee, subject to availability of a clear vacancy within the prescribed 5% quota. 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.

3. The maximum time a person's name can be kept under consideration for offering Compassionate Appointment will be three years, subject to the condition that the prescribed committee has reviewed and certified the penurious condition of the applicant at the end of the first and second year. After three years, if Compassionate Appointment is not possible to be offered to the Applicant, his case will be finally closed, and will not be considered again."



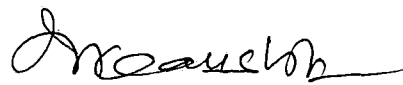
The perusal of the aforesaid OM clearly reveals that the concept of consideration of the period of three years has been evolved and there is no concept of three times. It may be mentioned that the learned counsel for the respondents, after going through the aforesaid OM, has pointed out that the consideration for the second year is only to be made in case the Committee of the opinion that the case was deserving one more year deserves another consideration and so for 3rd year. There seems to be some fallacy in his version. Firstly, it is difficult to conclude that the first Screening Committee did not recommend the case of the applicant for further consideration and this position is evident from the action of the respondents that the case of the applicant was considered 2nd time and also 3rd time but against the vacancy of one year following the date of death of the deceased Govt. servant. Perhaps a misconception has prevailed and any stereotype manner the concept of 3rd time consideration has been applied instead of concept of three year. As per the aforesaid Office Memorandum in such a situation the case of the individual is required to be considered for a maximum period of three years and not three times. In this

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view of the matter, the case of the applicant has definitely not been considered in accordance with the rules in force.

7. Examining the matter from yet another angle, it may be pointed out that the vacancies are required to be calculated on annual basis and not on quarterly basis. The concept of consideration on a quarterly basis is not known in the service jurisprudence. This position is also borne out from the fact that the ceiling of 5% of vacancies is prescribed against the vacancies under direct recruitment quota meant for a particular year and not against particular quarter. Therefore, examining the matter from any angle, I find that there is a force in the contention of the learned counsel for the applicant that the case of the applicant has not been duly considered in accordance with the relevant rules and, therefore, the same attracts my concurrence.

8. In the premises, the Original Application deserves acceptance and the same stands allowed, accordingly. The impugned order dated 1st April 2004 at annexure A/1 stands quashed. The respondents are directed to consider the case of the applicant for appointment on compassionate grounds against the vacancies for two more subsequent years as prescribed under Office Memorandum dated 05.05.2003 *ibid.* . No costs.


(J.K. KAUSHIK)
Judl. Member

Kumawat



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Rice

Cop, of water sent
to Counsel for ref
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Vide A. 201

clt 29-7-05

Part II and III destroyed
in my presence on 12-1-14
under the supervision of
section officer (1) as per
order dated 18/12/13

Section officer (Record)

18/11/14