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**CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR.**

Original Application No. 190/2005
Date of order: 16.01.2007

CORAM:

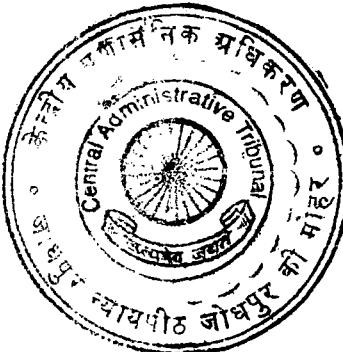
**HON'BLE MR. J K KAUSHIK, JUDICIAL MEMBER
HON'BLE MR. R R BHANDARI, ADMINISTRATIVE MEMBER**

Mahendra Choudhary S/o Late Shri Hari Ram Dabola, age 28 years, by caste Jat, R/o village Barani Khurd, Tehsil Bhopalgarh, District Jodhpur. At present R/o Plot No. 107, Mahavir Nagar, Mahamandir, Jodhpur.

...Applicant

Mr. R.K. Soni, Advocate brief holder for Mr. I.R. Choudhary, counsel for applicant.

Versus



1. Union of India through the Secretary, Broadcasting & Information Department, Govt. of India, New Delhi.
2. Broadcasting Corporation of India through the Director General, Prasar Bharti, New Delhi.
3. The Station Director, Prasar Bharti, Bhartiya Prsaran Nigam, Akashwani, Rajasthan Zone, Jaipur.
4. The Center Director, Prasar Bharti, Akashwani, Nagaur.

...Respondents

Mr. Ravi Bhansali, counsel for respondents.

ORDER

Per Mr J K Kaushik, Judicial Member

Shri Mahendra Choudhary, the applicant, has preferred this Original Application under Section 19 of the Administrative Tribunals Act, 1985 wherein he has sought for the following relief:-

"In view of the facts and grounds mentioned above, the applicant most respectfully prays that this application may kindly be allowed and by issuing writ, order or direction the impugned Order No. JAI/RAJ-ZONE/1{17}/2005/S dated 28.2.2005 / 1.4.2005 (Annex. A/1) passed by the respondent No. 3 so also the Order No. D.O.P.T. O.M. No. 14014/19/2002 Estt(D) dated 5th May, 2003 as referred to in the Annex. 1 may kindly be quashed and set aside and the respondents may kindly be directed to fairly and sympathetically consider the applicant's candidature for compassionate ground appointment and

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appoint him LDC or an any other post with all consequential benefits to the applicant."

2. We have heard learned counsel for both the parties in piecemeal and today the arguments were concluded. Learned counsel for the respondents also placed the requisite documents called for on records. We have perused the records as well as pleadings made in this case.

3. The abridged facts of this case are that the applicant is the son of one Shri Hari Ram Dabola. The said Shri Hari Ram Dabola was employed as Engineering Assistant in the department of Prasar Bharti (Broadcasting Corporation of India) All India Radio, Nagaur and died while in service on 04.10.2000. The deceased Govt. servant was survived with his widow, 2 sons i.e. the applicant and another son aged about 19 years who is studying in B.A. IIInd year. The matter was taken up with the respondent-department immediately for consideration of appointment of the applicant on compassionate grounds. There were various correspondences between the various authorities and finally the case was turned down vide communication dated 01.04.2005 (Annexure A/1) for the reason that the case is more than three years old and cannot be considered as such. The Original Application has been grounded on diverse grounds mentioned in para 5 and its sub-paras.

4. The respondents have contested the case and filed a detailed and exhaustive reply to the Original Application. It has been submitted that the case of the applicant was duly considered by the Screening Committee and was recommended to be included in the eligibility list for compassionate appointment, which came to be forwarded to the Directorate, All India Radio, New Delhi, but since the deceased Govt. servant expired three years ago, the case was closed



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and intimated to that effect to the applicant. The grounds raised in the Original Application have been generally denied. The same is followed by a detailed rejoinder wherein the facts and grounds mentioned in the reply have been generally refuted. There have been lot of further proceedings in this case and numbers of additional affidavits were filed on behalf of the respondents for clarifying certain queries which arose due to the pleadings made on behalf of the respondents.

5. Learned counsel for the applicant has strived hard and was at pains to demonstrate that a grave injustice had been caused to the applicant and his case was dealt with an unfair manner inasmuch as a person who was less indigent than that of the applicant, had been given appointment but the case of the applicant was totally neglected for the reasons best known to the administration. He took us through the various communications, which form part of the records, and submitted that the person who had been selected is in a better financial position than that of the applicant but still for no good reason the appointment was not given to the applicant. He has also shown us comparative liability of the applicant vis-à-vis the person who was selected and submitted that the person selected was in a better financial position.

6. Per contra, learned counsel for the respondents with equal vehemence has opposed the contentions raised on behalf of the applicant and submitted that the respondents have been very fair in the matter and taken all the steps in consonance with the rules and no injustice has been caused to the applicant. He has laid stress on the fact that the reason for dropping the case of the applicant is that the case is of more than three years old and even three persons higher in



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merit than the applicant came to be dropped on this count itself.

Therefore, making comparison with the person whose case was not more than three years old and who came to be selected loses its significance. He has also contended that certain additional factors like number of years of service put up by the deceased government servant were also taken into consideration and the selection was finally made with the approval of the headquarters.

7. We have considered the rival submissions put forth on behalf of both the parties. We find that death of the deceased Govt. servant in the instant case took place on 04.10.2000 and the documents which are placed on record including the pleadings made on behalf of the respondents is not in consonance with the rules, rather; does not seem to be happily worded inasmuch as it is the OM dated 05.05.2003 which provided that consideration for grant of compassionate appointment should be for three consecutive years. Otherwise the original scheme which came into effect from the year 1998 provided for consideration for one year and the applicant's case was only required to be considered for the year 2000 and not against the vacancies of subsequent years. Shri Yogendra Sharma's father expired in subsequent year and the comparative statement and study is required to be carried out only in respect of the person who are in the consideration zone. However, the respondents did consider the case of the applicant for three years. We have also very anxiously observed that the family of the deceased Govt. servant is getting family pension of Rs. 3970 + dearness relief presently @ 29% per month, was paid gratuity to the tune of Rs. 1, 33,668 and C.G.E. Insurance amount to the tune of Rs. 67,812 and the family of the deceased government servant is consisting of only the widow and two sons which cannot be said that the family is in indigent condition as



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such. As per the verdict of the Hon'ble Apex Court in the case of **Punjab National Bank & ors Vs. Ashwini Kumar Taneja 2005 (1) SLJ SC 30 = AIR 2004 SC 4155**, the terminal benefits which are granted to the family of the deceased Govt. servant are essential factors to be taken into consideration for determining the indigence of the family.

We have anxiously noted the contention of the learned counsel for the applicant that the person, who was little more solvent than that of the applicant, has been granted the benefit of compassionate appointment. We find that deceased government servant in that case had rendered more service than that of the father of the applicant in instant case and there is a clear distinction between the two. After one of the factors for consideration is that the deceased government servant rendered services satisfactorily so as to resort to the exceptional provision for such appointment which is not a normal mode. If the plea is that if the respondents have not acted according to the law then also that would not give any right to the applicant since the equality could be claimed against the enforceable right and not against an illegality. Further, the said person has also not been impleaded as a party respondent and no adverse order could be passed without hearing him. In this view of the matter, we are of the considered opinion that the Article 14 of the Constitution of India has not been offended in any manner; therefore, the contention of the learned counsel for the applicant cannot be concurred. Thus we do not find that the applicant has any case worth interference by this Bench of the Tribunal.

8. Learned counsel for the applicant has also submitted that there were vacancies for the year 2000 against which the case of the applicant ought to have been considered. It is totally wrong and as per records, only one vacancy was there for the year 2000. The very



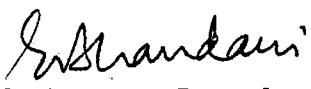


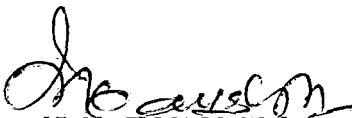
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scheme, which was applicable to the applicant at the relevant point of time, provides that if family survives for a period of more than 5 years there is presumption to the effect that there is some means of livelihood and by now more than six years have passed. Nothing abnormal has been shown to us. Therefore, no fault can be fastened to the action of the respondents on any count.



9. The result is rather very unfortunate but we are left with no option except to dismiss this Original Application, which we do so. No costs.


(R.R. BHANDARI)
Administrative Member


(J.K. KAUSHIK)
Judicial Member

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~~26/3/14~~ and 111 destroyed 26/3/14
in my presence on 26/3/14
under the supervision of
Section Officer as per
order dated 26/3/14

Section Officer (Record)

Copy received
J.H. Deshpande
C.M.H. Chaudhary
for P.L. Chaudhary

Copy recd
today
M.A.
(Mahadev
Sajabai
Av.)
for R. Phansali
Av.
25/1/07