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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

O.A. NOs. 201, 223, 242, 338 & 339 of 2005

With M.A. Nos. 160/05 (OA223/05) & 105/05 (OA 242/05)

Jodhpur: this the 28th day of April, 2006

CORAM :

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

OA No. 201/2005

Nema Ram S/o Shri Veera Ram aged 22 years, R/o Thoriaon Ki Dani, Pal Balaji District Jodhpur. Shri Veera Ram S/o Sh. Gunesh Ram, Ex. Mazdoor, Central Arid Zone Research Institute, Jodhpur.

.....Applicant

Versus

1. Indian Council of Agricultural Research, Krashi Bhawan, New Delhi through its Director General.
2. Central Arid Zone Research Institute, Jodhpur, through its Director.

.....Respondents

OA 223/2005

MA No. 160/2005

Mahendra Singh S/o Shri Narsingh Dan Charan aged 20 years R/o Plot No. 19, Gulab Nagar, BJS Colony, Jodhpur Shri Narsingh Das S/o Shri Umer Dan, Ex. Class IV Servant, Central Arid Zone Research Institute, Jodhpur.

.....Applicant

Versus

1. Indian Council of Agricultural Research, Krashi Bhawan, New Delhi through its Director General.
2. Central Arid Zone Research Institute, Jodhpur, through its Director.
3. Senior Administrative Officer, Central Arid Zone Research Institute, Jodhpur.

.....Respondents

OA No. 242/05

MA No. 105/05

(Signature)

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OA. NO. 242/2005 & MA. NO. 105/2005

Ramesh Kumar Meghwal S/o Shri Bhika Ram aged 23 years, R/o Plot No. 42, Meghwal Basti, Masuria, Jodhpur. Smt. Chaku Wife of Shri Bhika Ram, Mazdoor, Central Arid Zone Research Institute, Joanpur.

Versus

1. Indian Council of Agricultural Research, Krashi Bhawan, New Delhi through its Director General.
2. Central Arid Zone Research Institute, Jodhpur, through its Director.

....Respondents

OA NO. 338/05

Smt. Sumati Widow of Shri Phoola Ram Alias Sakia aged 40 Years, R/o Chimanpura, Jodhpur Road, Pali. Smt. Pepi Wife of Shri Sakka Ram, Stockman, Central Arid Zone Research Institute, Pali Farm, Pali.

....Applicant

Versus

1. Indian Council of Agricultural Research, Krashi Bhawan, New Delhi through its Director General.
2. Central Arid Zone Research Institute, Jodhpur, through its Director.

....Respondents

OA No. 339/05

Narain Lal S/o Shri Sakka Ram Alias Sakia aged 25 years, R/o Chimanpura, Jodhpur Road, Pali, Smt. Pepi wife of Shri Sakka Ram, Mazdoor, Central Arid Zone Research Institute, Pali Farm, Pali.

....Applicant

Versus

1. Indian Council of Agricultural Research, Krashi Bhawan, New Delhi through its Director General.
2. Central Arid Zone Research Institute, Jodhpur, through its Director.

....Respondents

Present :

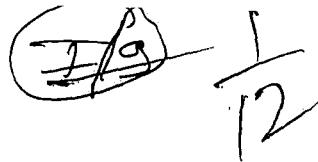
Mr. Vijay Mehta, Advocate, for applicants.

Mr. Hawa Singh, Advocate brief holder for Mr. V. S. Gurjar, counsel for respondents.

ORDER

Shri Nema Ram, Mahendra Singh, Ramesh Kumar Meghwal, Smt. Sumati and Narain Lal have filed their individual O.As for seeking a direction to consider their cases on compassionate appointments





amongst other relief. A common question of fact and law is involved in these cases, hence, they are being decided through a common order.

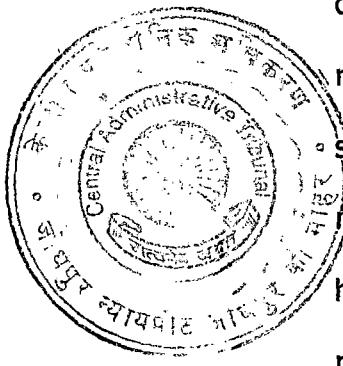
2. With the consent of both the learned counsel for the parties, these cases were taken up for final disposal at the stage of admission. I have heard the arguments advanced at the Bar and have carefully perused the pleadings and records. The respondents also made available the relevant record as directed, for perusal of the Court.

OA No. 201/2005 (Nema Ram)

3. Applicant Nema Ram is the S/o late Shri Veera Ram (sic Jetha Ram). Shri Veera Ram (sic Jetha Ram) worked as permanent employee on the post of Mazdoor from 27.7.1980 till 21.6.2004 under the respondent no. 2. He expired while in service on 21.6.2004 and was survived by his widow, three sons including applicant and two unmarried daughters with no earning member in the family. The case for his appointment was taken up but the same was not considered by the respondents.

OA 223/2005 (Mahendra Singh)

4. The applicant is the S/o late Shri Narsingh Dan Charan. Shri Narsingh Dan Charan was a permanent employee holding a Group 'D' post under respondent no. 2 and expired on 9.2.2002 in harness. He was survived with his widow, two sons and two un-married daughters with no earning member in the family. His case for compassionate appointment was taken-up and the same has been turned-down vide communication dated 2.9.2004 at Annex. A/1. The O.A. has been filed on 1.8.2005. The applicant has also preferred M.A. No. 160/05 for condonation of delay on the ground that he was first informed about rejection of his claim only on 3.9.2004 and subsequently certain






appointments have been allowed to the ward of temporary status holders neglecting his claim.

OA No. 242/2005 and MA No. 105/2005 (Ramesh Kumar)

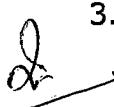
5. The applicant Shri Ramesh Kumar Meghwal, is the S/o Late Smt. Chaku. Said Smt. Chaku was employed on the post of Mazdoor under the respondent No. 2 from 25.2.1987 till 29.5.2003 when she expired while in service. She was survived with applicant, two sons and two unmarried daughters. Applicant's younger brother is leaving separately and does not support the family. The matter was taken up for consideration of appointment on compassionate in respect of the applicant but there has not been any specific reply except that he has been verbally told that there is no vacancy for extending such employment with the respondent-department. A Misc application for seeking condonation of delay has also been filed.

OA NO. 338/05 (Smt. Sumati)

6. Applicant Smt. Sumati is the wife of Late Phoola Ram. Shri Phula Ram was last employed on the post of Stockman under respondent No. 2 and expired on 25.4.2004. He was survived with applicant, two sons and two daughters. He left behind with lot of liability, hence, an application was made to the respondents for grant of compassionate appointment to the applicant but he was informed that there is no vacancy for the present and it is not possible to give appointment to her.

OA No. 339/05 (Narain Lal)

7. Applicant Narain Lal is the S/o Smt. Pepi. Smt. Pepi was employed on the post of Mazdoor under respondent No. 2 and died on 3.5.2005 while in service. She was survived by three sons including the



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applicant, one daughter and her husband leaving the family in indigent condition without there being any breadwinner. The matter was taken up for grant of compassionate appointment but without any response.

8. The aforesaid OAs have been filed on almost common grounds that their cases have not been considered on the pretext of want of vacancies. The vacancies were very much available which is evident from the appointments made on compassionate ground in respect of Smt. Santosh and Smt. Meena. The action of the respondents is violative of Articles 14 and 16 of the Constitution of India. The applicants belong to the reserve community i.e. SC/ST/OBC and were entitled to get priority in the matter of employment, which has not been found expedient by the respondents, and there has been violation of provisions of the very Scheme for compassionate appointment itself.

9. The respondents have filed their exhaustive reply including narrating the legal aspect of the matter elaborately. The object and purpose for grant of appointment on compassionate grounds has been discussed. It is the common defence from the side of respondents that the matters of compassionate appointments can be considered only on regular basis if the vacancy meant for that purpose which are available up to a maximum 5% quota of total vacancies, falling under direct recruitment in Group 'C' and 'D', are available. Nevertheless, due to non-availability of vacancies, applicants could not be granted appointment. It has also been averred that as per the policy in vogue, cases of the applicants have already been referred to other sister Organizations of ICAR for consideration against the vacancies meant for that purpose and the same are still pending. It has also been averred that their cases cannot be equated with that of Smt. Santosh and Smt. Meena who are the widows of casual labourers TS and their husband



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died while on engagement by the Institute. They have been accorded engagement only on daily rated basis as casual labourers and such appointments are not possible under the Scheme framed for the purpose. Another ground of defence as set out in the reply is that the Scheme being relied upon by the learned counsel for applicants is not applicable to their cases. Numbers of judgements have been mentioned in the reply regulating the various aspects of compassionate appointments. The reply is followed by a rejoinder refuting the contentions raised in the reply. Separate replies to the MAs for condonation of delay have also been filed.

10. Both the learned counsel for the parties have reiterated the facts and grounds enumerated in their respective pleadings as noticed above. The learned counsel for the applicants was at pains to submit that it is very strange that the legal heirs of casual labourer are being considered at a better footing than the legal heirs of regular employees. He has submitted that all the deceased Government servants in these OAs were employed on regular basis and all of them belong to reserve [SC/ST/OBC] category. The applicants have been denied appointment on compassionate ground only on the pretext that no vacancy was available against the 5% direct recruitment quota. He has stressed hard to demonstrate that applicants have specifically pleaded that Smt. Santosh and Smt. Meena have been given appointment on compassionate grounds and why the vacancy constraint did not obstruct their appointments. There has been hostile discrimination in matter of employment.

11. Per contra, learned counsel for the respondents with equal vehemence, strongly opposed the contentions put-forth on behalf of the applicants. He has contended that the cases of applicants are distinct

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from that of Smt. Santosh and Smt. Meena. In cases of Smt. Santosh and Smt. Meena there was a specific direction from this Bench of the Tribunal as up-held by the Hon'ble High Court to consider their cases for grant of compassionate appointment on casual basis in accordance with Office Memorandum issued for the purpose. Their cases were accordingly considered and they have been engaged on daily wages basis and not against any regular vacancy. The husbands of these two widows were employed as Casual labourer with temporary status, therefore, there is no discrimination. He has also drawn my attention towards the record of proceedings, which have been conducted for consideration of cases on compassionate appointment and has submitted that there has been absolutely no vacancy for the last number of years against 5% quota for direct recruitment and, therefore, nobody has been granted such appointment. He was questioned as to whether the Department would have any difficulty in considering the cases of applicants for engagement as daily wager similar to that of Smt. Santosh and Smt. Meena; learned counsel for respondents was unable to give any direct answer. He however, contended that even if the department has wrongly extended any benefits to any person, the Tribunal would not perpetuate the illegality by extending the benefits by invoking equality clause. Nevertheless, learned counsel for applicants was asked as to whether the applicants would be satisfied if they are now considered for engagement on daily wage basis similar to those referred to above. He submitted that an appointment on compassionate ground(s) is always on regular basis and not on casual basis. The respondents must be having some vacancies and that is the reason they have appointed two persons. He also submitted that in some of the cases, this Bench of the Tribunal even directed to give appointment on compassionate ground and the same was up-held by the Hon'ble High Court and implemented by the respondents.



12. I have considered the rival submissions put-forth on behalf of both the parties. Before examining the merits of these cases, I consider it expedient to dispose of the M.A. Nos. 105 and 160 of 2005 regarding condonation of delay. It has been categorically indicated in the reply that the matters of compassionate appointments in respect of applicants in these two M.As in particular and other applicants in general, are under constraint consideration inasmuch as it is said that their cases have been referred to other institutions of the other ICAR, therefore the objection of limitation can hardly withstand the legal scrutiny and it would not sound well from the side of respondents to insist on the objection of limitation in such situation. Therefore, the M.As are hereby accepted and delay, if any, in filing of the OA stands condoned.



13. Now advertig to the factual aspect of these cases. It is true that all the applicants belong to reserve communities i.e. SC, ST and OBC and are the legal heirs of permanent government. It also true that two widows of Casual Labour TS have been engaged on daily wages basis on compassionate grounds in pursuance with orders of the court. It is also a fact that there arose no vacancy during last over four years against 5% direct recruit quota in-group C or D posts for compassionate appointment. In absence of vacancy, no one has been given appointment on regular basis. I also find from perusal of the order issued in respect of Smt Santosh that her husband was also ordered to be treated as regular employee.

14. As far as the legal aspect of the controversy is concerned, the Tribunal cannot direct to give appointment on compassionate grounds in case there is no vacancy. This issue does not remain res integra and

has been settled by the Apex in **Himachal Road Transport Corporation vs. Dinesh Kumar** AIR 1996 SC 2226. In that case the Hon'ble Apex Court were dealing with two cases where applications had been submitted by the dependents of the deceased employees for appointment on compassionate grounds and both of them were placed on the waiting list and had not been given appointment. They approached the Himachal Pradesh Administrative Tribunal and the Tribunal directed the Himachal Road Transport Corporation to appoint both of them as Clerk on regular basis. Setting aside the said decision of the Tribunal this Court has observed:

"..... In the absence of a vacancy, it is not open to the Corporation to appoint a person to any post. It will be a gross abuse of the powers of a public authority to appoint persons when vacancies are not available. If persons are so appointed and paid salaries, it will be mere misuse of public funds, which is totally unauthorised. Normally, even if the Tribunal finds that a person is qualified to be appointed to post under the kith and kin policy, the Tribunal should only give a direction to the appropriate authority to consider the case of the particular applicant, in the light of the relevant rules and subject to the availability of the post. It is not open to the Tribunal either to direct the appointment of any person to a post or direct the concerned authorities to create a supernumerary post and then appoint a person to such a post."



Keeping in view the aforesaid proposition of law, the prayer of the applicants for giving appointment as such cannot be accepted for want of vacancies and on this count, no fault can be found with the action of the respondents.

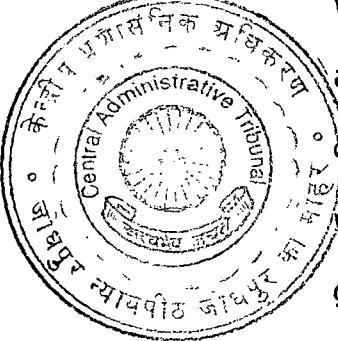
15. As regards the other aspect of the controversy, I find that Smt Santosh and Smt Meena were engaged on daily wages basis on compassionate grounds, as per the direction of this bench of the Tribunal, which was solely based on the specific Office Memorandum, regulating the cases of deceased TS Casual Labour. There was a direction to consider appointment on casual basis. It is also a fact that the general scheme does not apply to their cases. However, the deceased government servant therein were also deemed regular

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employees and in that case, the applicants could not have been singled out and deprived of the similar treatment. I am unable to persuade myself with the submission of the learned counsel for the respondents that the applicant could not claim any benefit on the ground of infraction of equality clause. It is not the case of respondents that they cannot engage the applicants on daily wages basis i.e. in similar way as done in case of two widows indicated above. There is also force in the plea of applicants that the TS employee is being given preferential treatment over the regular employees. The actions of the authorities have to be fair while dealing with the public employment so as inspire the confidence in the mind of the public at large.

16. In the backdrop of above analysis, the legal and factual position which has come to crystallised, I find force and substance in theses OAs and the same are disposed of with a direction to the respondents to consider the cases of applicants afresh for engaging them as daily wager similar to that of Smt Santosh and Smt Meena, on compassionate grounds. The impugned order dated 2/3.9.2004 (A/1) to OA No. 223/2005 stands quashed. This order shall be complied with within a period of three months from the date of receipt of a copy of the same.

No costs.


J.K. KAUSHIK
JUDICIAL MEMBER

jrm

Part (b) and (c) destroyed
in my presence on 11/11/14
under the supervision of
Section Officer (b) as per
order dated 31/10/2014

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Section Officer (Record)
11/11/14

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