

27/10

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH: JODHPUR.**

Original Application No. 11/2005

Date of Order: 14.11.2005

Coram:

Hon'ble Mr. J K Kaushik, Judicial Member.

Hukam Singh Khichi son of late Shri Mahendra Singh aged 23 years resident of 17, Lohar Colony, Paota, Jodhpur.

Applicant.

Mr. Rakesh Kalla, counsel for applicant.

VERSUS

1. Union of India through Secretary, Defence Ministry, Government of India, New Delhi.
2. The Chief Engineer, Head Quarters, Jaipur Zone, Power House Road, Bani Park, Jaipur 302 008.
3. The Commander Works Engineer (Army), Multan Lines, Jodhpur 342 010.
4. The Assistant Garrison Engineer (1) R&D Defence Lab, Ratanada Palace, Jodhpur.

: Respondents.

Mr. Vinit Mathur, counsel for respondents.

ORDER (Oral)

Per Mr. J K Kaushik, Judicial Member.

Shri Hukam Singh Khinchi has moved this Original Application under Section 19 of the Administrative Tribunals Act whereby he has assailed the impugned order dt. 16.12.2002 at Annexure A/1 and has sought for quashing of the said order with a further direction to the respondents to provide appointment on compassionate ground in his favour on the post which was held by his father with all consequential benefits.

2. With the consent of the learned counsel for both the parties, the case was taken up for final disposal at the stage of admission; keeping in view that a very short controversy is involved in this case and the pleadings are complete. I have





accordingly heard the arguments advanced at the bar by the learned counsel representing the contesting parties and have carefully perused the pleadings and records of this case.

3. The factual matrix of this case is within a very narrow compass. The applicant is the only son of late Shri Mahendra Singh Khichi. Shri Mahendra Singh Khichi was last employed as MT Driver in Grade II in respondents department. He served for over 22 years and died in harness on 27.2.1999. He was survived with his wife, one son i.e. applicant and his daughter. The daughter was already married within the life span of the deceased Govt. servant. The case of the applicant was considered at number of occasions i.e. about 4 times and the same was turned down on the ground that he was not found meritorious enough in 2002 and subsequently there was ban on the recruitments. His case was again considered but the same has been turned down. It has been averred that there were only 5 vacancies against 5% of direct recruitment in Group "C" & "D" posts which were meant for filling up on compassionate appointment. In merit list, the applicant's position was at serial No. 82 and he has secured only 42 marks as per his relative positions. For want of sufficient number of vacancies, the applicant's case could not be approved for appointment. The terminal benefits which were paid to the family of the deceased Govt. servant were to the tune of Rs. 2,30,000/- and family pension @ 2295/- per month plus dearness relief. The family did not have any liability of minor children/unmarried daughter.

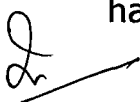


4. Both the learned counsel for the contesting parties have reiterated the facts and grounds mentioned in their respective

pleadings, as noticed above. The learned counsel for the applicant has submitted that during the pendency of this case, a notice for demand of justice was also sent to the competent authority for making available the merit list of candidates indicating the position of the applicant vis-à-vis other candidates so as to unfold the true position. However, the same has remained unreplied.

On the other hand, the learned counsel for the respondents has submitted that the complete position has been reflected in the reply itself and no rejoinder to this effect has been filed. He has also submitted that he is not aware of any such notice since the same does not form the part of the pleadings. He has submitted that in any case the complete factual aspect has been disclosed and the official acts are presumed to have been done in good faith and as per the established procedures and the burden lies on the person who disputes the same and in this case no such dispute has been even raised. One has only a right for consideration and there is no right to appointment as such on compassionate grounds. Therefore, the action of the respondents cannot be faulted with and it is not a fit case for interference by this Bench of the Tribunal.

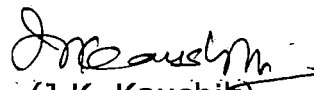
5. I have considered the rival submissions put forth on behalf of both the contesting parties. As far as the factual aspect of the matter is concerned there is absolutely no quarrel. Admittedly, the case of the applicant has been considered four times. There were only 5 vacancies and the name of the applicant stood at serial No. 82 of the merit lists. The applicant has not disputed this position inasmuch as no rejoinder to this




effect has been filed. By now the legal position in regard to the appointment on compassionate grounds is fairly settled by the Apex Court in case of **Punjab National Bank Vs. Ashwani Kumar AIR 2004 SC 4155** wherein it has been held that the terminal benefits is one of the ground to be taken into consideration while contesting the case of appointment on compassionate ground and appointment on compassionate ground cannot be claimed after a long delay. It has also been held that appointment on compassionate ground is not as a matter of right. The ratio laid down by the Apex Court fully applies in the instant case as much as ex facie the family of the deceased Govt. servant does not seem to be in indigent condition and there is no reason to disbelieve the version of the respondents that the applicant could not find a berth for want of sufficient vacancies. In other words, his case did not fall within the permissible vacancies meant for giving appointment on compassionate ground. In this view of the matter, the learned counsel for respondents is right in saying that there is no ground for interference with the impugned order, in the instant case.



6. The result is rather very unfortunate but I am left with no option except to dismiss the Original Application, which I do so accordingly, but with no order as to costs.


(J.K. Kaushik)
Judicial Member

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for
(Patent-1 call)
for Applicant.