

29/11/2006

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

O.A.NO.222 OF 2005

29th November 2006

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

Smt. Chandra Kala W/o Late Sh. Ram Narayan Ji Godara, Ex-Cane Weaver in the office of Garrison Engineer (Army), Jodhpur (Rajasthan), Aged about 40 years, R/o C/o M/s Amar Construction, Post Bag No. 632, Kacheri post Office, Jodhpur (Rajasthan).

..... Applicant

By: Mr.S.K.Malik, Advocate.

Versus

1. Union of India through The Secretary, Ministry of Defence, Raksha Bhawan, New Delhi-110011.
2. Director General, Engineer-in-Chief Branch, Army Headquarters, Kashmir House, DHQ Post, New Delhi.
3. Chief Engineer, Jaipur Zone, Power House Road, Bani Park, Jaipur (Rajasthan)-302006.
4. Commander Works Engineer (Army), Multan Line, Jodhpur (Rajasthan)-342010.
5. Garrison Engineer (Army), (Central), Multan Line, Jodhpur, (Rajasthan).

----- Respondents

By: Smt. K. Parveen, Advocate.

ORDER

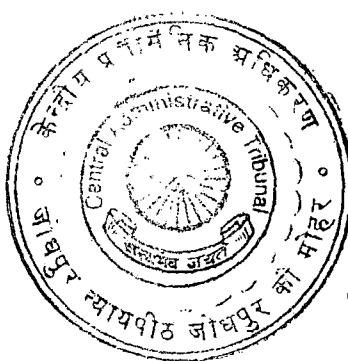
(HON'BLE MR.J.K.KAUSHIK, JM)

Smt. Chandra Kala has questioned the validity of the orders dated 25.2.2005, 4.8.2004, 11.5.2004, 24.3.2004 and 8.11.2005 (Annexures A-1 to A-5) and has prayed for setting aside of the same with further direction to the respondents to consider her case for appointment on compassionate grounds on any Group D post with all the consequential benefits, amongst other reliefs.

2. We have heard learned counsel for both parties and have carefully perused the record of this case. The abridged facts of this case are that applicant is wife of late Shri Ram Narayan Ji Godara. Said Shri Godara

was initially appointed to the post of Cane Weaver on 7.3.1987. He was a blind person. He went to Nagpur on 2.8.1991 for his domestic work and disappeared from Nagpur Railway Station on 4.8.1994. An FIR was lodged on Police Station Nagpur Station on 21.8.1991. Simultaneously another FIR was lodged at Mahamandir Police Station, Jodhpur by the family members of the deceased government servant. The pension claim of the applicant was processed by the respondent department vide letter dated 29.3.1995 and the applicant was granted family pension w.e.f. 21.8.1992 and after lapse of one year from the date of FIR, certain terminal benefits were also paid. The missing government servant was survived by his son and two unmarried daughters. The family does not have its own source of livelihood and its members are residing in a rented house.

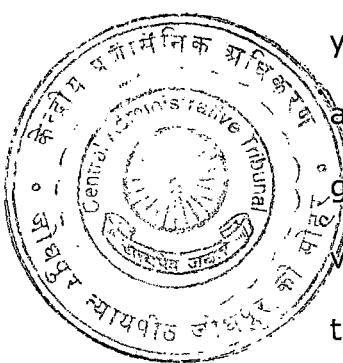
3. The applicant moved an application on 20th March 1998 for appointment on compassionate grounds. Board of officers considered her case and recommended her name along with others, which was duly approved by the respondent No. 3. It was said that the sanction of the competent authority was required for regularization since the application for appointment was not submitted within two years from the date of death of the deceased government servant, vide communication dated 16.4.1999. The applicant waited for 7 years after the date of missing of her husband so as to draw a presumption of death as per the section 108 of the Evidence Act and thereafter applied for her appointment. There were certain subsequent correspondences in the matter. Finally on 8.12.2003, she was informed that her case for employment assistance was considered and rejected by the Board of Officers due to non-availability of vacancies. Similar is the fate of subsequent considerations made by the Board of Officers. Further case of the applicant is that in case of some other persons the appointments have been given in the



year 2002, 2004 and one person has been given appointment in the year 2005. The O.A. has been filed on numerous grounds as mentioned in para 5 and its sub paras of the O.A. It has been averred that the applicant has been visited with hostile discrimination and the action of the respondents is violative of article 14 and 16 of the Constitution of India. It has also been averred that the Ministry of Defence vide letter dated 9.3.2001 cited by the respondents has no relevance to the instant case.

4. The respondents have contested the case and have filed parawise reply to the Original Application. The main defence of the respondents as set out in the reply is that the quota prescribed for compassionate appointment is 5% against direct recruitment vacancies occurring in a year in Group C and D posts. The case of the applicant for compassionate appointment was duly considered by the Board of Officers as per the government policy, but he was not the most deserving candidate. The various factors necessary for adjudging indigence of the individuals were taken into consideration. But there was no vacancy available during the quarter ending June, September, and December 2003 and March and June 2004. Therefore, the case of the applicant duly considered and rejected due to non-availability of vacancies. The grounds raised in the O.A. have generally been denied.

5. Both the learned counsel for the parties have reiterated the facts and grounds mentioned in the respective pleadings. The learned counsel for the applicant has made us to travel through various communications forming part of the record and it has been submitted that the applicant's case was duly considered and recommended but the same was taken up with the higher authorities in the year 1999, for grant of relaxation. It is submitted that no relaxation was required since the presumption of death arose only after 7 years from the date the government servant went



SD

-4-

missing and that would have fallen only in the year 1998. He has submitted that the candidature of the applicant has been rejected abruptly without any cogent reasons and some persons have been given appointment during the year 1994 as well as during 2005. Therefore, the respondents' action cannot be said to be in consonance with the rules, rather the same is in infraction of the Article 14 of the Constitution of India.

6. Per contra, learned counsel for the respondents has submitted that the case of the applicant has been sincerely considered by the respondents but she could not be given the appointment due to scarcity of the vacancies and the vacancy position has been very much reflected in the impugned orders itself. There was only one vacancy in the year 2004 and that has been given to the person who was on the top of the merit.

We have considered the rival submissions put forth on behalf of both the parties. As far as the factual aspect of the matter is concerned, there is hardly any dispute. The case of the applicant has been considered a number of times and it is clear from the details given in the impugned orders that she has been fairly considered. The complete record shows that because of vacancy being not available under the said quota, the applicant could not be provided with the appointment on compassionate grounds. Incidentally, no rejoinder to reply has been filed by the applicant and the position, as set out in the reply shall have to be taken to be true on its face value. The position is also clear from the various impugned orders. There are certain names mentioned that they have been given appointment against the vacancies for the year 2004 and 2005 and the respondents have admitted the position in that in the year 2004, one person was given the appointment and for the year 2005,



[Signature]

there is no detail available from either of the side. In this view of the matter, the action of the respondents cannot be faulted with and the impugned order cannot be said to be illegal or in operative.

8. Besides aforesaid position, the very Scheme which has been referred to by the learned counsel for the applicant i.e. Chapter 25 of Compassionate Appointment, Establishment & Administration by P. Muthuswamy, at Page 210, envisages vide Para 4 that where several years have passed after death of government servant, it shall appear *prima facie* that family has sufficient income to pull itself on. The provisions of the Scheme being relevant are reproduced as under:



“4. Where the death took place long ago.—It will no longer be necessary for Departments to refer to Department of Personnel and Administrative Reforms cases of compassionate appointments of the wards of Government servants merely because a long time, say 5 years, has elapsed since the death of the Government servant. The Ministries/Departments may consider such cases themselves on merit but while admitting claim of such applications, Ministries / Departments may please keep in view the important fact that the concept of compassionate appointments is largely related to the need for immediate assistance to the family on the passing away of the Government servant in harness. When several years have passed after the death of a Government Servant, it would appear *prima facie* that the family has been able to manage somehow all these years and had some means of subsistence. Ministries /Departments will no doubt deal with such requests with a great deal of circumspection in order to give due allocation to more deserving cases, if any. The decision in such cases of belated appointments may be taken after the Secretary has approved of the proposal”/

9. The husband of the applicant disappeared on 4.8.1991 and now we are in 2006 and more than 15 years have elapsed. The family has somehow or the other has survived. We have not been shown any special reasons or circumstances to the contrary. By applying the aforesaid instructions, there seems to be no justification for giving appointment to the applicant under “dying in harness scheme”. It is by now well settled that such appointments can be granted to the heirs of its deceased employees dying in harness only if vacancies exist for absorbing. In other words, the compassionate appointments could be granted only against such vacancies and the Court cannot direct, by mandamus, to create

vacancies for that purpose, if there are none. This proposition of law finds support from a decision of Apex Court in the case of **Hindustan Aeronautics Ltd. v. A. Radhika Thirumalai (Smt.)**, (1996) 6 SCC 394 : AIR 1997 Supreme Court 123, wherein their Lordships have held as under:

"9. A situation similar to the present case arose in **Himachal Road Transport Corporation v. Dinesh Kumar**, (1996 AIR SCW 2727), (supra). In that case this Court was 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 a mere misuse of public funds, which is totally unauthorised. Normally, even if the Tribunal finds that a person is qualified to be appointed to a 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,"(p. 397) (of SCALE): (at P. 2728 of AIR)."



The aforesaid proposition of law fully applied to the controversy involved in the instant case. The authorities cited on behalf of the applicant are not relevant to the controversy involved in this case, hence of no help to the applicant. Therefore, the action of the respondents cannot be faulted with on any ground.

10. In the result, the Original Application sans merit and the same stands dismissed accordingly. No costs.

R R Bhandari
(R R BHANDARI)
Administrative Member

J K Kaushik
(J K KAUSHIK)
Judicial Member

HC*

SL
on 11/12/06
for
Kausar Parveen
7-12-06

Part II and III destroyed
in my presence on 11/14/06
under the supervision of
section officer () as per
order dated 31/01/06

Section officer (Record)