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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

**Original Application Nos.291/2005
&
Misc. Application No. 132/2005**

Date of decision: 31-8-2009

Hon'ble Mr. Justice Syed Md Mahfooz Alam, Judicial Member.

Bhupendra Singh, S/o Shri Mool Singh aged 26 years, Ex. DES. Resident of 146 Hanuman Hatgha, Bikaner (Rajasthan)

: Applicant.

Rep. By Mr. R.B. Saxena and Mr. Nitin Trivedi : Counsel for the applicant.

Versus

1. The Union of India through the Secretary, Ministry of Defence, Raksha Bhawan, New Delhi.
2. The Chief Engineer, Bhatinda Zone Military Stationb, Bhatinda (Punjab)
3. The Head Quarter, Chief Engineer, Western Command, Chandi Mandir,
4. The Garrison Engineer (North) MES, Bikaner

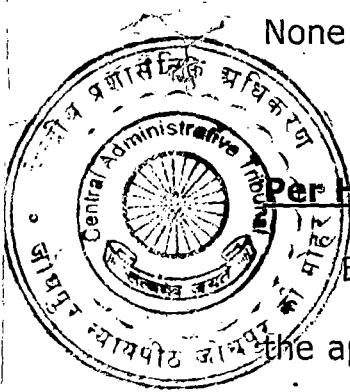
: Respondents.

Rep by Mrs. Kesar Parveen: Counsel for respondents 1,2 & 4

None present for respondent no. 3

ORDER

Per Hon'ble Mr. Justice S.M.M. Alam, Judicial Member.



Being aggrieved by the order dated 31.05.2004 (annex. A/1), the applicant Bhupendra Singh has preferred this Original Application seeking relief to quash and set aside the impugned order (Annex. A/1) with a direction to the respondents to appoint him on

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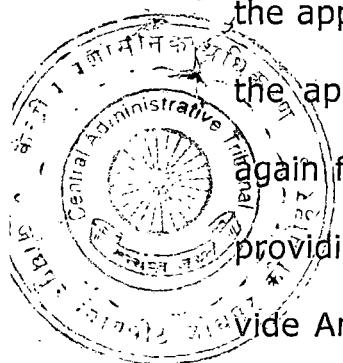
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compassionate grounds as his name was kept at Sl. No. 9 in the waiting list prepared for the year 1999. He has also prayed for grant of consequential benefits with retrospective effect with costs of the application.

2. The brief facts of the case are as follows:

The applicant's father late Mool Singh was a permanent employee working as DES in MES, Bikaner. He died on 20.8.1980 while in active service. Late Mool Singh left behind him his widow and two minor sons including the applicant. Late Mool Singh was the only bread earner in the family and as such after his death the family is facing various hardships as there is no other means of livelihood. Due to the rituals and customs prevailing in the society, applicant's mother was not allowed to go out and to involve herself in any service. At the time of death of Shri Mool Singh the applicant was only 11 months' old. The applicant's mother filed an application before the concerned authority to give compassionate appointment to the applicant and the competent authority accepted the same. When the applicant attained the age of 16 years, the applicant's mother again filed a representation before the authority in MES, Bikaner for providing employment to the applicant on compassionate grounds vide Annex. A/2-(i). In reply, the respondents informed the mother of the applicant vide letter dated 27.07.95 that the applicant is still underage for employment so she may apply as soon as the applicant



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attains the age of 18. Thereafter, she again applied when the applicant attained the age of 18 years, seeking appointment on compassionate grounds for the applicant vide her letter dated 24.09.97 (Annex. A/3). As no reply was coming from the concerned authority so she filed several applications (Annex. A/5 and A/6) praying therein to appoint her son on compassionate ground. Thereafter the Engineer in Chief, Army Headquarters, New Delhi vide his letter dated 11.11.99 (Annex. A/7) informed Lt. General K. Chiman Singh PVSM (Retd.) that the case of the applicant was considered by Chief Engineer Bhatinda Zone for category of Mazdoor and he has been placed at Sl. No. 9 in the waiting list. In the said letter it has also been incorporated that there were large number of candidates waiting for compassionate appointment in various categories but due to meager quota of 5% as authorized by the Government for providing compassionate appointment to the dependents of deceased Government employees including Army Personnel, the individual will be offered appointment on occurrence of vacancy and will have to wait for his turn. Thereafter, vide letter dated 15.12.2000 (Annex. A/8) the applicant's mother was advised to contact the Garrison Engineer, Bikaner for needful. Accordingly the applicant's mother contacted Garrison Engineer, Bikaner (Respondent No.4), who vide his letter dated 08.10.2001(annex. A/10) asked her to furnish certain documents for taking further action in the matter.

The respondent no. 4 thereafter vide his letter dated 24.10.2002



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[Annex. A/11 (i)] informed the applicant that his case for employment assistance on compassionate grounds would be considered in the next quarterly meeting of the Board of Officers.

Thereafter the applicant submitted a representation dated 01.11.2002 [Annex.A/12 (i)] requesting the authorities concerned to provide him appointment on compassionate grounds and decide the issue as early as possible as he and the other family members of the deceased government servant were facing various hardships.

Thereafter the third respondent vide his letter dated 24.03.2003 (Annex. A/13) simply stated that his case shall be considered in the next quarterly meeting of the Board of Officers. The further case of the applicant is that in spite of repeated requests and repeated assurances given by the respondents no fruitful result came out and the applicant was not provided with any appointment on compassionate grounds. However, the second respondent vide his letter dated 30.06.2003 (Annex. A/15) informed the applicant that the competent authority has rejected the case of the applicant for compassionate appointment and his name would be deleted from the

next meeting of Board of Officers.



Thereafter the applicant preferred Original Application no. 53/2003, challenging the communication dated 30.06.2003 (Annex. A/15 herein). The said O.A was disposed of by a Bench of this

Tribunal at the admission stage vide its order dated 20.01.2004 (Annex. A/16). The operative portion of the order reads as under:

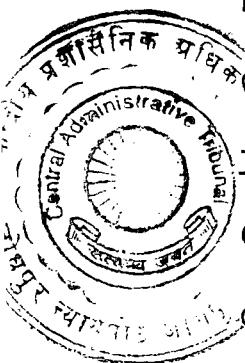
"..... that there is a waiting list in the matter and that his position in the same is at Sl. No. 9. All this perhaps only goes to show that the respondents have been sincerely trying to accommodate the petitioner for compassionate appointment. There has to be a logical end to this exercise and so if the petitioner's name stood at Sl. No. 9 in the year 1999, it is also likely that by this time, the list has moved up and compassionate appointments have been made.....".

4. The further case of the applicant is that after passing the said order by the Tribunal, the respondents again considered the case of the applicant for compassionate appointment and the respondents by communication dated 31.05.2004 (Annex. A/1) rejected the claim on the grounds mentioned therein that the quota prescribed for granting compassionate appointments is only 5% of the total direct recruitment vacancies in the year. After the disposal of the O.A the applicant's mother submitted a representation dated 15.08.2004 (Annex. A/17) and the employees union also submitted a representation dated 20.08.2004 (Annex. A/18) for granting appointment on compassionate grounds to the applicant. The applicant also met the authorities personally. As no fruitful result was coming out as such the applicant preferred the present O.A claiming the relief to quash and set aside the impugned order dated 31.05.04 (annex. A/1).

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5. After filing of this O.A notices were issued to the respondents and in compliance of the notices, the respondents 1,2 & 4 appeared through lawyer and filed a joint reply on their behalf.

6. The respondents have stated in their reply that as per the scheme of appointment on compassionate grounds, the whole object to grant compassionate appointment is to enable the family to tide over the sudden crisis and relieve the family of the deceased from financial destitution and to help it to get over the emergency and the quota prescribed for the purpose of granting compassionate appointment is only 5% of the total direct recruit vacancy occurring in a year in Group C or Group D posts and so no case could be considered individually or unit wise and all such cases are considered jointly by the Board of Officers at the Headquarters as per the Government policy. The Board of Officers consider the cases for compassionate appointment by taking into account the size of the family, age of the children, amount of terminal benefits amount of family pension, liability in terms of unmarried daughters etc and after considering the cases appointment is provided only to really deserving cases. According to the reply of the respondents, compassionate appointment cannot be granted after a lapse of reasonable period and it is not a vested right which can be exercised at any time in future. It has further been stated that the appointment on compassionate grounds in respect of the applicant



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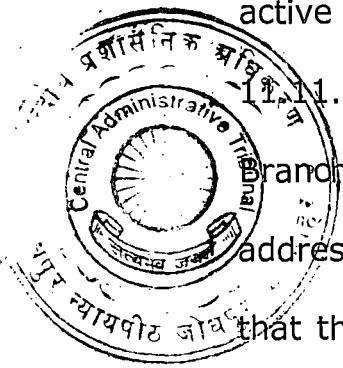
was considered in three quarterly meeting of the Board of Officers lastly on 30.09.2002 and after due consideration the name of the applicant was deleted from the next meeting of the Board of officers and the said decision was communicated to the applicant vide letter No. 10554/NB/1032 EIC dated 30.06.2003 (Annex. A/15). It has further been stated that as per letter No. 19 (10 2000 /D[Lab] dated 12.02.2001 with regard to wait-listing of deserving cases, there is policy that the committee considers the request for appointment on compassionate grounds taking into account the position regarding the availability of vacancies for such appointment keeping in mind that only in deserving cases the compassionate appointment should be made against the 5% quota made available for the purpose. It has been further stated that yard stick of poverty line to be adopted to determine the financial destitution/penurious condition of the family and the same has been fixed below Rs. 1767.20 for a family of 5 members. The DOPT has also directed to dispense with the system

of maintenance of waiting list and therefore the impugned order passed by the authorities (Annex. A/1) after considering the order of this Tribunal dated 20.01.2004 in O.A. No. 53/2003 is according to the rules framed in respect of granting the appointment on compassionate grounds.

7. Mr. Nitin Trivedi, learned counsel appearing for the applicant during his arguments submitted that there is no denial of this fact

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that the applicant's father Mool Singh died while he was in active service. It is also not denied that at the time of death of Shri Mool Singh the applicant was only 11 month's old. It is also not denied that the applicant's mother filed application before the competent authority to provide appointment to the applicant on compassionate grounds in place of his deceased father. He has further submitted that the documents attached to this O.A establish beyond doubt that the competent authority has accepted the request of the applicant's mother and the various letters written by the respondents addressed to the applicant's mother would show that her request for appointment of her son on compassionate grounds remained under active consideration of the Board of Officers and as per letter dated 11.11.99, (annex. A/7) issued from the office of Engineer in Chief's Branch, Army Headquarters, Kashmir House, DHQ New Delhi addressed to one Lt. Gen. K Chiman Singh PVSM (Retd.), it was clear that the applicant's name was placed in the waiting list at Sl. No. 9 prepared for compassionate appointment. He further submitted that Annex. A/7 makes it clear that the applicant was found fit and eligible for being appointed on compassionate grounds by the competent authority with clear understanding that and the issuance of letter of appointment will be subject to availability of the vacancy and on coming of his turn as per waiting list. The learned counsel also submitted that this position was accepted by the Tribunal in its order dated 20.01.2004 passed in O.A. No. 53/2003, wherein this Tribunal



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while directing the respondents to act upon the 'waiting list' has observed that there has to be a logical end to this exercise and it is also likely that by this time, the list has moved up and compassionate appointments have been made. The learned counsel contended that in view of the above observation of this Tribunal the respondents were legally bound to appoint the applicant on compassionate ground as per the waiting list prepared by them and so he prayed that the impugned order (Annex. A/1) whereby the respondents have rejected the claim of the applicant or compassionate appointment be quashed and set aside.



On the other hand Smt. Parveen, learned advocate appearing on behalf of the respondents argued that the applicant has no indefeasible right to claim compassionate appointment and appointment on compassionate grounds are made by the competent authority on the basis of Scheme, instructions and rules framed by the government or the concerned department in this regard. She submitted in the light of Scheme, instructions and the rules, the claim of the applicant for compassionate appointment was considered in the meeting of Board of Officers and by reasoned order the claim was rejected. She submitted that there is no illegality in the impugned order (annex. A/1) as such the O.A should be dismissed.

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9. From the facts of the case as stated above and from the documents attached with the O.A, the following facts have come on record:

- i) Late Mool Singh, the father of the applicant was a government employee working as DSE in MES Bikaner. He died on 20.8.1980 while in active service.
- ii) Late Mool Singh left behind him his widow and two minor sons. The applicant is one of the sons of the deceased employee.
- iii) At the time of death of Mool Singh the applicant was only 11 months old and thus he was not qualified for government job at that time.
- iv) Smt. Vimla Devi the widow of the deceased (mother of the applicant) due to family custom did not opt for applying for a job on compassionate grounds immediately after the death of her husband.
- v) It appears from Annex. A/2(i) that Smt. Vimla Devi for the first time filed an application on 28.06.1995 requesting the authorities to grant compassionate appointment to her son [i.e. the applicant] (there is no document to show that prior to this date any application had been filed for seeking appointment on compassionate grounds)
- vi) By Annex. A/2 the concerned authorities informed Smt. Vimla Devi that her son was still minor and so she should file an application after the applicant attained the age of majority. As per the said advice of the authority, the mother of the applicant again filed an application for compassionate appointment on 24.09.97 after the applicant attained the age of majority as per Annex. A/3. Thereafter she filed representations Annex. A/5 and Annex. A/6.



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vii) The authority concerned vide Annex. A/7 placed the application on record for considering the case of the applicant for compassionate appointment on the post of Mazdoor and kept the name of the applicant at Sl. No. 9 in the waiting list.

10. Documents attached to the O.A shows that on several occasions, the name of the applicant was considered in the meeting of the Board of Officers and finally the same was rejected vide order dated 30.06.2003 (annex. A/15). The said order was challenged by the applicant by filing O.A. No. 53/2003 and this Tribunal vide its order dated 20.01.2004 (Annex. A/16) disposed of the said O.A with the following observations:

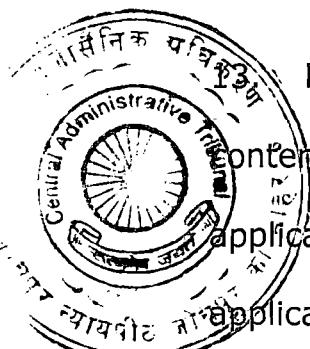
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..... All this perhaps only goes to show that the respondents have been sincerely trying to accommodate the petitioner for compassionate appointment. There has to be a logical end to this exercise and so if the petitioner's name stood at Sl. No. 9 in the year 1999, it is also likely that by this time, the list has moved up and compassionate appointments have been made. With this back ground, this O.A is disposed of at the admission stage itself with a direction to the respondents to act on their waiting list and take it to its logical conclusion in so far as the petitioner is concerned....."

11. As per the directions of this Tribunal, the competent authority considered the matter again and by Annex. A/1 of this O.A, finally rejected the claim.

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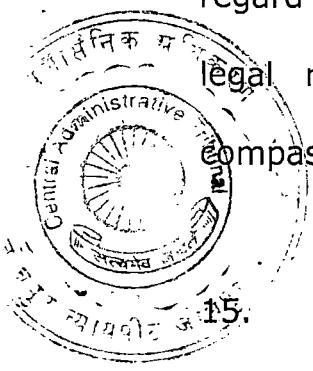
12. From the above mentioned facts it is clear that the previous rejection order dated 30.06.2003 (annex. A/15), which was the first order rejecting the claim of the applicant for appointment on compassionate grounds was challenged in the previous O.A No. 53/03 but the same was never quashed or set aside. However, by another order dated 31.05.2004, (Annex. A/1) the concerned authority again rejected the claim of the applicant for appointment on compassionate grounds more or less on similar grounds and this order is under challenge in this O.A.



Mr. Nitin Trivedi, learned counsel appearing for the applicant contended that the competent authority has accepted the claim of the applicant for appointment on compassionate grounds and the applicant's name was kept at Sl. No. 9 in the waiting list and in the meetings of the Board of officers three or four times the case of the applicant was considered BUT finally rejected by order dated 30.06.2003, which was wholly unjustified. He submitted that the inclusion of the name of the applicant in the waiting list at Sl. No. 9 for appointment on compassionate grounds, created a legal right in favour of the applicant to get appointment on compassionate grounds.

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14. On the other hand, Smt. K. Parveen, learned counsel appearing on behalf of the respondents vehemently opposed the above contention of the learned counsel of the applicant. She submitted that mere inclusion of the name in the waiting list for appointment on compassionate grounds never created any legal right in favour of the applicant for being appointed on compassionate grounds. The names were included for the purpose of scrutinizing the individual case in order to come to the conclusion as to who is the fittest person to be given appointment on compassionate grounds as per the scheme, rules and circulars issued by the Government or Department in this regard and so on the basis of waiting list it cannot be held that any legal right had accrued to the applicant for appointment on compassionate grounds.



15. Mr. Nitin Trivedi, learned counsel for the applicant has placed reliance on a judgement of the High Court of Rajasthan, Jaipur Bench in the case of **Vishnu Singh vs. Managing Director SBBJ and anr** [RLW 2004 (3) Raj- 1742] and submitted that the power to give appointment on compassionate grounds is coupled with a duty which creates a corresponding right in favour of the dependant of the deceased employee and the same cannot be denied merely because of the fact that the family of the deceased government employee has got certain income by way of family pension etc.

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16. Smt. K. Parveen learned counsel appearing on behalf of the respondents submitted that the law on the subject of claiming appointment on compassionate grounds is well settled and the main criteria for granting compassionate appointment is whether the deceased employee had left the family in penury and without any means of livelihood. In this regard she placed reliance on the decision of the Apex Court in the case of **State Bank of India and ors. vs. Jaspal Kaur** [(2007) 9 SCC 571] wherein it is observed

that

" the major criterion while appointing a person on compassionate grounds should be financial condition of the family the deceased person left behind. Unless the financial condition is entirely penurious, such appointments cannot be made. It has further been observed in the said decision that the criteria of penury has to be applied and only in cases where the condition of the family is without many means of livelihood and living hand to mouth the compassionate appointment was required to be granted. It has further been observed that the appointment under the scheme of compassionate appointment was at the discretion of the authority, which was to be exercised, keeping in view the scheme and the object/rationale behind it.

17. Relying upon the above decision the learned counsel for the respondents submitted that as far as this case is concerned the circumstances will reveal that the deceased employee had not left the family in penury and without any means of livelihood. She submitted that the deceased employee Shri Mool Singh died on 20.08.80 and there is no document on record to show that immediately after the

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death of Shri Mool Singh any application for compassionate appointment was filed by any member of his family. The averments made in the O.A would go to show that the widow of the deceased, due to prevailing custom in the society did not choose to file any application for appointment on compassionate grounds for herself. She further submitted that for the first time an application for compassionate appointment was filed on behalf of the applicant by his mother (i.e. the widow of the deceased government servant) on 25.06.95 vide Annex. A/2 (i) i.e. to say after about 15 years after the death of the deceased employee. She submitted that this fact alone established that the deceased government servant had not left his family in penury or without any means of livelihood and so the competent authority had rightly rejected the claim of the applicant for compassionate appointment after due consideration.

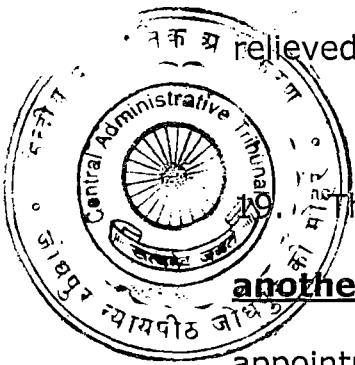
18. I have heard the arguments advanced by both the learned counsel appearing for the parties. I have perused the decisions cited by the learned counsel on both sides. I have also perused the object of the scheme for compassionate appointment given in Chapter 31 of the Swamys' Complete Manual on Establishment and Administration for Central Government Offices which reads as under:

" The object of the Scheme is to grant appointment on compassionate grounds to a dependent family member of a Government servant dying in harness or who is retired on medical grounds, thereby leaving his family in penury and without any

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means of livelihood, to relieve the family of the Government servant concerned from financial destitution and to help it get over the emergency.

On going through the object of the scheme of compassionate appointment I have come to the conclusion that the scheme for compassionate appointment was brought into existence for providing immediate relief to the dependants of the deceased employee who left his family members in penury and in financial crisis and so if any immediate request for compassionate appointment was not made by any member the belated requests for compassionate appointment forfeits such claim on the ground that the family of the deceased government servant does not require any immediate relief to be relieved from the financial crisis.



The Apex Court in the case of **State Bank of India and another vs. Somvir Singh** [(2007) 4 SCC 778] has held that appointment on compassionate ground is an exception from the general rule because recruitment to public services has to be made in a transparent and accountable manner, providing opportunity to all eligible persons to compete and participate in the selection process.

Such appointments are required to be made on the basis of open invitation of applications and on merit. The dependants of the deceased employees, died in harness, do not have any special or additional claim to public services, other than any one conferred, if

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any, by the employer by way of instructions. The Apex Court further held that the claim for compassionate appointment and the right, if any, is traceable only by the scheme, executive instructions or rules framed by the employer in the matter of providing employment on compassionate grounds. The above judgement of the Apex Court clearly establishes that dependants of the deceased employee who died in harness, has no indefeasible right to claim appointment on compassionate appointment. The appointment on compassionate grounds will be judged by the Scheme or executive instructions or rules framed in this regard. In the case of **Union Bank of India and others vs. M.T. Latheesh** [(2006) 7 SCC 350], the Apex Court has held that issuing a direction by the High Court for grant of compassionate appointment without noticing the scheme, instructions or rules prevailing is amounting to open a Pandora box to litigants.

20. Relying upon the above mentioned judgements of the Apex Court, I am of the view that the validity of Annex. A/1, which is under challenge, whereby the claim of the applicant for appointment on compassionate grounds was rejected should be judged on the basis of Scheme or Rules prevailing in the department. A perusal of Annex. A/1 shows that the Board of Officers in its meeting while considering the claim of the candidates for appointment on compassionate grounds have taken into account various rules, circulars of the government on the subject and after due

consideration of the financial position of the applicant and the 5% quota available for appointment on compassionate grounds, have rejected the claim of the applicant. Thus there appears no illegality in the procedure adopted for rejecting the claim of the applicant for appointment on compassionate grounds by the competent authority.

21. The very basis of offering compassionate appointment to the dependants of the deceased depends upon the fact whether the deceased had left the family in penury and without any means of livelihood. In the instant case, the circumstances reveal that the father of the applicant Mool Singh who died in the year 1980 (20.08.80) did not leave the family in penury and without any means of livelihood and that is why the applicant's mother did not file any application for compassionate appointment immediately after his death. The record further reveals that for the first time, after 15 years of the death of applicant's father an application for compassionate appointment was filed on behalf of the applicant by his mother. It goes to show that for a considerable long time after the death of the government servant, his wife, the applicant's mother, was able to maintain herself and her children and this circumstance points out that the family has got sufficient means of livelihood. Therefore, in the instant case it cannot be held that due to the sudden death of Mool Singh and loss of bread earner the family of the deceased was left in penury and without any means of livelihood. I

have already stated about the scheme for providing compassionate appointment to one of the dependants of the deceased government servant who died in harness is to relieve the family from the sudden crisis and the period for providing compassionate appointment cannot be allowed to stretch for long. Admittedly, now 29 years have elapsed since the death of Shri Mool Singh and if the authorities are forced to induct the applicant in service on compassionate grounds it would amount to opening a pandora's box for filing such applications by others who could not apply for getting compassionate appointment within a reasonable time after the death of the government servant.

22. In this view of the matter, this O.A cannot be allowed in spite of



the fact that in the previous O.A No. 53/2003, a direction was issued to the concerned authorities to exhaust the waiting list and complete the exercise to its logical conclusion. I have held already that mere inclusion of the name of the applicant in the waiting list did not create any legal right to the applicant to be appointed on compassionate grounds so there appears no illegality in the impugned order (Annex.A/1) whereby the claim of the applicant for compassionate appointment was rejected by the respondents and thus the impugned order cannot be quashed or set aside.

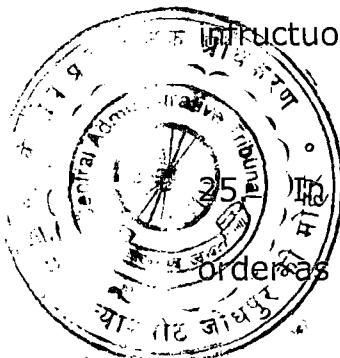
23. In the result, I do not find any merit in this O.A and the same is hereby dismissed.



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24. As the O.A has been dismissed, Misc. application No.

132/2005 for condoning the delay in filing the O.A has become



unfructuous and hence the same is also hereby dismissed.
In the facts and circumstances of this case there will be no
orders as to costs.



[Justice S.M.M. Alam]
Judicial Member.

Jsv.

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03/09/09

For Nifin (Bull)
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Part II and III destroyed
in my presence on 8/8/09
under the supervision of
section officer () as per
order dated 07/07/2015

Section officer (Record)

Karl
7/9/09