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

Original Application No. 292/2005

Date of order: 23.08.2007

CORAM:

HON'BLE MR. TARSEM LAL, ADMINISTRATIVE MEMBER.

Rajendra Kumar Meena S/o Late Shri Prabhu Lal Meena, aged about 30 years, R/o Village & Post - Gadoli, Tehsil - Jahajpur, Distt. - Bhilwara (Raj.). Late Prabhu Lal Meena, Monument Attendant, Kaner Ki Putli, Vill.- Kaner, Tehsil - Jahajpur, Distt. - Bhilwara (Raj.).

...Applicant.

Mr. Amit Dave, counsel for applicant.

VERSUS

1. Union of India through Secretary, Ministry of Human Resources and Development, New Delhi.
2. The Director General, Archaeological Survey of India, Jan Path, New Delhi.
3. Superintending Archaeologist, Jaipur Circle, Jaipur - 302020.

...Respondents.

Mr. M. Godara, proxy counsel for
Mr. Vinit Mathur, counsel for respondents.

ORDER

The Original Application No. 292/2005 has been filed by Shri Rajendra Kumar Meena requesting for compassionate appointment.

2. Late Shri Prabhu Lal Meena was working on the post of Monument Attendant at Kaner Ki Putli, District Bhilwara under Jaipur Circle. He died while in service on 09.11.2003 after rendering more than 30 years of service. He left behind his wife and two sons. The family has been paid terminal benefits of Rs.

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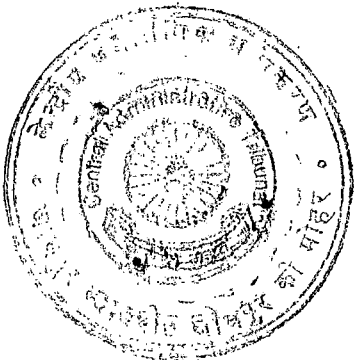
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2.5 lakhs and the family pension of Rs. 1900/- per month is also being paid.

3. The applicant submitted an application before the Director General, Archaeological Survey of India, Janpath, New Delhi requesting him for appointment on the suitable post on compassionate grounds. The Director (Admn.), Archaeological Survey of India informed the Superintending Archaeologist, Archaeological Survey of India, Jaipur Circle, Jaipur vide its order dated 18.01.2005 (Annexure A/3) that the case of the applicant has not been found fit for appointment on compassionate basis. While communicating the rejection of the request of the applicant, no reason has been given by the respondents for rejection of the same.

4. The applicant has pleaded that the instructions issued by the Government of India, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) vide its Memorandum dated 05th May 2003 (Annexure A/5), stipulates that the prescribed Committee should consider the case of the applicant for placing the name of the applicant in the list of subsequent years but perusal of the order dated 18.01.2005 (Annexure A/3) shows that not a whisper by the Committee has been made relating to the fact that the case of the applicant will be placed before the Committee in the subsequent years.



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5. The applicant, has, therefore, requested that the impugned order dated 18.01.2005 may be quashed and set aside and he may be given appointment on the compassionate basis.

6. On the other hand, the respondents have filed a detailed reply to the Original Application and have stated that late Shri Prabhu Lal Meena, Monument Attendant, died while on leave on 09th November 2003. The father of the applicant left the Headquarters on 07th November, 2003 and he expired while on leave.

7. That after the death of the deceased, an application was filed by the applicant for seeking appointment on compassionate ground and the same was forwarded to the competent authority for consideration of the case of the applicant.

8. The respondents have pleaded that compassionate appointment is not a right; it is only a welfare measure to save the family from financial destitution and starvation consequent on the death of the employee. Such employment can be given limited only to 5% of the vacancies arisen against direct recruitment quota. In this case, the family of the deceased employee received gratuity Rs. 1,93,344/-, Group Insurance Rs. 24,430/-, Leave Encashment Rs. 22,355/- and GPF Rs. 59,376/- and thus, total Rs. 2,99,505/-. In addition to the above, the family is in receipt of the family pension of Rs. 1900/- plus 50% DP and DA as admissible from time to time. Hence, there is no



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reason to believe that the family is in a state of financial destitution.

9. The case of the applicant for compassionate appointment was considered by the Committee constituted by the competent authority ^{to} consider the appointment on compassionate grounds as per the provisions made in para 12 (C) of the Scheme for Compassionate Appointment and guidelines issued by the DOP&T in the meeting held on 19th Oct., 2004 and the application of the applicant was also examined by the committee in detail taking into accounts the financial resources, liabilities/assets relative indigence etc. of the family of the deceased and the Committee recommended him "not fit case" for appointment on compassionate grounds; as conveyed by the Director (Administration) Archaeological Survey of India, New Delhi vide letter dated 18th Jan., 2005.

10. No biasness or arbitrariness has been pointed out by the applicant as the same has not been committed by the respondents. Therefore, unless any fault or biasness is proved on the part of the respondents, this Hon'ble Tribunal would not like to interfere in the lawful orders passed by the competent authority.



11. The respondents have prayed that the applicant has no case in his favour and he is not entitled to get any relief from this Tribunal. Therefore, the Original Application filed by the

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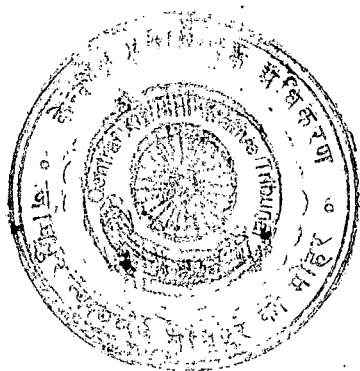
applicant may be dismissed with costs.

12. Learned counsel for both the parties have been heard. Learned counsel for the applicant has pleaded that the request of the applicant has been considered but rejected vide impugned order dated 18.01.2005 (Annexure A/3). He pleaded that vide impugned order, two candidates have been given appointment whereas the candidature of five candidates for appointment on compassionate basis has been rejected but no reason whatsoever has been given while rejecting the request of five candidates. He further averred that each case has to be considered and accepted or rejected on its merits.

13. Learned counsel for the applicant cited the case of **Mohinder Singh Gill and Another vs. The Chief Election Commissioner, New Delhi and Others**, reported in (1978) 1 SCC 405, wherein their Lordships of the Hon'ble Supreme Court has held as under: -

"8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in *Gordhandas Bhanji*:

Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by the public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."



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14. He further pleaded that as per the Government of India, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training), Memorandum dated 05th May 2003, it has been stipulated that if compassionate appointment to genuine and deserving cases as per the guidelines is not possible in the first year due to non-availability of regular vacancy, the prescribed committee may review such cases to evaluate the financial conditions of the family to arrive at a decision as to whether a particular case warrants extension by one more year for consideration. But such case can be kept under consideration maximum upto three years whereas no such indication has been given in the impugned order dated 18.01.2005 (Annexure A/3).

15. Learned counsel for the applicant pleaded that he has filed amended Original Application to which reply has not been filed by the respondents. It is established fact that whenever reply is not filed to the pleadings, the same are deemed to have been accepted by the other party. He, therefore, requested that the impugned order dated 18.01.2005 (Annexure A/3) may be quashed and he may be provided the relief as given in para one above.

16. Learned counsel for the respondents pleaded that before the Department of Personnel and Training instructions dated 05th May 2003 (Annexure A/5), the compassionate appointment cases used to be considered only for one year. After issuance of



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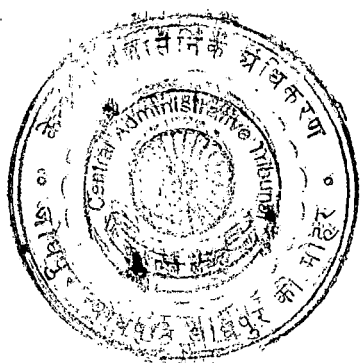
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the above instructions, the cases are considered for three years only if the Committee finds that it is appropriate that such cases are required to be considered in the period of three years. He explained that in para 4 of the impugned order dated 18.01.2005, it has been stipulated as under:

"4. The following applications sent by you were also examined by the Committee in detail taking into accounts the financial resources, liabilities/assets relative indigence etc. of the family of the deceased and the Committee vide para 4 of Minutes recommended them 'not fit case' for appointment on compassionate grounds. They may be informed accordingly."

17. He explained that it is amply clear that the Committee has considered the case of the applicant taking into account the financial resources, liabilities/assets relative indigence etc. of the family of the deceased and the Committee has recommended that 'not fit case' for appointment on compassionate grounds.

18. Learned counsel for the respondents relied in the case of **State Bank of India and Another vs. Somvir Singh**, reported in (2007) 4 SCC 778, wherein the Hon'ble Supreme Court has held as under: -



"..... Scheme providing for compassionate appointment only where deceased employee left his family in penury or without any means of livelihood - Financial condition of deceased employee's family thus an important criterion for eligibility of a dependent of the deceased - Factors to be taken into account for determining financial condition - Income of the family from all sources to be assessed - Penury does not comprehend mere financial hardship."

19. He further relied in the case of **General Manager (D&PB) and others vs. Kunti Tiwary and another**, reported in (2004) 7 SCC 271, wherein the Hon'ble Supreme Court has held as

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under:

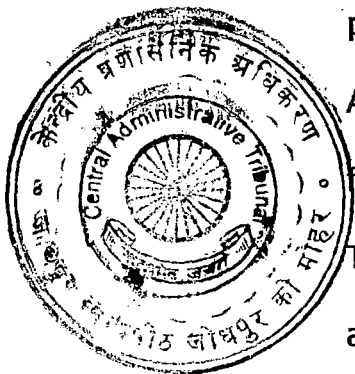
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"..... compassionate appointment only in case where the deceased employee left his family in penury and without any means of livelihood - Terminal benefits received, and other movable and immovable property possessed, by the family of the deceased employee showing that its financial condition was not penurious - Employer Bank therefore denying compassionate appointment to the deceased's son - In such circumstances, held, High Court erred in diluting the criterion of penury to one of "not very well-to-do" and directing the Bank to appoint the deceased's son.

20. Learned counsel for the respondents pleaded that the amended Original Application has been filed by the applicant in response to the information given in the annexures to the reply originally filed by the respondents, therefore, there was no requirement of filing a revised reply to the amended Original Application.

21. He pleaded that the case of the applicant has been considered in a fair and objective manner under the policy formulated by the Government of India, Department of Personnel and Training O.M. No. 14014/6/94-Estt. (D), dated 09.10.1998 and DOP&T Memorandum dated 05th May 2003. Therefore, the Original Application may be dismissed.

22. This case has been considered carefully and documents perused. As regards the reply to the amended Original Application not having been filed by the respondents, it is seen from the orders passed in M.A. No. 28/2007 by this Bench of the Tribunal on 06.02.2007, wherein it has been stipulated that the amendment will not change the nature and character of the O.A. In view of the above observation of this Bench of the Tribunal, there was no necessity of filing reply to the amended Original



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Application.

23. It is seen from the impugned order dated 18.01.2005 (Annexure A/3) issued by the Government of India, Archaeological Survey of India, Janpath, New Delhi, that the same is not a detailed speaking order. It has not been indicated as to how many total vacancies were there for direct recruitment and how many have been filled on the basis of compassionate basis. The marks obtained by the candidates who have been appointed vis-a-vis the marks obtained by the applicant have not been indicated. The comparative indigent conditions of the candidates who were considered for compassionate appointment vis-a-vis who have been rejected have not been indicated. It is also not clear from the impugned order as to how many times the case of the applicant has been considered by the competent authority.

24. In view of the above discussion, the respondent-department is directed to re-consider the applicant's request for compassionate appointment and if he is found otherwise suitable, the applicant could be offered compassionate appointment depending upon the vacancy position and the rules and regulations to fill up such vacancies.

25. The Original Application is allowed. No order as to costs.



Tarsem Lal
[Tarsem Lal]
Administrative Member

nlk/jsv.