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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

**ORIGINAL APPLICATION NO. 94/2007
JODHPUR THIS IS THE 15 January, 2009**

CORAM :

**HON'BLE MR. N.D.RAGHAVAN, VICE CHAIRMAN
HON'BLE MR. SHANKAR PRASAD, MEMBER [A]**

Smt. Pramila Awasthi W/o Late Shri Sachin Kuamr Awasthi C/o Shri Mahendra Kumar Ojha, House No. 188, Janta Colony, Pali, Rajasthan. W/o Ex. Inspector, Central Excise, Behror, District Alwar, Rajasthan.

.....Applicant

For Applicant : Mr. S.K.Malik, Advocate.
Vs.

1-Union of India through the Secretary, Ministry of Finance, Department of Revenue, New Delhi.

2-The Commissioner, Central Excise, New Central Revenue Building, Statue Circle, 'C' Scheme, Jaipur-I, Rajasthan.

3-The Additional Commissioner (P&V), Central Excise, New Central Revenue Building, Statue Circle, 'C' Scheme, Jaipur-I, Rajasthan.

.....Respondents.

For Respondents : Mr. Mahendra Godara proxy for Mr. Vineet Mathur Advocate.

**.....
ORDER
[PER SHANKAR PRASAD, MEMBER(A)]**

Aggrieved by the order dated 27.2.2006, rejecting her case for compassionate appointment, the applicant has preferred the present O.A.

2- The facts lie in a narrow compass. The deceased husband of the applicant was working as Inspector, Central Excise under the respondents. While on duty he died of a heart-attack on 20.2.2004. He left behind his wife ,the O.A. applicant and two minor children. She submitted an application for compassionate appointment in the prescribed proforma. She has been informed by the impugned letter that her case for compassionate appointment cannot be considered for want of vacancy. The respondents along with their reply, have also brought on record a letter dated 3.4.2007 addressed to five persons including the applicant, that as three years have expired from the date of

of death and as compassionate appointment cannot be offered because no posts are available, the case of compassionate appointment is finally closed.

3- The case of applicant in brief is that the impugned order does not give details of year-wise vacancies and that her case for compassionate appointment is required to be considered sympathetically as there is no earning member in the family.

The applicant filed rejoinder to bring on record the information furnished to her under the Right to Information Act with response to her application dated 29.8.2008. This letter shows the following position regarding vacancies in direct recruitment and promotion quota in Group 'C' and vacancies filled-up in each of the year 2003-04 to 2006-07.

	Year	Vacancies	Filled
	2003-2004	90	17
	2004-2005	99	19
	2005-2006	95	16
	2006-2007	138	45

4- The respondents have filed a detailed reply. It is stated that a sum of Rs. 6,53,451/- has been paid towards Gratuity, G.P.F., Insurance, Leave Encashment etc. and that the Family Pension has been fixed at Rs. 3,538/-+ DA per month. As per the DOP&T O.M. of 9.10.1998, compassionate appointment can be made to a maximum of 5% of vacancies falling under DR the quota in any group 'C' cadre. Appointment has to be made on the basis of objective assessment of the financial condition of the family including its assets and liabilities. The Ministry have decided not to offer compassionate appointment to

the grade of Inspector, Central Excise on compassionate grounds. Compassionate appointment can be offered to other Group 'C' and 'D' posts according to suitable educational qualification etc. The DOP&T O.M. of 5.5.2003 provides that the case has to be considered on three occasions only and if even after three years, compassionate appointment has not been offered, the case will be finally closed. The subsequent letter dated 15.7.2004 makes it clear that the time limit of three years has to be decided with reference to the date of death or retirement of the Government servant. The request of the department of Revenue to increase the compassionate quota from 5% to 25% has not been accepted to by the DOP&T. The case has been finally closed as per the existing O.M. The Apex Court in ***Hindustan Aeronautics Limited Vs. Smt. Aradhika Thirumalai***, has held when no vacancy or there is a ban on recruitment, the department cannot be compelled to give appointment on compassionate ground. Reference is also given to some other decisions.

5- We have heard the learned counsels and perused the pleadings.

6- The learned counsel for the applicant has contended that the information furnished with reference to her application under the Right to Information Act, shows that the earlier information furnished by the respondents regarding non availability of vacancy is not correct and that vacancies were available. The respondents on the other hand, contend that 5% of posts have to be worked-out with reference to posts filled-up by the department and not with regard to the vacancies.

7- We find that the heading shows both direct recruitment and promotion quota. It does not specifically indicate as to how many posts ~~are~~ to be filled by direct recruitment and how many by

promotion. In the absence of details regarding this break-up, we cannot form a final opinion on this issue.

8- An importation question that arises in the present O.A. is, as to what is the true meaning of three occasions in DOP&T O.M. dated 5.5.2003. Does it means effective consideration on three occasions or only three years even if no vacancies were available. The applicant, in O.A. No. 386/07 ***Navaz Mogal Vs. UOI and Ors.***, before the Ahmedabad Bench, was aggrieved by the decision of respondents to drop his name from persons to be considered for compassionate appointment as three years had elapsed. The respondents had placed reliance on letter No. A-12012/67/2004-Adm.IIIB dated 15.07.2004 of the Department of Revenue, issued in the background of Department of Personnel & Training O.M. of 05.05.2003. The Tribunal held :-

"6. A perusal of this letter shows that the intent was to extend the time limit so that genuine cases are not deprived of compassionate appointment on the ground that vacancies were not available. The object is clearly to provide consideration on three occasions subject to conditions prescribed therein. The Ministry of Finance clarification dated 15.07.04 is not on record.

7. A Division Bench of this Tribunal in OA 135/2006, Mrs. N.M. Makwana vs. Union of India, was considering the case of an employee of this very department. The department had taken the same stand. The Tribunal held :

"7. The proper construction of the aforesaid OM of DOPT is that the applicant has to be considered on three occasions subject to the condition that the applicant has to be indigent on the first occasion. The DOPT is a nodal department in the matter of Personnel policy and each department is expected to follow that policy unless they have obtained for themselves a different dispensation from the competent authority in accordance with the Transaction business rules for the matter. Nothing indicated in this connection."

8. We have not been persuaded to take a different view.

9- The decision of coterminous Bench is binding on us.

10- We are accordingly of the view that the case of the applicant is required to be considered on three occasions subject conditions.

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mentioned in DOP&T O.M. dated 05.05.2003. We accordingly quash the reply contained in Annex. R/1 qua the applicant and direct the respondents to consider her case for compassionate appointment on three effective occasions subject to the conditions mentioned in letter dated 05.05.2003. The first consideration should be made within three months of availability of vacancies or receipt of this order, whichever is earlier. The O.A. is disposed of accordingly with no orders as to costs.

Shankar Prasad
(Shankar Prasad)
Member (A)

N.D.Ragavan
(N.D.Ragavan)
VC

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