

26/8

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

ORIGINAL APPLICATION NO. 17/2007

Date of order: 03.07.2007

CORAM:

HON'BLE MR. TARSEM LAL, ADMINISTRATIVE MEMBER.

Jitendra Vairagi S/o Sh. Kishan Das Sadhu Ji, Aged about 21 Years, R/O House No. 201, Suryanagar, Udainiwash Road, Opposite Akashwani Kendra, Madri, Udaipur (Raj.).

Son of Ex. Museum Attendant in the Office of the Head of Office, Anthropological Survey of India, Western Region Center, 16, Madhuban, Udaipur (Rajasthan).

...Applicant.
Mr. S.K. Malik, counsel for applicant.

VERSUS

1. Union of India through the Secretary, Ministry of HRD, Department of Culture, Shastri Bhawan, 'C' Wing, Dr. Rajendra Prasad Road, New Delhi – 110001.
2. The Director, Anthropological Survey of India, Ministry of HRD, Department of Culture, Govt. of India, 27, Jawaharlal Nehru Road, Kolkata – 700016.
3. The Head of Office, Anthropological Survey of India, Western Region Centre, 16, Madhuban, Udaipur (Rajasthan).

...Respondents.

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

ORDER (Oral)

Shri Jitendra Vairagi, the applicant, has filed this Original Application seeking compassionate appointment as a result of retirement of his father on medical grounds.

2. Shri Kishan Das Sadhu while working as Museum Attendant in the Head of Office of Anthropological Survey of India, Western Region Centre, 16, Madhuban, Udaipur (Rajasthan), was declared permanently incapacitated for further service by the Medical Board of



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- 2 -

Maharana Bhopal Rajkiya Chikitsalaya, Udaipur and retired from service on 07.09.2004.

3. After the retirement of his father on medical grounds, the applicant applied for compassionate appointment vide his application dated 22.02.2005. All the deficiencies pointed out in his application and the additional information required by the respondents were also supplied.

4. Subsequently, the respondents informed the applicant vide memorandum dated 24.07.2006 (Annex. A/7) that it has been decided by the competent authority to offer him the post of Lower Division Clerk in the scale of pay of Rs. 3050-75-3950-80-4590 at the Western Regional Centre, Udaipur. He was also sent, along with the memorandum dated 24.07.2006, a set of Attestation Form (in triplicate) along with the Medical Examination Form, Candidates Statement & Declaration Form, Marriage Declaration Form and Character Certificate Form with the instructions to submit the same duly filled in and attested by the competent authority for taking necessary action. The applicant submitted (annexure A/8) all the forms duly filled and attested by the competent authority, as desired by the respondents.

5. The applicant requested the respondents from time to time vide his representations dated 15.09.2006 and 05.10.2006 (Annexure A/11 and A/12, respectively).

6. Thereafter, the Director, Anthropological Survey of India, Government of India, Kolkata vide his impugned memorandum dated 06.12.2006 (Annexure A/1) informed the applicant that his case for compassionate appointment to the post of Lower Division Clerk in this



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Survey has carefully been examined by this Survey but cannot be ~~fo~~ acceded to due to administrative reason.

7. Aggrieved by the above impugned order dated 6th December 2006 (Annexure A/1), the applicant has filed the present O.A. and has asked for the relief as given in para 1 above.

8. (i) The respondents have filed a detailed reply and have not agreed to grant the relief asked for by the applicant. The respondents' contention is that as far as granting of appointment to the applicant on compassionate ground is concerned, that depend on various aspects that includes liabilities left behind by the retiring or the deceased employee on family i.e. education of the minor children, daughters marriage etc.

(ii) The respondents have further pleaded that the case of the applicant was considered and the same was rejected for the reasons of non-availability of vacancies meant for this purpose, which is permissible only to the extent of 5% of vacancies under direct recruitment quota in a recruitment year.

(iii) The respondents have explained that at present there is no vacancy available under 5% quota for granting compassionate appointment and the applicant was informed accordingly. The respondents have further explained that as far as grant of appointment on compassionate ground is concerned, the same is not an enforceable and accrued right of the applicant. The applicant has a right of consideration and that has already been done and rejected because of non-availability of the vacancies. Even as per the scheme on the subject, there is a ceiling of 5% vacancies for this purpose against the direct recruitment quota of that particular year. The respondents, have, therefore, prayed that the O.A. filed by the applicant may be dismissed with costs.



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-4-

9. Learned counsel for both the parties have been heard and the documents perused.

10. Learned counsel for the applicant reiterated all the facts and grounds given in his O.A. and submitted that vide impugned order dated 6th December 2006, no reasons have been given for rejecting the request of the applicant for compassionate appointment. The learned counsel for the applicant has relied on the following case law in this regard: -

(i) **Balbir Kaur and another vs. Steel Authority of India Ltd. And Others : 2000 Supreme Court Cases (L&S) 767**

para 19 wherein the Hon'ble Apex Court has held as under:

"19. We are not called upon to assess the situation but the fact remains that having due regard to the constitutional philosophy to decry a compassionate employment opportunity would neither be fair nor reasonable. The concept of social justice is the yardstick to the justice administration system or the legal justice

(ii) He further relied in the case of **Mohinder Singh Gill and another vs. The Chief Election Commissioner, New Delhi and others : AIR 1978 Supreme Court 851** wherein the Hon'ble Apex Court has held as under: -

"..... 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 late brought out."



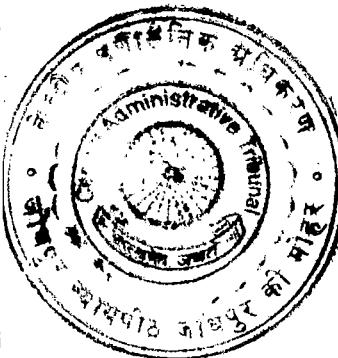
11. Learned counsel for the applicant pleaded that as the reasons for rejection have not been given by the respondents, the impugned order dated 6th December 2006 (Annexure A/1) may be set aside and request of the applicant for appointment on compassionate grounds may be allowed.

-5-

12. Learned counsel for the respondents also reiterated the facts given in the reply to the O.A. and further stated that the applicant can be given compassionate appointment in pursuance of the Scheme formulated and circulated by the DOPT vide letter No. G.I., Dept. of Per. & Trg., O.M. No. 14014/6/94-Estt. (D), dated 9.10.1998.

13. Learned counsel for the respondents also stated that the request of the applicant has not been accepted due to non-availability of 5% vacancies for the direct recruitment; although the same has not been mentioned by the respondents in their order dated 06.12.2006 (Annexure A/1). He stated that no allegation of mala fide or bias or violation of any provision of the scheme and any liability left out has been alleged by the applicant. The application of the applicant has been considered in accordance with the policy on the subject in a fair manner and the same could not be accepted on account of non-availability of the vacancies for the direct recruitment. Therefore, the prayer of the applicant may be rejected.

14. I have considered the submissions made by the learned counsel on behalf of both the parties and perused the records. It has been stipulated vide para 3 of letter No. 14014/19/2002-Estt(D) dated the 5th May, 2003 issued by the Government of India, Ministry of Personnel, Public Grievances & Pensions, Department of Personnel and Training, that the maximum time a person's name can be kept under consideration for offering Compassionate Appointment will be three years, subject to the condition that the prescribed Committee has reviewed and certified the previous condition of the applicant at the end of the first and the second. After three years, if compassionate appointment is not possible to be offered to the Applicant, his case will be finally closed, and will not be considered again.



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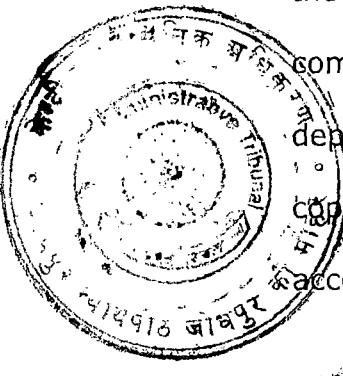
15. The applicant was given an assurance vide letter No. 2-127/2005/Estt. (Col.I) dated 24th July, 2006 (Annexure A/7), wherein the following was stated: -

".... it has been decided by the Competent Authority to offer him the post of Lower Division Clerk in the Scale of Pay of Rs. 3050-75-3950-80-4590/- at the Western Regional Centre, Udaipur of this Survey."

16. Whereas while rejecting the request of the applicant vide impugned order dated 6th December 2006 (Annexure A/1), the respondents have stated that the case for compassionate appointment to the post of Lower Division Clerk has carefully been examined but cannot be acceded to due to administrative reason.

17. It is seen that no specific administrative reasons have been enunciated in the impugned order dated 6th December 2006.

18. In view of the above, the respondent-department may reconsider 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 vacancy. The above case of compassionate appointment may be considered by the respondent-department within a period of six months from the date of receipt of a copy of this order. The present Original Application is allowed accordingly. No costs.


Tarsem Lal
[Tarsem Lal]
Administrative Member

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Re
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S. K. Malhi
ASW
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Part II and III destroyed
in my presence on 4/16/14
under the supervision of
Security 23/8/14
order 23/8/14

SM
record)