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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application no. 82/2008

30.01.09. Date of Judgement.

Hon'ble Mr. N.D. Raghavan, Vice chairman.

Hon'ble Dr. R.C. Panda, Administrative Member.

Jitendra Vairagi S/o Shri Kishan Das Sandhuji, aged about 22 years, R/o House No. 201, Suryanagar, Udainiwas Road, Opp. To akashwani Kendra, Madri, Udaipur (Rajasthan) s/o Ex. Museum attendant in the office of the Head of Office, Anthropological Survey of India, Western Region Centre, 16 Madhuban Udaipur (Rajasthan).

Applicant.

Rep. By Mr. S.K. Malik : Counsel for the 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.
2. The Director, Anthropological Survey of India, Ministry of HRD, Department of culture, Govt. of India, 27 Jawaharlal Nehru Road, Kolkata 16
3. The Head Office, Anthropological Survey of India, Ministry of HRD, Department of culture, Govt. of India, 27 Jawaharlal Nehru Road, Kolkata 16

: Respondents.

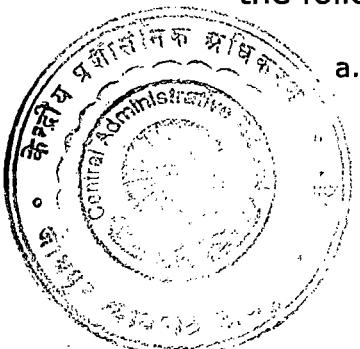
Rep. By Mr. Mr. Godara, Proxy counsel for Mr. Vinit Mathur:
: Counsel for the respondents.

ORDER

Per Mr. N.D. Raghavan, Vice Chairman.

In this application filed under Sec. 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for the following reliefs:

- a. by an appropriate writ order or direction impugned order dated 27.12.2007 (Annex. A/1) be declared illegal and be quashed and set aside.



(2)

- b. by an order or direction respondents may be directed to consider and offer appointment to the applicant on compassionate ground on the post of lower division clerk at Western Regional Centre, Udaipur with all consequential benefits.
- c. Exemplary cost be imposed on the respondents for causing undue harassment to the applicant.
- d. Any other relief which is found just and proper be passed in favour of the applicant.

2.1 The facts of the case are that the applicant is the son of one Kishan Das Sadhu. The said Kishan Das Sadhu, while working as Museum Attendant at Udaipur office under the respondents, was medically incapacitated by a competent medical board and he was retired from service under Rule 38 of CCS (pension) Rules 1972 by order dated 30.09.2004. Consequent to his father's retirement on medical invalidation, by his application dated 22.02.2005, the applicant has applied for appointment on compassionate grounds. Thereafter, the respondents issued a memorandum dated 24.07.2006, (Annex. A/2) to the applicant vide which it was intimated that it was decided to offer him the post of LDC in the scale of pay of Rs. 3050-4590 and he was further directed to submit the enclosed forms duly filled in for taking further action. The applicant alleges that he had submitted the proformas duly filled in time. But there was no response from the respondents. Therefore he made representations dated 15.09.2006, 05.10.2006, 17.10.2006 and 01.11.2006 to the respondents but of no avail. However, the respondents vide memorandum dated 06.12.2006 (Annex. A/3) intimated the applicant that his case for compassionate appointment has been carefully considered by them and the same cannot be acceded to due to administrative reason.



(3)

2.2 Aggrieved thereby, the applicant has filed O.A. No. 17/07 before this Tribunal. As no administrative reason was given in the memorandum dated 06.12.2006, after hearing both sides and perusing the records, this Tribunal by its order dated 03.07.2007,(Annex. A/4) directed the respondents to consider the case of the applicant for compassionate appointment within a period of six months from the date of receipt of a copy of that order. As per the directions of this Tribunal dated 03.07.2007, the respondents after considering the case of the applicant again, issued the impugned order dated 27.12.2007(Annex. A/1) and intimated the applicant that his case had been carefully considered but could not be acceded to for the present, due to non availability of quota for the said appointment as per existing established norm and procedures and that no sooner the said vacancy would arise his case would be considered.

2.3 Various grounds have been raised in support of the facts of this case in para 5 and its sub paras. Thus, on the above basis, the applicant has prayed that the O.A be allowed and Annex. A/1 dated 27.12.2007 be quashed and set aside.

3. The respondents have contested the O.A by filing reply. In the reply, the respondents have stated that vide impugned order dated 27.09.2007, the applicant has been intimated that at present the request of the applicant for granting him compassionate appointment could not be acceded to due to non availability of



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(4)

vacancies meant for the wards of the deceased. They have also stated that appointment on compassionate grounds could not be extended to the applicant beyond the vacancies reserved for that purpose i.e. 5% of the direct recruitment vacancies. It has been further averred that this is the second round of litigation as in the earlier O.A filed by the applicant i.e. O.A. No. 17/2007, this Tribunal had directed the respondents to consider the case of the applicant and if the vacancy would be available for that purpose and the rule permits, he might be given appointment. It is further averred that the applicant's case has been kept in the waiting list and as ~~and~~ in the event of any vacancy arising his case would be considered. As regards the facts of this case the respondents have stated that awarding of compassionate appointment depends upon availability of quota for compassionate appointment and that though vacancy of LDC existed at Western Regional Center Udaipur during the year 2006, compassionate quota under 5% of vacancies has not arisen in that year and as such there is no vacancy under compassionate quota. They have generally denied the grounds adduced by the applicant. The respondents have therefore prayed for the dismissal of the O.A.

4. A rejoinder has been filed by the applicant stating that two posts of LDC for the recruitment year 2002-2003 have not yet been filled and as such the averment of the respondents that the applicant's name has been kept in the waiting list and as ^{that the} when *lalit*



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the vacancy will arise his case will be considered, are totally far from the truth.

5.1 We have heard the learned counsel for the parties and perused the documents carefully. The applicant has prayed for granting him the compassionate appointment on the ground that his father was retired on medical invalidation. The respondents, by impugned order dated 27.12.2007, have stated that as there was no vacancy at present under the quota meant for compassionate appointment and that the name of the applicant has been kept in the waiting list and as soon as the vacancy would arise the applicant would be given appointment.

5.2 The Apex Court in the case of **State Bank of India and Another vs. Somvir Singh** [(2007) 2 SCC (L&S) 92] has held as under:

“ Appointment on compassionate grounds is an exception carved out to the general rule that recruitment to public services is 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 merit. Defendants of employees who died in harness do not have any special or additional claim to public services other than the one conferred, if any, by the employer. The claim for compassionate appointment and the right, if any, is traceable only to the scheme, executive instructions, rules, etc framed by the employer in the matter of providing employment on compassionate grounds. There is no right of whatsoever nature to claim compassionate appointment on any ground other than the one, if any, conferred by the employer by way of scheme or instructions as the case may be.”

5.3 In the case of **Union Bank of India M.T. Latheesh** [(2006) 7 SCC 350] the Apex Court has observed that indiscriminate grant



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of employment on compassionate grounds would shut the door for employment to the ever growing population of unemployed youth.

5.4 In view of the above discussion, our view strengthened by the aforesaid case laws laid down by the Hon'ble Supreme Court, the applicant has not made out any case for our interference with the impugned order. 6. In the result, O.A is dismissed accordingly.

No costs.

[R.C. PANDA]
Administrative Member.

Jsv.

[N D RAGHAVAN]
Vice Chairman.

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Dinesh
S. K. Malhi
31/03

Part II and III ~~Section~~
in my presence on 31/03
under the supervision of
Section Officer ^{as per}
order dated 07/07/2015.

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Section Officer (Record)

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31/03