

(18)

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH;JODHPUR.**

Original Application no. 148/2008.

Date of decision : 19.12.2008

Hon'ble Mr.Khushiram, Administrative Member.

Smt. Uma Sharma, W/o late Shri Diwakar Sharma, aged 46 years, R/o 13 Hari Singh Nagar, behind Taj Hari Mahal, Residency Road, Jodhpur. Husband of the applicant was service as TGT (English) in Kendriya Vidyalaya, Rajkot

: Applicant.

Rep. By Mr. Vivek shah proxy counsel
For Mr. K.K. Shah : Counsel for the applicant.

VERSUS



1. Kendriya Vidyalaya Sangathan, through its Commissioner, 18 Institutional Area, Shaheed Jeet Singh Marg, New Delhi 110 016.
2. The Assistant Commissioner, Kendriya Vidyalaya Sangathan (Regional Office) 92, Gandhi Nagar Marg, Bajaj Nagar, Jaipur 302015
3. The Deputy Commissioner (Admn) Kendriya Vidyalaya Sangathan, 18 Institutional Area, Shaheed Jeet Singh Marg, New Delhi 110 016.

: Respondents.

Rep. By Mr. Hawa Singh proxy counsel for
Mr. V.S. Gurjar : Counsel for the respondents.

ORDER

Per Mr. Khushiram, Administrative Member.

Applicant is the widow of late Shri Diwakar Sharma, TGT (English), who died on 13.09.2003. She applied for compassionate appointment on 11.04.2004. The applicant possesses a diploma in nursing and she kept on reminding the respondents seeking compassionate appointment. After several reminders, she received intimation on 04.09.2006 to apply in the prescribed

[Signature]

format through proper channel. She submitted the application (in the prescribed proforma) dated 04.09.2006 (Annex. A/9). Thereafter, she was informed on 25.09.2007 that her case could not be considered for appointment to the post of LDC on compassionate grounds due to non availability of the vacancies since only 5% of the vacancies available under the direct recruitment quota has been earmarked for compassionate appointment. It was also informed that if the compassionate appointment could not be given within three years from the date of the death of the employee, the case may be treated as closed and shall not be considered again. The applicant has filed this O.A. challenging this impugned order.

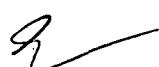
2. The respondents have filed a detailed reply stating that the object of granting compassionate appointment is to relieve the family from the financial distress and to get over the sudden crisis. The respondents have also said in the reply to the O.A. that she has not approached the Tribunal within the time limit prescribed under Sec. 20 read with 21 of Administrative Tribunals Act, 1985. It is also stated that mere possession of qualification for appointment to a particular post does not confer any right for compassionate appointment. The case of the applicant for compassionate appointment was considered as per the policy guidelines dated 09.10.1998. But her case could not be recommended since more deserving and indigent cases were there. The respondents have stated that due to non-availability of vacancy her



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request could not be acceded to. Moreover appointment on compassionate grounds is not a vested right and the policy decisions framed by Government of India are not subject to any change by the Office/Department of the respondents and a policy decision cannot be assailed by the applicant before the Court. The respondents have also stated that appointment on compassionate grounds was given to more deserving persons and for want of vacancies, her case could not be considered.

3. In support of his contention the learned counsel for the applicant relied on the decision of the Apex Court in the case of **Syed Khadim Hussain Vs. State of Bihar and Ors.**, [2006 SCC (L & S) 1681] wherein it was held by the Apex Court that rejection of the appellant's application was not justified since at the time of rejection of his application, he must have crossed 18 years of age. The Apex Court in the peculiar facts and circumstances of the above case, directed the respondents therein to give appointment within a period of three months. Relying on the above decision the learned counsel for the applicant contended that earlier the application of applicant was rejected, as it was not in the prescribed format and on the deceased Government servant left behind his widow and five minor children. The learned counsel, therefore contended that the dictum of the above case squarely apply to the facts of this case. The learned counsel for the applicant also relied on the decision of the Hon'ble High Court of Rajasthan in the case of **Smt. Maya L. Dhingrani and ors. Vs.**



The UCO Bank and ors. [2002 (5) WLC, Rajasthan Page 763,] wherein Hon'ble High Court (Jaipur) Bench has held that since the Bank was having scheme for compassionate appointment and on the death of a peon, his daughter applied for appointment on compassionate grounds after five years of death of her father as soon as she attained majority, her application must be deemed to be filed within time and the respondents were directed to reconsider the matter.

4. On the other hand, the learned counsel for the respondents stated as per para 3 of the OM dated 05.05.2003, the matter has attained finality, i.e. as per policy guideline, after three years of the death of the government servant, if no appointment was given on compassionate grounds, the matter is to be treated as closed the case could not be considered again. In support of the above contention the learned counsel cited the case of **Kendriya Vidyalaya Sangathan and Ors. Vs. Dharmendra Sharma** reported in (2007) 8 SCC 148 wherein the Apex Court has held that court cannot direct "appointment contrary to policy- Kendriya Vidyalaya Sangathan (KVS) deciding not to make Group 'D' appointments and to award work to contractors".

5. Heard the learned counsel on both sides and carefully perused records placed before me. It is clear that applicant, on the death of her husband, had applied for the post of LDC, but the same was not responded ^{to} by the respondents and she was asked to



(12)

apply through proper channel in the prescribed proforma on 19th of July, 2006. Thereafter, she applied. The respondents vide their letter dated 25.01.2007 (Annex. A/10) have stated that only four cases for appointment to the post of LDC have been recommended under the limit of 5% of total direct recruitment quota and remaining cases were also considered but could not be acceded to for want of vacancy. It is not clear from the reply whether the applicant's case was considered properly for three consecutive years as per para 3 of OM No. 14014/19/2002-Estt (D) dated 05.05.2003, issued by DOPT. Accordingly, the respondents are directed to reconsider the case of the applicant for compassionate appointment and pass a reasoned and speaking order thereon within a period of six months from the date of receipt of a copy of this order. O.A is disposed of as above. No costs.



Khushiram
19.12.2008
(Khushiram)
Administrative Member

Sonegara

R/C
Rajendra
Ram K. L. Shah
13/11/03

Alloph
on 16/11

Part II and III destroyed
in my presence on 19/11/2014
under the supervision of
section officer (1) as per
order dated 19/8/2014

Section officer (Record)