

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

Original Application No. 85 of 2009

JODHPUR THIS IS THE 19th DAY OF AUGUST, 2010.

CORAM:

HON'BLE DR. K.B.SURESH, MEMBER (Judicial)

Mahendra Kumar Sen S/o Late Shri Pukh Raj Sen aged 36 years, resident of 56, Dhanmal Mathur Colony, Gulab Bari, Ajmer (The Applicant's father at the time of death was working on the post of Accounts Officer under respondent No.5).

.....Applicant.

[Mr. Sunil Joshi, Advocate, for applicant]

Vs.

- 1- Union of India through the Secretary, Ministry of Defence, Government of India, Raksha Bhawan, New Delhi.
- 2- The Secretary, Department of Personnel & Training, Ministry of Personnel, Government of India, New Delhi.
- 3- Principal Controller of Defence Accounts, Southern Command No.1, Finance Road, Pune - 01.
- 4- Controller General of Defence Accounts, West Block-V, R.K. Puram, New Delhi - 66.
- 5- Assistant Controller of Defence Accounts, Area Accounts Office (S.C.), Mandore Road, Polo - II, Jodhpur.

.....Respondents.

[Mr. Vikas Seoul proxy for Mr. Vineet Mathur, Advocate, for respondents].

**ORDER
[BY THE COURT]**

Professor Robson, in his book, Justice and Administrative Law, Greenwood Press (1951), Page 413 states as thus :

"The Judge or Administrator, applying indefinite statutory provisions ought to be something other than an impartial referee and arbitrator. In all civilized countries, the Judge must, in fact, possess certain conceptions of what is



socially desirable, or at least acceptable, and his decisions, when occasions arise, must be guided by these conceptions. In this sense, judges are and must be biased. It is a simple fact that a man who had not a standard of moral values which approximated broadly to the accepted opinions of the day, who had no beliefs as to what is harmful to society and what beneficial, who had no bias in favour of marriage as against promiscuous sexual relations, honesty as against deceit, truthfulness as against lying; who did not think wealth better than poverty, courage better than cowardice, constitutional government more desirable than anarchy, would not be tolerated as a judge on the bench."

2- Indeed, Hon'ble the Apex Court had delineated the parameters of compassion to be made available to Government servants who died in harness and fix the bench-mark for the Government to follow and the basic parameters and premise under which the beneficial scheme has to be brought into operation. The 5% reservation of posts, measurement of indigency, the primacy granted to the widow rather than to other dependants, are all part and parcel of the judicial determination by the Apex Court in a catena of decisions.

3- Following the death of his father in 2007 from the post of Accounts Officer, the applicant, who was aged 36 years at that time, with a wife and two children, had approached the authorities for appointment as Auditor, on compassionate grounds on the ground that he is double post graduate and thus, under the circumstances which warranted grant of compassion to



him and therefore requested for a compassionate appointment in lieu of his father.

4- The respondents had apparently prepared a set of rules to follow and to be applied for measurement of compassion to be ruled-out to each applicant in the same chain. They have apparently fixed a methodology of providing marks and had universally applied this methodology, but, the applicant now assails this methodology as discriminative and capable of grant of unmerited gains to others. Even though, on an equal footing the respondent would say that terminal benefits of Rs. 21 lakhs was made available to the applicant's family along with family pension alone of about Rs. 10,000/- per month and, therefore, the level of indigency claimed by the applicant which may require compassion to be meted-out, is virtually non-existent. They also would point-out that the applicants may not be around the age of 25 years or so as to provide useful service to the organization as the applicant has already passed the age of 36 years and, therefore, on a comparative basis, his services may not be of optimum use to the organization as also to himself. The applicant in his rejoinder would point-out that the benchmark of age cannot be attributed as it is within the powers of the respondents to relax the bar of age for appointment and it has been done so in the cases of several others and he pointed-out with specific instances of those others for whom the bar was not made applicable. Thus, he prayed that applicant is very much entitled for the upper age relaxation as there is no prohibition in relaxing the upper age in the Scheme of 1998 as has been



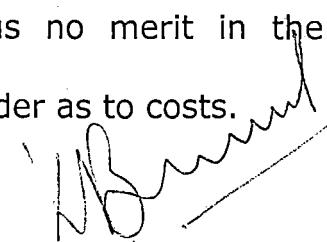
provided to others. It was pointed-out by the respondents that the relaxation was granted only to the widows and wherever it found to be necessary and it had been followed as a general practice, as such, they contended that no hostile discrimination has been made in case of the applicant. I do not find anything reprobate in a relaxation for widows for the simple reason that they are thus able to run the family. Whereas, in the case of the applicant, who is already 36 years of age, with a wife and two children and it cannot be believed that he had lived his life without one or other form of gainful employment and at any rate, it is not normally acceptable that he would have managed all these years on his father's income alone. Had he not been able to sustain his own nuclear family? The respondents would also point-out that the deceased had only seven months' of service left when he passed-away and, therefore, on a comparative analysis, the applicant had got the lower points and, therefore, he cannot be considered for compassionate appointment.

5- I have heard the matter in detail and had gone through the pleadings.

6- The factor of compassion may not be meaningful and realistic as there is no comparison in the relative sufferings of a younger widow or even an elder widow with that of a man who is in his prime and who had crossed the age of 36 years with qualifications and able to sustain himself. Even if, it is to be said that he considers himself to be unable to sustain himself, the burden cannot fall on the society and it can only be rested on his own shoulders. After having obtain the benefit of 21 lakhs minus



loan amount and the widow receiving about Rs. 10,000/- towards monthly pension, there cannot be any further parameters to be designed on the compassion for which the applicant is entitled to. If taken in such a larger perspective, the word compassion would lose its meaning and compassionate appointment will become a vested right of an employee who died while in harness. Clearly, this is not meant by the scheme and nor was the object of the policy makers or the Hon'ble Apex Court. There is thus no merit in the O.A. It is, therefore, dismissed with no order as to costs.



(Dr.K.B.Suresh)JM

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अनुष्ठान अधिकारी
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