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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

ORIGINAL APPLICATION NO. 344/2010

Date of Decision: 09.12.2010

HON'BLE Dr. K.B. SURESH, JUDICIAL MEMBER

Khivraj S/o Late Shri Sukharam, by caste Sasi, aged about 29 years,
R/o village Kohkaria, Sasi Colony, Banar Road, Jodhpur (Rajasthan).

.... Applicant

For Applicant : Mr. Sukesh Bhati, Advocate.

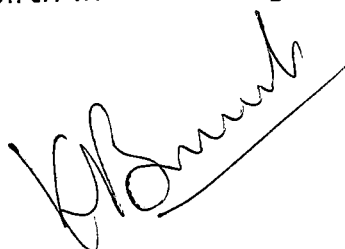
VERSUS

1. Union of India through the Secretary, Department of Defence, Raksha Bhawan, New Delhi.
2. The Chief Engineer, (MES), Headquarters, Southern Command, Pune-1.
3. The Lt. Col., SO 1 (Pers), (MES), Southern Command, Pune-1.
4. The Chief Engineer, (MES), Bhopal Zone, Sultania Infantry Lines, Bhopal, PIN-900 433.
5. The Garrison Engineer, (MES), Banar, Jodhpur.

.... Respondents.

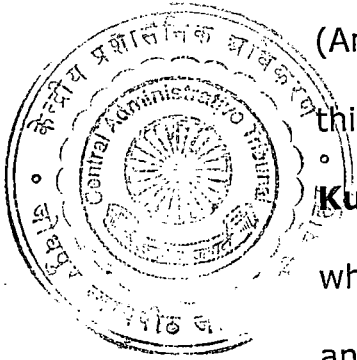
ORDER (ORAL)

The issue relates to compassionate appointment. Following the death of applicant's father on 14.12.2006, the applicant seems to have applied for compassionate appointment. But there was an issue raised regarding the correct date of birth on the driving license and on the official records which were contradictory to each other. Since the post to which the applicant had applied for was either Driver or Peon, the authority correctly demanded that there must be reconciliation of a date of birth. Apparently, the applicant contended that the date of birth in the driving license was shown mistakenly and





sought time to get it corrected. It would appear that the fresh driving license with duly corrected date of birth could be submitted only on 27.03.2009. Apparently, the respondents sought other corrected documents as well. Going by this, the respondents were able to consider him on the vacancy available after receipt of the full set of documents which were harmonized in each other. But the respondents passed an order dated 28.09.2010 (Annexure-A/2), by which it would appear that the respondents considered him and found that in the quarter for the period of three months no vacancies were noted and, therefore, his application was rejected on the ground of non-availability of vacancies. On the next day itself i.e. 29.09.2010 (Annexure-A/1), the respondents passed a more detailed order and this time quoting the judgment of Hon'ble Supreme Court in **Umesh Kumar Nagpal Vs. State of Harayana & Ors** (JT 1994 (3) SC 525) which had held that "it is not a vested right which can be exercised at any time in future." The word 'any time in future' and the time of three months was apparently understood to mean that regard being had to point of time, within a time gap of three years only can compassionate appointment be meted out even to deserving applicant. Therefore, computing from the time of death of the deceased to the time of consideration, the three years period has already passed. On this notional conclusion, the respondents have passed an order stating that he is not worth for being considered and rejected his application.

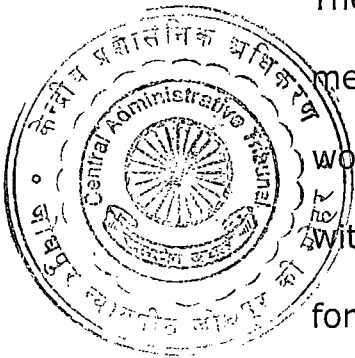


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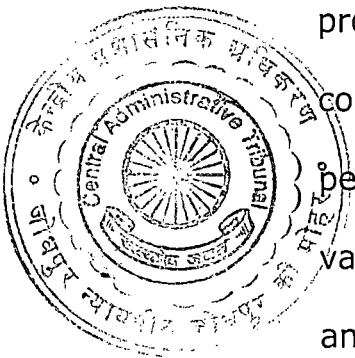
2. But the applicant would rely upon another decision in the case of **Director of Education (Secondary) & Anr. vs. Puspendra Kumar & Ors.** etc. etc. reported in AIR 1998 (SC) 2230 to canvass a view that the post available on the date of consideration i.e. according to the applicant either the date of death of the deceased or the date of application would be relevant in this regard. But looking at yet another angle the soul of Supreme Court Judgment is that an opportunity must be granted for three considerations wherein for each consideration, a sufficient number of vacancies in relation to the applicants must be marshaled together preferably on year-to-year basis and comparative merit on each candidate must be analyzed.

The intension is to give three opportunities as otherwise the welfare measure behind compassionate appointment would be frustrated. The word 'at any time in future' in this context can only mean that without adequate reason, a person who had delayed his application for more than three years may be said to have lost his opportunity.

But the Hon'ble Apex Court in another case held that the minor person who submitted his application for compassionate appointment after five years on attaining his age of majority, the same may be considered within time as he was under a legal disadvantage. In this case, the applicant had applied in time but his application had a lacunae which may not be in his own making and given the level of administrative functioning the time it took for him to correct the lacunae, cannot be put as a burden of his shoulder. Therefore, it has to be held that applicant has applied in time and he is entitled to be considered for compassionate appointment. It is seen that the



applicant had been blessed with terminal benefits of Rs.4 lacs odd but the Hon'ble Apex Court held that terminal benefits are not the sole determinant, especially in this case family pension is only Rs.2,962/- and valuable immovable property is of Rs.90,000/- only. Therefore, in normal parlance the applicant could be said to be considered for compassionate appointment as indigent. Therefore, The Annexure-A/1 & A/2 are passed without applying of minds and without dealing with the principle of natural justice and judicial pronouncements. Therefore, both the orders dated 29.09.2010 (Annexure-A/1) & dated 28.09.2010 (Annexure-A/2) are hereby quashed being bereft of proper reasoning and being arbitrary and the respondents shall consider the case of the applicant alongwith other similarly situated person for three consecutive opportunities after marshalling all the vacancies available in that particular time frame wherein sufficient and justifiable vacancies are available, and thus shall grant three transparent opportunities to the applicant and on each consideration the applicant shall be informed of the outcome. Accordingly, the O.A. is allowed to the extent stated above, at the admission stage itself. There shall be no order as to costs.



[Dr. K.B. Suresh]
Judicial Member