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**CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH; JODHPUR**

**Original Application No. 580/2011 with  
Misc. Application No. 211/2011**

**Date of decision: 26.03.2012.**

**CORAM:**

**HON'BLE DR. K.B.S. RAJAN, MEMBER (J) &  
HON'BLE MR. B.K. SINHA, MEMBER (A)**

Geeta Devi Widow of Shri Trilok, Aged 40 years, Resident of Pabupura, Ward No. 42, Civil Airport Road, Jodhpur, deceased - Ex. Mazdoor in the Office of Garrison Engineer, Army (Central), MES, Jodhpur.

..... Applicant

By Mr. Vijay Mehta, Advocate, for the applicant.

**Versus**

1. Union of India through the Secretary to the Government of India, Ministry of Defence, Raksha Bhawan, New Delhi.
2. Chief Engineer, Southern Command, Pune - 1.
3. Chief Engineer, Bhopal Zone, MES, SI Lines, Bhopal.
4. Garrison Engineer, MES, Army Central, Jodhpur.
5. Command Works Engineer, Army, Jodhpur.

..... Respondents

By Mr. Kuldeep Mathur, Advocate, for respondents.

**ORDER**

**Per Dr. K.B. S. RAJAN MEMBER (JUDICIAL)**

M.A. No. 211 of 2011 is allowed and delay condoned.

2. Applicant's husband died in August, 2004 while working as a permanent employee as a *Mazdoor* in the office of Garrison Engineer, Army - Central, MES, Jodhpur. He died prematurely at an young age of about 42 years, at least eighteen years prior to his normal date of superannuation. At the time of demise, he was survived by his widow, a daughter and two sons. It is the case of the applicant that at the time of death of her husband, the family had huge liability of education and marriage of all her children. The family belongs to Scheduled caste.
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3. The applicant applied for compassionate appointment sometimes in December, 2004 and the application was re-submitted in May 2005. Annexures A-2 and A-3 refer. Thereafter, she was called to appear before the Board of Officers on 27 and 28<sup>th</sup> October, 2005 and she did appear. Along with her certain others also appeared. According to the applicant, on the basis of the norms laid down by the respondents, she had secured 60 points while the two others secured respectively 53 and 60 marks. The Board did recommend the case of the applicant. Annexure A-4 refers. However, the name of the applicant was not recommended to the higher Authority and cases of less points had been referred to. Such of those who had secured less points were also appointed on compassionate grounds in 2008-2009. It was on coming to know about the above appointment of less meritorious cases that the applicant had submitted a representation vide Annexure A-5 dated 01-02-2009. This was followed by yet another representation in September, 2011 to the D.G. Pers E-in-C Branch, vide Annexure A-6. It was at this juncture that the applicant was informed that the income certificate annexed by the applicant was undated and the applicant was asked to submit documents in time for appointment. As by then three years had been passed, the applicant's case could not be considered in view of the letter dated 23-10-2006. The applicant did submit the income certificate but the same was not duly considered. Hence, she filed representation on 12-02-2011 and as there has been no response, this OA has been filed with the

following prayer, vide Para 8 of the OA, which reads as under:-

***"That on the basis of the facts and grounds mentioned herewith, the applicant prays that the impugned order Annexure A-1 may kindly be quashed and the respondents may kindly be directed to give appointment on compassionate grounds to the applicant forthwith. Any other order as deemed fit in the facts and circumstances of the case may kindly be also passed and the costs be also awarded to the applicant."***

4. Respondents have contested the OA. They do admit the fact that the case of the applicant had been recommended, vide reply to para 4.4 of the O.A. The fact that persons with less points than the applicant were also appointed. Reply to para 4.6 refers. Their contention is that there have been certain deficiencies in filing the documents which had not been made good and by the time the same could be done, three years period had lapsed and hence, her case cannot be considered. Annexure A-7 read with reply to para 4.9 of the OA refers.

5. Counsel for the applicant argued that the admitted fact is that the others have been considered and appointment given, while in the case of the applicant, on the ground that the documents were found to be deficient, the case was not considered, though her case is more deserving as per the assessment by the Board. The counsel contended that it is not the case of the respondents that there had been any communication indicating the nature of deficiency in the documents preferred by the applicant. For, there has been admittedly no communication in this regard. That the applicant could ascertain informally from a clerk vide para 4.10 had been

taken as if it is the communication and the respondents have maintained that in her own words, the applicant had been advised. The counsel submitted that it was expected of the respondents to have informed the applicant of their own, especially when the case of the applicant was more deserving in nature.

6. Counsel for the respondents referred to relevant part of the counter and did not deny the facts as mentioned above. In so far as non communication of the deficiency is concerned, he had submitted that reply to para 4.10 would answer the same.

7. Arguments were heard and documents perused. It appears that there has been a lapse on the part of the respondents in not duly communicating the applicant about the requirement of income certificate. It is seen that one of the candidates for compassionate appointment reflected in the income certificate that the annual income is Rs 34,673/-, which is approximately twice the annual income in the case of the applicant. The delay in communicating the deficiency is certainly a mistake on the part of the respondents, which cannot be allowed to be encashed by the respondents themselves. (It is worth referring to the following two observations of the Apex Court in the following two decisions -

**(a) A.K. Lakshmipathy v. Rai Saheb Pannalal H. Lahoti Charitable Trust, (2010) 1 SCC 287 wherein, the Apex Court has stated -**

**"they cannot be allowed to take advantage of their own mistake and conveniently pass on the blame to the respondents."**

 **(b) Rekha Mukherjee v. Ashis Kumar Das, (2005) 3**

**SCC 427 : wherein, the Apex Court has stated -**

**36. The respondents herein cannot take advantage of their own mistake.**

8. The deficiency is not that grave. The extent of annual income has not varied. The only deficiency is that it is not from an authority from where normally such a certificate could be issued. The respondents have not disputed as to the poor annual income of the family of the applicant. The deficiency is one of procedure which deserves to be condoned.

9. In view of the above, the OA is disposed of with the direction to the respondents to consider grant of appointment on compassionate grounds as the case has already been recommended for such appointment and the deficiency has now been removed. If some other conditions are to be fulfilled, the applicant should be duly informed in advance.

10. It is not known whether there is any vacancy at present under the 5% quota for compassionate appointment. If such a vacancy is available, the respondents shall in that event, consider accommodating the applicant against the vacancy. If immediately no vacancy is available, then as and when the next immediate vacancy is available under the said 5% quota, the applicant should be considered for the same and further action taken.

11. Under the above circumstances, there shall be no orders as to costs.

  
(B.K.Sutha)  
MEMBER (A)  
jrm

  
(Dr. K.B.S.Rajan)  
MEMBER (J)