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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.25/2012

Jodhpur this the 18th day of September, 2013

Order reserved on 09.09.2013

CORAM

Hon'ble Ms. Meenakshi Hooja, Member (A)

Amin S/o Shri Suleman, aged 37 years, R/o 11, Prithvi Pura, Opp. Ganthiya House, Jodhpur. Father was as P/Ftr (HS-II) under respondent No.4&5.

.....Applicant
Mr.R.S. Saluja, counsel for applicant.

Versus

1. Union of India, through the Secretary, Ministry of Defence, Raksha Bhawan, New Delhi-1.
2. The DG (PERS) E-In-C's Branch E1C (IV) BHW PO, Kashmir House, New Delhi-1.
3. The Chief Engineer, Head Quarters, Bhopal Zone, MES SI Lines, Bhopal.
4. The CWE (A) MES, Jodhpur.
5. The GE (A) MES, Utility, Jodhpur.

.....Respondents
Smt. K. Parveen, counsel for respondents.

ORDER

This OA has been filed by applicant, Amin S/o Shri Suleman, under Section 21 of the Administrative Tribunals Act, 1985. It has been averred in the OA that his father expired on 20th September, 2007 while in service and left behind his wife and the applicant, the sole son. After the death of his father, applicant immediately submitted an application for appointment on

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compassionate ground. This application in the First look was rejected by order dated 10th September, 2009 (Annexure-A/2). The Second look also met with the same fate on account of non-availability of the vacancy, and in the Third look once again the case of the applicant for compassionate appointment was not considered on account of non-availability of vacancy. Thereafter, the case of the applicant was considered from 25th February, 2011 till 09th May, 2011 until Eighth look and on account of non-availability of vacancy, the matter was always recommended for next look. It was in the Ninth look that on account of applicant seeking (attaining) 32 marks for the post of Mazdoor, he was not considered for appointment, but his case was recommended for next look. It was then while giving the Tenth look the matter was treated to be the final one and this time the case of the applicant was rejected on the ground that it was three years old. The copy of the order of the Tenth look dated 15th September, 2011 along with the forwarding letter dated 22nd September, 2011 has been placed at Annexure-A/1 collectively. Applicant has also referred to OM dated 08th June, 2009 issued by DGW, CPWD, which in turn is based on instructions of DoPT dated 09th October, 1998, which provides for review of even three year old case.

2. It has been further averred in the OA that the applicant has not been considered for compassionate appointment on the ground that his case is more than three years old and the respondents have lost sight of fact that during the past three years the case could not

be considered as the vacancies were not available, thus, in these circumstances, the applicant has been punished for no fault of his.

Therefore, the applicant has filed this OA and sought the following reliefs:-

- "(i) *The Annex.A/1 dated 15.09.2011 forwarded with letter dated 22nd Sep., 2011 may kindly be quashed and set aside.*
- (ii) *That pursuant to aforesaid respondents may kindly be directed to consider applicant's case for compassionate appointment on merits.*
- (iii) *Any other favourable order which this Hon'ble Tribunal may deem just and proper in the facts and circumstances of the case may kindly be passed in favour of the applicant.*
- (iv) *Original Application filed by the applicant may kindly be allowed with costs."*

3. The respondents in their reply have said that Shri Suleman Khan, father of the applicant, expired on 20.12.2007 as per Death Certificate issued by Jodhpur Nagar Nigam but in the OA the date of death of the deceased was mentioned as 20.09.2007, which is incorrect. It has been averred that the case of the applicant for grant of compassionate appointment was considered through Board of Officers, which had taken into consideration the various aspects of the case for grant of compassionate appointment in accordance with Mod, ID No.19(4) 824-99-1998-D (Lab) dated 09.03.2001, and the case of the applicant was not fully rejected and the same was carried forward for the next looks. It has been further stated that the appointments on compassionate grounds are made in the department fairly on the basis of competitive merit and availability of vacancies. The applicant was fairly and correctly communicated through speaking order dated 18.11.2009, in which the reasons for denial of compassionate appointment were also mentioned. It has been further averred that offer of compassionate appointment to an aspirant depends on availability of vacancies. The case of the

applicant was again re-examined along with other candidates through Board of Officers for granting of compassionate appointment. The marks are being allotted to the eligible candidates on the basis of various parameters viz. family pension, terminal benefits, monthly income of earning member of family, market value of moveable and immovable property etc. in accordance with guidelines issued by MoD, ID No.19(4) 824-99-1998-D (Lab) dated 09.03.2001 and Government of India, Ministry of Defence F.No.19(3/2009/D/Lab) dated 22.01.2010 (Annexure-R/01 and R/02). As per the policy in vogue and DOP&T instructions the prescribed Board/Committee has reviewed and certified the penurious condition of the applicant at the end of 1st and 2nd years and it is stated that as per the policy in vogue after three years, if compassionate appointment is not possible to be offered to any candidate, the case is finally closed. Accordingly, in the present case, final speaking order was issued vide letter dated 15.09.2011. It has also been stated in the reply that the applicant has placed reliance on instructions of DOP&T dated 09.10.1998 which have been reviewed periodically and the present DOP&T OM dated 05.05.2003 as at Annexure-R/03 lays down the time limit of 3 years for considering and giving compassionate appointment. The respondents have thus submitted that the case has been duly and diligently considered in 10 looks and the that final speaking order (Annexure-A/1) has been issued as per the policy of the Government of India in force, and even otherwise appointment on compassionate ground cannot be claimed as a matter of right, and

therefore they have prayed that the OA to be dismissed being devoid of merit.

4. Heard both the parties. Counsel for the applicant contended that the case of the applicant was considered when no vacancies were available in the respondent department. He further submitted that if the vacancies were not available then the Government was bound to create supernumerary post and to offer compassionate appointment to the candidates. In support of his arguments, the learned counsel for the applicant relied upon the judgment of the Hon'ble Apex Court passed in the case of *Smt. Phoolwari v. Union of India & Ors*, reported in (1991) 0 AIR (SC) 469 wherein it has been held "*if there is no suitable post of appointment supernumerary post should be created to accommodate the applicant.*" and in the case of *Director of Education (Secondary) & Anr. v. Pushpendra Kumar & Ors.* reported in (1998) 5 SCC 194/ (1998) 0 AIR (SC) 2230.

5. Per contra, counsel for the respondents vehemently argued that due consideration has been given to the case of the applicant and only after Tenth look and constant consideration for three years, the case of the applicant has been finally closed in accordance with the policy of the Government of India, DOP&T Scheme for compassionate appointment as may be seen in Annexure-R/01, R/02 and R/03. Reliance was also placed on the judgments of the CAT Ernakulam Bench passed in OA No.18/2011 dated 20.10.2011, CAT Hyderabad Bench order dated 28.04.2011

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passed in OA No.438/2011 and CAT Jodhpur Bench judgment dated 22.02.2012 passed in OA No.25/2011 and also the ruling of the Apex Court in *Umesh Kumar Nagpal vs. State of Haryana & Ors* which is referred to in the judgment of the Jodhpur Tribunal dated 22.02.2012 in OA No.25/2011.

6. Considered the rival contentions of both the parties and also perused the record. It is noted from the speaking orders; viz. Tenth and final look (Annexure-A/1) and from the First to Ninth look that the case of the applicant was considered according to the prescribed guidelines of the competent authority and the availability of vacancies from 10th September, 2009 to 15th September, 2011. After the First look the case of the applicant was recommended for Second look as no vacancies were available. In the Second and Third look his case was recommended for the Fourth look in view of non-availability of vacancies, and again for the Fifth look, as no vacancies were available. Thereafter, in the Sixth and Seventh look also no vacancies were available, and in the Eighth look again no vacancies were available. In the ninth look (speaking order dated 09th May, 2011) 02 vacancies were available but the marks secured by the applicant were 32 against the cut off marks of 88 for Group 'D' Mazdoor and 83 for Safaiwala. In the Tenth and final look (order dated 15th September, 2011) his case could not be considered again due to non-availability of sufficient vacancies within 5% quota and on the basis of DOP&T OM No.14014/19/2013-Estt(D) dated 05th May 2003 which prescribes the maximum time of 3

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years, a person's name can be kept under consideration for offering compassionate appointment, his case was finally closed and the applicant was informed of the same by letter dated 22nd September, 2011.

7. As far as the judgments relied upon by the counsel for the applicant are concerned, the issues involved in the instant case are different from the cited cases. In *Smt. Phoolwari v. Union of India & Ors*, reported in (1991) 0 AIR (SC) 469, the petitioner was seeking to continue residence in the quarter, which belonged to her deceased husband, as well as asking for compassionate appointment for her son in the said Press where her husband was previously the employee. The Hon'ble Apex Court took into account a similar case of *Smt. Sushma Gosain v. Union of India*, reported in AIR 1989 SC 1976, in which the Hon'ble Apex Court at Page No.1977 of AIR held as under:-

"It can be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant."

and on the said basis, the Hon'ble Apex Court in the case of *Smt. Phoolwari v. Union of India & Ors* (supra) held as under:-

"Accordingly, we direct the Union of India to take immediate steps for employing the second son of the appellant in a suitable post commensurate with his educational qualification within a period of one month from the date of this order. The appellant shall be permitted to stay in the said quarter where she is at present residing with the members of her family. The appellant, will however, withdraw her application filed before the Tribunal. The appeal is thus allowed. There will be no order as to costs."

Thus, it would be seen that in *Smt. Phoolwari v. Union of India & Ors*, Hon'ble Apex Court only issued direction to

immediately take steps for employing the second son of the appellant in a suitable post, and in the earlier order in the case of *Smt. Sushma Gosain v. Union of India* (supra), the Hon'ble Apex Court held that the purpose of providing appointment on compassionate grounds is to mitigate the hardship due to death of the bread earner of the family and such appointment should be provided to the family and it is improper to keep such case pending for years. However, in the present case, there has been no delay on the part of the respondent department in considering the candidature of the candidates including the applicant and the distress financial position of the family (families) in accordance with the DoPT guidelines which are annexed as R/01 & R/02, which provide for assessing the comparative merit as well as taking persons on compassionate grounds against 5% of the vacancies. In the instant case in the First look, there was no vacancy available and in the Ninth look when two vacancies were available the applicant obtained 32 marks which was well above the cut off marks for the Group 'D' posts of Mazdoor (88) and Safaiwala (83) and therefore naturally the persons which greater need and financial distress would have got priority for appointment. The DoPT guidelines do not make any provisions for creation of supernumerary posts and further as per Annexure-R/03 the case is to be considered for three years and thereafter finally closed, which has been done in this case also. Therefore, the facts and ratio of the case *Smt. Phoolwari* (supra) are different from the facts of the instant case.

As far as the judgment of the Hon'ble Apex Court in *Director of Education (Secondary) & Anr. v. Pushpendra Kumar & Ors (supra)* is concerned, the case relates to the Uttar Pradesh Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974 framed by the Government of Uttar Pradesh and issue in the case was their applicability to non-government aided secondary school. But, here in the instant case, we deal with the rules framed by the competent authority as applicable to the MES i.e. respondent department and its employees. Therefore, the facts of the cited case are also different from the facts of the present case. Further it is also relevant that in the judgments cited by the counsel for the applicant i.e. *Smt. Phoolwari v. Union of India & Ors (supra)* and *Smt. Sushma Gosain v. Union of India (supra)*, the applicability of scheme as annexed as Annexure-R/01, R/02 and R/03 was not an issue because at the relevant time these schemes were not in force and the Government of India framed these schemes in accordance with the various judgments passed by the Hon'ble Apex Court in several cases and directed the instrumentalities of the Government to follow up the above schemes, and it is not the case of the applicant that his claim was rejected by the respondents in violation of the schemes in force. Therefore, the principle envisaged by the Hon'ble Apex Court in above mentioned cases are not applicable in the instant case.

9. At the same time, the Hon'ble Apex Court in the case of *Umesh Kumar Nagpal vs. State of Haryana & Ors.* reported in JT 1994 (3) SC 525, has held as under:-

"The question relates to the consideration which should guide while giving appointment in public services on compassionate ground. It appears that there has been a good deal of obfuscation on the issue. As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object to granting compassionate employment is thus to enable the family to tide over the sudden crisis."

It has been further held with reference to the decision of the Hon'ble Apex Court in the case of *Sushma Gosain & Ors* (supra), which has been referred to in the case of *Smt. Phoolwari* (supra), as under:-

*"It is for these reasons that we have not been in a position to appreciate judgments of some of the High Courts which have justified and even directed compassionate employment either as a matter of course or in posts above Classes III and IV. We are also dismayed to find that the decision of this Court in *Sushma Gosain & Ors. v. Union of India* [(1989(4) SLR 327] has been misinterpreted to the point of distortion. The decision does not justify compassionate employment either as a matter of course or in employment in posts above classes III and IV."*

And in summing up, the Hon'ble Apex Court held as under:-

"For these very reasons, the compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over."

10. The respondents have referred to the decision given by the Central Administrative Tribunal, Ernakulam Bench in OA No.18/2011 (*K. Reghu vs. Union of India & ors.*), dated 20.10.2011 in which the Tribunal upheld the position and circular which provides for consideration of a case up to a period of three years

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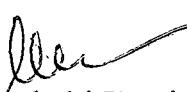
and offering compassionate appointment on comparative merit. The respondents have also referred to the decision given by the Central Administrative Tribunal, Hyderabad Bench, in OA No.438/2011 (*G.V.K. Perraju vs. Union of India*) dated 28.04.2011 wherein the application of the applicant has been rejected on the ground that no compassionate appointment can be considered after three years from the date of death of deceased employee. Further, the respondents have referred the order of this Tribunal passed in OA No.25/2011 (*Jitendra v. Union of India*) dated 22.02.2012, which relies upon the judgment of the Hon'ble Supreme Court in the case of *Umesh Kumar Nagpal vs. State of Himachal Pradesh* and it has been upheld by the Tribunal that the appointment is to be given against 5% vacancy of a particular year and it has been further expressed that "certain parameters have been provided by the Departmental of Personnel and Training as well as by the Hon'ble Supreme Court also. We are aware of the position that compassionate appointment is not an avenue for the employment to the unemployed persons, but, the purpose, intention and the object for providing the compassionate appointment is that the family after the death of the sole bread earner may not come at the starving condition and in order to maintain and over-com the family from the financial distress only."

11. In the present case, the record clearly shows that the respondents have considered the applicant's case in accordance with the guidelines laid down by the DOP&T for determining the

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comparative merit and the time frame of considering the case for 3 years, and have consistently issued reason based speaking orders which have also been communicated to the applicant.

12. Thus, in view of the Hon'ble Apex Court's ruling and the guidelines issued by the competent authority for compassionate appointments, no case is made out by the applicant for grant of compassionate appointment after his case has been duly considered as per rules. Hence the OA lacks merit and is dismissed with no order as to costs.


(Meenakshi Hooja)
Administrative Member