

**CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH, JODHPUR**

Original Application No. 290/00047/2014

Jodhpur, this the 28<sup>th</sup> July, 2015

**CORAM**

**Hon'ble Ms. Meenakshi Hooja, Administrative Member**

Smt. Swyamjyoti W/o late Shri Jaideep Gaur D/o Shri Purushottam Kumar Joshi, resident of 2/A-23, Madhuban Housing Board, Jodhpur (at present applicant is not in service)

.....Applicant

By Advocate: Mr. Vinay Jain

Versus

1. Union of India through the Director General, Indian Council of Medical Research, Ansari Nagar, New Delhi.
2. The Director, Desert Medical Research Centre (DMRC), Indian Council of Medical Research, Swami Bhawan, New Delhi.
3. The Officer Incharge, Scientist- "F", Desert Medicine Research Centre (DMRC), New Pali Road, Jodhpur

.....Respondents

By Advocate : Mr. M.S.Godara

**ORDER (ORAL)**

The applicant has filed this OA u/s 19 of the Administrative Tribunals Act, 1985 against the order dated 04.12.2013 (Ann.A/1) by which the applicant has been denied appointment on compassionate grounds. In the prayer clause, it has been prayed

that the respondents may be directed to consider the candidature of the applicant on a suitable post on compassionate ground in respondent department or in any other department of Government of India and order dated 04.12.2013 may kindly be quashed.

2. Brief facts of the case, as stated by the applicant, are that her husband Shri Jaideep Gaur was working in the respondent department on the post of Cleck-Cum-Typist and he expired on 12.5.2011 while in service. After death of her husband, she submitted application in the prescribed proforma to the respondents for giving appointment on compassionate grounds. When the case for compassionate appointment was not considered, the applicant also served a legal notice on 24.1.2012 but nothing was done. Therefore, she filed OA No.59/2012 before this Tribunal and the same was decided vide order dated 30.5.2012 (Ann.A/2) with the direction to the respondents that the applicant be considered against the next vacancy. Thereafter much time lapsed and vacancies were available in the Union of India departments, but candidature of the applicant was not considered, therefore, again a legal notice dated 26.10.2013 (Ann.A/3) was given to consider candidature of the applicant. Since the applicant served legal notice to the respondents, therefore, officers of the department became annoyed and passed

order dated 04.12.2013 informing the applicant that there was no vacant post during the year 2012 and 2013 under the compensatory grounds quota i.e. 5% in Group-C and D in the Centre. The applicant has further stated that the Govt. of India, Ministry of Personnel, Public Grievances and Pension has issued OM 09.10.1998 (Ann.A/4) which is the scheme for compassionate appointment under the Central Government which clarifies that the employment under the scheme is not confined to the Ministry/Department/Office in which deceased was working. The offer of appointment can be given under the Government of India depending upon availability of suitable vacancy and if the vacancies are not available in the department then the department should refer the case of the Government of India for showing the availability of vacancies in other departments. Therefore, aggrieved of the action of the respondents, the applicant has filed this OA praying for direction to the respondents to give appointment on compassionate grounds.

3. In the reply to the OA, the respondents have raised preliminary objection regarding maintainability of the OA and submitted that for the same relief an OA has already been decided and suitable order has been passed. It has further been submitted that the husband of the applicant expired on 12.5.2011 and after his death the terminal benefits admissible to the

deceased family to the tune of Rs. 98,358 + Leave Encashment of Rs. 24,140 + GIS Scheme of Rs. 51,082 + GPF of Rs. 23,136, Total Rs. 1,96,716 has been paid in time and her case for giving appointment was also considered and rejected on merits due to non-availability of vacancies under 5% quota for direct recruitment. The respondents have further submitted that in compliance of the order of this Tribunal dated 30.5.2012, the case was again considered afresh and rejected again due to non-availability of vacancies. With regard to referring the case to other department of Government of India, it has been submitted that the Government has already issued OM on 22.6.2001 (Ann.R/1) in regard to not to refer the case to other departments as it is not solving the useful purpose for the reason that sufficient vacancies are not available under 5% ceiling for giving appointment on compassionate grounds in any department even to fulfil their own requirements. According to the respondents, there was no post available for giving appointment on compassionate quota in the year 2011 to 2013, therefore, the case of the applicant was rejected and as far as contention of the applicant that her case should have been referred to other department is concerned, the respondents submitted that vide OM dated 22.6.2001 the Government of India has already directed that department should not refer the case to other departments as

departments, therefore, the applicant cannot claim as a matter of right to get her case transferred to other department and prayed that the OA is liable to be dismissed.

4. Heard. Counsel for applicant submitted that Shri Jaideep Gaur, husband of the applicant, was working on the post of Clerk-Cum-Typist in the DMRC, Jodhpur and expired on 12<sup>th</sup> May, 2011. The applicant who is widow of Shri Jaideep Gaur submitted an application for being considered for appointment on compassionate ground but the same was not decided, then she filed OA in this Tribunal which was registered as OA No. 59/2012 and decided on 30.05.2012 in the following terms:-

“2. In view of the counter affidavit submitted by the respondents, it appears that the application for compassionate appointment is still under active consideration. Hence, the cause of action does not arise sufficiently and the application is premature. It is disposed of with a directive that the case of the applicant be considered against the next vacancy and it should be disposed of within two months of the date when the vacancy so arises.”

 Counsel for applicant further submitted that the applicant gave legal notice dated 26.10.2013 (Annex. A/3) but the respondents vide order dated 04.12.2013 (Annex. A/1) with reference to the order of Tribunal dated 30.05.2012 informed the applicant that there was no vacant post during the year 2012 and

in the Centre and did not provide compassionate appointment. Counsel for applicant prayed that the case of the applicant is genuine as her husband expired only 3-4 months after her marriage and she deserves to be considered for any subsequent vacancy. Counsel for applicant submitted with reference to OM dated 9<sup>th</sup> October, 1998 (Ann.A/4) that the applicant may also be considered for appointment on compassionate ground in any other department.

5. Per contra, counsel for respondents submitted that there was no vacancy in the respondent department for compassionate appointment in the year 2012 and 2013 and even presently there are no vacancies available for compassionate appointment as the respondent-department is a small unit and there are hardly any vacancies. He further submitted that the OM dated October 9, 1998 (Ann.A/4) referred to by counsel for applicant has since been revoked by the Government vide order dated 22.06.2001 (Ann.R/1) and now there is no provision of referring the cases for considering in other Departments. Counsel for the respondents further contended that the case of the applicant can only be considered for 3 years and much time has already elapsed, therefore, the case of the applicant lacks merit and the applicant is not entitled to any relief and prayed for dismissal of the OA.

6. Considered aforesaid contentions and perused the record.

It is seen that the case has only been rejected vide letter dated 04.12.2013 (Ann.A/1) in view of no vacancies being available for compassionate appointment for the year 2012 and 2013.

However, as and when a vacancy arises the respondent department can certainly consider the case of the applicant as per rules and instructions in force. Accordingly, it is considered appropriate to dispose of the OA with certain directions.

7. The respondents are directed to consider the case of the applicant, alongwith other cases, if any, on arising of next vacancy, as per rules and instructions on the subject and inform the applicant accordingly. Further, in case of there being no vacancy available within next 6 months, the respondents are also directed to inform the applicant of the position.

The OA, thus stands disposed of with no order as to costs.

  
(MEENAKSHI HOOJA)  
Administrative Member

R/ss

HC  
Dharmendra  
Sikar  
(Manesar)  
(Vijay Jain  
R.D.V.)  
order ~~date~~  
~~5/8/75~~