

CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH LUCKNOW

ORIGINAL APPLICATION NO: 429/2003.

this, the 5th day of September 2003.

HON. SMT. MEERA CHHIBBER MEMBER(J)

Nighar Fatima, aged about 33 years, W/o Late Shri Shammi
R/O 500/105, Kutuppur, Ikka Stand, Daliganj, Lucknow.

....Applicant.

BY Advocate ~~Shri~~ Kum Pushpila Bisht.

VERSUS

1. Union of India through the Secretary, Department
of Cultural Affairs, GOI, New Delhi.
2. The Director General, Archaeological Survey of India
Government of India, New Delhi.
3. The Superintending Archaeologist Archaeological Survey
of India, Lucknow Circle Baily Guard Cottage, Golaganj,
Lucknow.

....Respondents.

BY ADVOCATE SHRI G.S.SIKARWAR.

ORDER (ORAL)



BY HON. SMT. MEERA CHHIBBER MEMBER(J)

By this O.A., the applicant has sought quashing of the impugned advertisement dated 29.7.2003 (Annexure-10). She has further sought a direction the respondents particularly Respondent No. 2 to rectify the illegality committed by it by appointing the applicant on compassionate grounds on daily wage basis whereas it ought to have been on regular basis against a substantive vacancy and further to direct the Respondent No. 3 to make the payment of back wages to the applicant interms of the Award dated 28.11.97.

2. It is submitted by the applicant that her husband Shri Mohd. Shami had raised a dispute after he was illegally thrown out from service by an oral order by Respondent No. 3 before the Central Ministry of Labour, New Delhi which resulted into a reference dated 27.3.1996, which came to be adjudicated as Industrial Dispute No. 34/1996 before the Central Government Industrial Tribunal-Cum-Labour Court, Kanpur. ^{During} ~~While~~ the pendency of said case, Shri Mohd. Shami died and thereafter he was substituted by the applicant. The aforesaid case was decided in favour of the applicant vide award dated 28.11.97 whereby the termination of the services of the the deceased husband of the applicant was held illegal and respondents were directed to pay back wages to the applicant. With regard to her claim for compassionate appointment, Tribunal had observed that it is expected that respondents would consider the case



of the applicant for compassionate appointment. However, applicant was engaged only on daily wages.

3. The grievance now before us is that vide order dated 9.4.2003, respondents are considering ^{number of} persons for regularisation and vide advertisement issued in Amar Ujjala Hindi Danik on 29.7.2003 ^{number 5-} mentioned ~~as~~ vacancy in Group 'D' ~~are~~ advertised, but till date, she has not been considered for regular appointment on compassionate grounds.


4. Contention of the applicant's counsel is, that unless, applicant is given the regular compassionate appointment, respondents could not have advertised the vacancies in Group 'D'.

5. Counsel for the respondents, on the other hand, invited ^{the court's} ~~my~~ attention to ~~vide~~ order dated 26.11.97 (on page 3 at 24,) wherein, the Tribunal had categorically stated that Smt. Nighar Fatima widow of the deceased concerned workman had sought employment on compassionate grounds. That request cannot be granted in the present reference, ^{as} this point is not covered by the present reference. However, it is expected that the opposite party would consider his ground for compassionate appointment on the premise that deceased had continued to remain in service till the date of his death.

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6. The learned counsel for respondents submitted that no direction was given by the Tribunal to give any compassionate appointment to the applicant and it was only an observation made by the Tribunal without adjudicating the issue and even this award is challenged by them in the Hon'ble High Court of Allahabad in Writ Petition No. 27554/98 and the same is still pending. He has therefore, submitted that so long the matter is subjudiced in the Hon'ble High Court, it is not open to the applicant to agitate those very issues before this Tribunal by filing this O.A. , in second innings. Even otherwise, he has submitted that, till date applicant has not given any representation to the authorities concerned with regard to claiming compassionate appointment nor she has applied in response to the advertisement which is annexed as Annexure- NO. 1 to this petition. He has therefore, prayed that this O.A. be dismissed at the admission stage itself.

7. I have heard both the counsel. As far as, applicant's claim for back wages is concerned that is already pending before the Hon'ble High Court of Allahabad therefore, that part of claim cannot be agitated by the applicant before this Tribunal. On the question of compassionate appointment also, I find that applicant has so far not made any representation to the authorities concerned therefore, the first step, which is required by the applicant is to give a proper representation to the authorities, so that they may apply their mind to the given circumstances in the case. It is also seen that applicant has not even given any application in response to the advertisement given by the respondents, which is annexed as Annexure No. 1 to this petition. Therefore, I find that this O.A., at this stage is premature. However, liberty is given to the applicant to give a proper representation to the authorities within one week from the date of receipt of copy of this order and also to apply pursuant to the advertisement even now.



In case, applicant gives such a representation or application for the post as advertised by the respondents, I am sure, respondents would apply their mind and pass appropriate orders thereon within a period of one month from said date under intimation to the applicant. It goes without saying that the orders passed should be well reasoned orders.

8. With the above directions, this O.A. is disposed of at the admission stage itself without going into the merits of the case. No order as to costs.



MEMBER(J)

LUCKNOW: DATED: 5.9.2003.

V.