

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No. 542/2009

This the 12th day of October , 2012

Hon'ble Sri Justice Alok Kumar Singh, Member (J)

Chandra Prakash Yadav aged about 26 years son of late Ram Achal, resident of village Tikaitganj, Post Kakori, District-Lucknow.

Applicant

By Advocate: Sri Abhishek Mishra for Ms. P.Bisht

Versus

1. Union of India through the Secretary, Ministry of Agriculture, Govt. of India, New Delhi.
2. Indian Council for Agricultural Research, Krishi Bhawan, Dr. Rajendra Prasad, New Delhi through its Director General.
3. Central Institute for Subtropical Horticulture , Rehmankhara, Kakori, Lucknow through its Director.
4. The Director, Central Institute for Subtropical Horticulture, Rehmankhara, Kakori, Lucknow.

Respondents

By Advocate: Sri S.P.Singh

ORDER (Dictated in Open Court)

HON'BLE SHRI JUSTICE ALOK KUMAR SINGH, MEMBER (J)

This O.A. has been filed for the following reliefs:-

- i) quash / set aside the order dated 3.8.2009 passed by the respondent No. 3 (Annexure No.1 to this Original Application) by means of which the representation of the applicant dated 22.7.2009 seeking compassionate appointment in place of his deceased father was rejected.
- ii) issue a direction to the respondents to consider the candidature of the applicant for giving him compassionate appointment after taking his educational qualifications into consideration.



iii) issue any other order or direction, which this Hon'ble Tribunal may deem just, fit and proper in the circumstances of the case favouring the applicant.

iv) Allow the O.A. with costs.

2. According to the case of the applicant, father of the applicant unfortunately expired on 6.10.2008 while in service of respondent No.3. The applicant moved an application seeking compassionate appointment on 5.11.2008. He did not receive any response from the respondents. Instead an advertisement for recruitment of one post of Junior Clerk came to the notice of the applicant. Thereafter, he immediately moved a representation dated 22.7.2009 (Annexure 8), On 3.8.2009 (Annexure 1) he was informed that presently no post is available for making compassionate appointment and that the recruitment of one post of Junior Clerk is under process. Hence this OA.

3. This O.A. has been contested by filing a detailed C.A. saying that the application of the applicant was considered sympathetically in the light of existing rules for making compassionate appointment by the competent authority. Such appointment can be made only upto 5% quota which was not available at present, on account of which the case of the applicant could not be recommended. Regarding the said advertisement of one vacant post of Junior Clerk, it is said that the post has been abolished and as such the advertisement has no relevance.

4. I have heard the learned counsel for parties and perused the entire material on record.

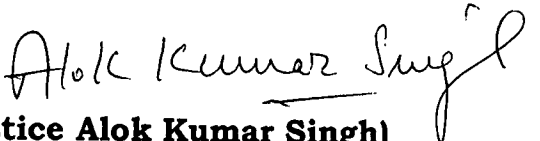
5. The scheme for compassionate appointment is over and above whatever is admissible to the legal heirs of the deceased employee as benefit of service which they got on the death of the



employee. It is true that there is a cap of 5% of the total vacancy for this purpose. According to the respondents, for the present, no post is available for the purpose. This contention has been simply denied by the applicant in the Rejoinder Reply but in the absence of any relevant material on record, this Tribunal cannot hold that vacancy (ies) exist. Nevertheless, on account of non-availability of vacancy at present, the application/ claim of the applicant cannot be treated or deemed closed.

6. Earlier, an O.M. dated 5.5.2003 issued by the DOP&T was issued for considering the matters of compassionate appointment consecutively for three times, if the candidate is found eligible. This O.M. having been held ultra virus, has now been withdrawn by none other than DOP&T itself on 26.7.2012.

7. In the conspectus of the above, this O.A. is finally disposed of with the direction to the respondents to consider the case of the applicant for compassionate appointment in accordance with relevant rules and instructions issued from time to time as and when vacancy becomes available within 5% of quota and pass appropriate orders in accordance with law. No order as to costs.


(Justice Alok Kumar Singh)
Member (J) 12.10.12

HLS/-