

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW
BENCH, LUCKNOW**

**Original Application No.97/2010
This the 18 Day of April 2011**

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

Amar Nath Sukul, aged about 29 years, son of late Dhiredra Nath Sukul, at present residing at K-1/1388, Ashiyana Colony, Lucknow.

...Applicant.

By Advocate: Sri Rajan Roy.

Versus.

1. Union of India through the Secretary, Ministry of Defence, Government of Indian, New Delhi.
2. Principal Controller of Defence Accounts (Central Command) Lucknow Cantt., Lucknow.
3. Controller of Defence Accounts (CC), (Central Command) Lucknow Cantt., Lucknow.
4. Deputy Controller of Defence Accounts (Central Command) Lucknow Cantt., Lucknow.
5. Controller of Defence Accounts, New Delhi.

.... Respondents.

By Advocate: Sri Sunil Sharma.

ORDER

By Hon'ble Mr. Justice Alok Kumar Singh, Member (J)

This O.A. has been filed for quashing of the orders dated 30.03.2009 (wrongly typed as 09.03.2009 in O.A.), 07.01.2010, 09.01.2006 and 29.03.2006 contained in Annexure-1, Annexure-2, Annexure-3 and Annexure-4 and for issuing direction to consider the compassionate appointment of the applicant in pursuance of the offer

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of compassionate appointment dated 24.09.2008 within stipulated period.

2. According to the applicant his father died while working on the post of Senior Auditor in the office of Principal Controller of Defence Accounts (Central Command), Lucknow on 14.08.2005, leaving behind his wife and three children (two unmarried daughters and one unmarried son). Within ten days of the death i.e. 24.08.2005, the mother of the applicant has submitted representation for compassionate appointment followed by another representation dated 31.08.2005 and 02.12.2005. On 09.01.2006, the opposite party no.2 issued an order declining the compassionate appointment on the ground that the widow is receiving family pension and she has also received retrial benefits of Rs.605802/- It was further sated that no vacancy was available at that time. In the next month i.e. 10.02.2006 applicant's mother submitted another representation saying that there is a debt liability of Rs. 3.0 lacks but on 29.03.2006, the opposite party no.4 again intimated the refusal of the claim of compassionate appointment. On 18.08.2008, the applicant's mother again submitted representation. Since three vacancies were released by C.G.D.A. as such the Board of Officers reviewed the case of the applicant and recommended it to opposite party no.2, who duly approved it. On 03.09.2008, the applicant received a letter from opposite party no.2 saying that his name was under consideration and he was required to appear in the written examination on 16.09.2008. He was also required to bring original certificates showing educational

qualification. On 16.09.2008, the applicant appeared in the written examination and submitted relevant certificates. The applicant was declared successful in the written examination and eligibility test and as such on 24.09.2008 an offer of appointment was made vide letter of the same date saying that the matter is under consideration for opposite party no.2 and applicant's first posting is expected to be at Lucknow or Kanpur. He was also directed to be present for medical examination before the Chief Medical Officer, Lucknow on 22.10.2008. Accordingly, he appeared for the medical examination before the Chief Medical Officer, Lucknow. On 11.02.2009, the Assistant Controller, Defence Accounts was directed to assess the financial condition of the family of Late Sukul. During the time of inspection the applicant and his family members informed him that the elder daughter Miss Juhi Sukul, who was employed in a private school on a salary of Rs.3000/- per month, had got married on 11.12.2005 i.e. after about four months of the death of applicant's father. On 13.09.2009 and 23.03.2009, the applicant's mother again submitted representations stating about the poor financial condition and also informing again that elder daughter Juhi Sukul having got married (Annexure-14 dated 13.03.2009 and Annexure-15 dated 23.03.2009). Thereafter, the applicant received an order dated 30.03.2009 inter-alia stating there in that since the applicant was above the prescribed upper limit of 27 years on the day of the examination, i.e. 16.09.2008, as such, Controller of Defence Accounts, New Delhi was requested to grant relaxation in the upper

age limit and while doing so it came to the notice that Miss Juhi Sukul, one of daughter of the deceased employee was employed in a private school with salary of Rs.3000/- per month and hence the proposal for compassionate appointment was not agreed and therefore the proposal letter dated 24.09.2009 may be treated as withdrawn. According to the applicant this letter is based on absolutely incorrect facts, i.e. Miss Juhi Sukul got married in December, 2005 itself and it was intimated to the opposite parties on 11.02.2009 and thereafter on 13.03.2009 and 23.03.2009. Again on 18.4.2009 a representation (Annexure-16) was given saying that Miss Juhi Sukul has been married to Sri Anil Agnihotri on 11.12.2005. Two more representations dated 16.07.2009 and 02.09.2009 (Annexure-17 and Annexure-18) were also given followed by representation date 11.11.2009 (Annexure-19). But to utter surprise to the applicant that impugned order dated 07.01.2010 was received by the applicant's mother saying that on account of lapse of three years the case has been rejected (closed) by the competent authority as it did not fall within indigency criteria. It is further stated that there are catena of decisions that the receipt of family pension and post retirement benefits could not be a ground for denying the compassionate appointment. If that is accepted as plausible reason for refusing such appointments, no dependent of central government can get it because monthly pension is invariably more than 1767.20 which is the poverty line, which has been taken as a benchmark for assessing the financial condition of the family. It is further said that as per Office Memo

dated 09.10.1998 which also contains the relevant schemes for compassionate appointment, the age of eligibility has to be determined on the date of application and therefore, the opposite party no.2 erred in treating the applicant as overage "as on the date of selection". On the relevant date of application she was much below of 27 years of age therefore, the matter was wrongly referred to opposite party no.5 for age relaxation.

3. The respondents have filed Counter Affidavit and contested the case saying that the mother of the applicant was intimated by means of a speaking order dated 09.01.2006 that the department is unable to offer the appointment on compassionate ground as the case of the applicant does not fulfill the indigency criteria and there is no vacancy available in the department. Again on 24.03.2006, the case was put up before the Board and the authorities reached to the similar conclusion and therefore rejected the claim of the applicant vide letter dated 29.03.2006. It is further said that as per yardstick to determine the most deserving cases, the cut off has been fixed as income below Rs.1767.20 for five members of a family. Earlier the minimum points were fixed as 80 on 100 point parameter/scale to determine indigency criteria. It was decreased by the competent authority up to 60 points in the year 2007 and further lowered as 40 points in the year 2008 for determining the indigency criteria. According to the OM No.F 14104/19/2002-Estt (D) dated 05.05.2003 issued by DOPT the maximum time name of a person can be kept under consideration for offering compassionate appointment will be three years where after, it

shall be closed. As soon as three vacancies were released by the C.G.D.A., New Delhi (Respondent No.5) vide letter dated 14.03.2008 the mother of the applicant again preferred an application for appointment of her son. His case was considered in view of minimum points of 40 and his case was placed before the Board of Officer. The Board recommended his name on compassionate ground having 45 points on the point of scale/parameter. Therefore, vide letter dated 03.09.2008, the applicant was proposed for appointment. He was asked to appear in the written examination on 16.09.2008. After obtaining 62.5% marks the applicant was declared successful in the examination. Hence a proposal letter for compassionate appointment dated 24.09.2008 was issued to the applicant. But his date of birth being 25.6.1980, as on 03.09.2008 when he was selected for appointment, he had crossed the upper age limit and therefore his case was referred to the Respondent No.5 for relaxation. During this time, it came to the notice that his case could not be considered again because his case has already been rejected in January, 2006 on indigency criteria. Hence order dated 30.03.2009 was issued and letter dated 24.09.2008 was withdrawn. But the applicant's mother made representation dated 18.04.2009 and 02.09.2009. She was informed vide letter dated 07.01.2010 upholding the earlier order dated 09.01.2006

4. In the Rejoinder Affidavit, most of the pleadings made earlier have been reiterated.

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5. On behalf of the applicant following three case laws have also been cited:-

(i). **Hari Ram Vs. Food Corporation of India & Others (2009)**

3 UPLBEC-2212 Hon'ble Sri Justice Sunil Ambwani (J); it was held in this case that scheme of compassionate appointment has to be made on human and sympathetic consideration. The instructions contained in O.M. issued vide DOPT O.M. No. F 14104/19/2002-Estt (D) dated 05.05.2003 fixing time limit of three years for offering compassionate appointment was declared irrational arbitrary and violative of Article-14 and 16 of the Constitution.

(ii). **(2005) 10 SCC-289 Govind Prakash Verma Vs. Life**

Insurance Corporation of India & Others. In this case, it was laid down that scheme of compassionate appointment is over and above whatever is admissible to the legal representatives of deceased employee as benefit of service which they get on the death of employee. Therefore, compassionate appointment cannot be refused on the ground that any member of family had received such benefit. It was held that inference of gainful employment of elder brother of claimant (son of employee dying in harness) for compassionate appointment could not be acted upon.

(iii). **(2006) 6 SCC-493 Balbir Kaur & Another Vs. Steel Authority**

of India & Others; according to an agreement introducing a scheme dated 01.09.1989 with the Steel Authority of India a Family Benefit Scheme was introduced in which during the time the deceased employee retired on superannuation had he been alive, and in lieu

thereof, the family were to get monthly payment equal to the basic pay plus dearness allowance. The Hon'ble Court held that this agreement did not withdraw the benefit of compassionate appointment already available to the employees.

6. I have heard the learned counsel for the parties at length and perused the material on record.

7. The following facts are not disputed;

(i). The applicant's father Late Dhiredra Nath Sukul while working in the office of the respondents, died on 14.08.2005 leaving behind his widow and three children (2 unmarried daughters and one unmarried son). The widow of Sukul submitted a representation for compassionate appointment which was declined on the ground that she is receiving family pension and has also received retriial benefits. Therefore, his case did not fulfill the indigency criteria. Further, there was no vacancy available at that time. The applicant was informed about this decision vide letter dated 09.01.206 (Anneuxre-3) and 29.03.2006 (Anneuxre-4). Thereafter applicant's mother i.e. widow of Sri Sukul again submitted a representation on 18.08.2008. Since three vacancies were released by CGDA, as such Board of Officers reviewed the case of the applicant and recommended it to the opposite party no.2, who duly approved it. On 03.09.2008, the applicant received a letter from opposite party no.2 saying that his name was under consideration. He was therefore required to appear in the written examination on 16.09.2008. Further, he was also required to bring original certificates showing his educational qualifications. On

16.09.2008, the applicant was appeared in the written examination and submitted relevant certificates. In this regard in the relevant paragraph of C.A. it has been further added that the applicant was declared successful with obtaining 62.5% marks. In respect of indigency criteria, it has been added in the counter affidavit that earlier minimum points were fixed as 80 on 100 point parameter/scale to determine indigency criteria. But it was decreased by the competent authority up to 60 points in the year 2007 and further lowered as 40 points in the year 2008. After the applicant was declared successful in the written examination and eligibility test, an offer of appointment was made vide letter dated 24.09.2008 saying that the matter is under consideration and applicant's first posting is likely to be made either at Lucknow or Kanpur. He was also directed to be present for medical examination before the Chief Medical Officer, Lucknow on 22.10.2008. Accordingly the applicant appeared for medical examination. Thereafter on 11.02.2009, on 11.02.2009, the Assistant Controller, Defence Accounts was directed to assess the financial condition of the family of Late Sukul. During the time of inspection the applicant and his family members informed him that the elder daughter Miss Juhi Sukul, who was employed in a private school on a salary of Rs.3000/- per month, had got married on 11.12.2005 i.e. after about four months of the death of applicant's father. On 13.09.2009 and 23.03.2009, the applicant's mother again submitted representations stating about the poor financial condition and also informing again that elder daughter Juhi Sukul had got married

(Annexure-14 dated 13.03.2009 and Annexure-15 dated 23.03.2009).

The pleadings about the marriage of Miss Juhi Sukul on 11.12.2005 and the factum about furnishing this information to the Assistant Controller, Defence Accounts, who was making assessment of financial condition of the family and also giving written information to the respondents on 13.09.2009 and 23.03.2009 Annexure-14 and Annexure 15 are specifically mentioned in the paragraph nos. 4.19, 4.23 and 4.31. These paragraphs have been replied in paragraphs nos. 15.18 and 23 respectively of the counter affidavit. But these contentions have not been controverted. It goes without saying that if some pleadings have not been controverted specifically the same are deemed to be proved.

8. From hear onwards, it appears that the respondents took a "U" turn. Instead of adhering their own stand, the respondents sent a letter / order dated 30.03.2009 (Annexue-1) inter-allia stating that since the applicant was above the prescribed upper limit of 27 years on the day of the examination, i.e. 16.09.2008, as such, Controller of Defence Accounts, New Delhi was requested to grant relaxation in the upper age limit and while doing so it came to the notice that Miss Juhi Sukul, one of daughter of the deceased employee was employed in a private school with salary of Rs.3000/- per month and hence the proposal for compassionate appointment was not agreed and therefore the proposal letter dated 24.09.2009 may be treated as withdrawn. This order dated 30.03.2009 has been assailed by the applicant on two counts. Firstly, it has been said that the respondents were under a

wrong notion that the age has to be seen as on date of examination. In para 4.39, it has been especially pleaded that as per Office Memo dated 09.10.1998 which also contains the relevant schemes for compassionate appointment, the upper age limit has to be seen as on the date of application and not on the date of appointment. Therefore, the opposite party no.2 erred in treating the applicant as overage "as on the date of selection" because the applicant was below 27 years of age when he submitted his application. Hence the matter was wrongly referred to opposite party no.5 for age relaxation. And in any case the relaxation of age is permissible under the scheme. These pleading of the OA have been replied with in para-30 of the counter affidavit. I have carefully gone through this paragraph. There is not even a whisper about O.M. dated 09.10.1998 and nowhere it has been specifically denied that according to this OM the age of eligibility was to be seen on the date of application and not the date of appointment or selection. Therefore in view of the absence of any specific denial of the aforesaid pleadings in para-4.30 of the OA the only conclusion is that the opposite party no.2 erred in finding the applicant overage as on the date of selection. It has not been further averred in this paragraph that the applicant was below 27 year of age when he submitted the application. This pleading has also not been denied. Hence it is deemed to be proved. Therefore, there was no occasion for the opposite party no.2 to have recommended to opposite party no.5 for age relaxation. I therefore find substance in the aforesaid submissions made on behalf of the applicant. Secondly, the order

dated 30.03.2009 has been assailed on the ground that it was wrongly taken into consideration that one of the members of the deceased family Miss Juhi Sukul is employed in a private school with salary of Rs.3000/- per month and hence the proposal of compassionate appointment of the applicant was not agreed too. As already mentioned hereinabove in the admitted facts (and facts not specifically denied), time and again the respondents were informed that elder daughter Miss Juhi Sukul was married with Sri Anil Agnihotri in the year 2005 i.e. much earlier than the offer of compassionate appointment dated 24.09.2998 and further, it was also specifically pleaded in paragraph 4.23 that after marriage she was residing with her in-laws and also left the employment. This fact were brought to the notice of Assistant Controller, Defence Accounts when he visited to the residence of the applicant for assessing financial condition and it was also mentioned in letter/ representations dated 13.03.2009 and 23.03.2009. These pleadings have also not been specifically denied. Therefore, these pleadings have to be construed to have been substantiated. Thus, even if the elder daughter of the deceased got employment in a private school with a salary of Rs.3000/- per month as soon as she got married in the year 2005 and she starting residing with her in-laws, she was no more the member of the deceased family. Moreover, as she left her employment there was no occasion for the respondents to have taken into account the aforesaid monthly income of Rs.3000/- per month which was in fact not available to the family of the deceased. Therefore, the impugned

order dated 30.03.2009 rejecting the claim on indigency criteria on the aforesaid ground was without any basis.

9. After receiving the aforesaid order dated 30.03.2009 two representation dated 02.09.2009 and 11.11.2009 were made from the side of the applicant for reconsideration. This time, it was rejected on the ground that in O.M. dated 05.05.2003 issued by the DOPT, it has been provided that maximum limit for consideration of the cases for compassionate appointment is three years and thereafter such cases should be closed. On the basis of this O.M., the case of the applicant was closed saying that it has already been informed that the case did not fall within the indigency criteria as has already been informed vide order dated 09.1.2006. Finally, the aforesaid representations dated 02.09.2009 and 11.11.2009 were rejected vide order/letter dated 07.01.2010 (Annexure-2) which has also been impugned. This order/letter has also been assailed on two grounds. Firstly, the aforesaid O.M. No.14014/19/2002-Estt. (D) dated 05.05.2003 fixing limit of three years for offering compassionate appointment has been declared irrational, arbitrary, unreasonable and violative of Article-14 and 16 of the Constitution of India by Hon'ble High Court of Judicature at Allahabad in the case of Hari Ram (Supra). Secondly, the reference has been made in the order dated 07.01.2010 that the case of the applicant has already been rejected on the ground that his case did not fall within the indigency criteria as has already informed vide order dated 09.01.2006. This order dated 09.01.2006 has become no-nest and meaningless. Because, at the time of passing of this order no

vacancy was available as mentioned in the order. But thereafter admittedly three vacancies were released by C.G.D.A. and according to the respondents themselves the minimum points which were fixed as 80 on 100 point parameter/scale to determine indigency criteria were decreased by the competent authority up to 60 points in the year 2007 and further lowered as 40 points in the year 2008 and therefore the Board of Officer admittedly reviewed the case of the applicant and recommendation was made to opposite party no.2 who also duly approved it. Not only this, a letter dated 30.09.2008 was also issued by opposite party no.2 informing the applicant that his name was under consideration. The applicant was even required to appear in the written examination in which he secured 62.5% marks and was declared successful. Finally, an offer of appointment dated 24.09.2008 was issued saying that applicant's first posting is expected either to Lucknow or Kanpur. He was also directed to be present for medical examination which he did. But as already said above thereafter the respondents took a plea that during the time of inspection about the financial condition of the applicant and his family members, it came to the notice that one of the member of the family namely Miss Juhi Sukul was getting salary of Rs.3000/- per month in a private school. In this regard, discussion has already been made hereinbefore that she was married to Sri Anil Agnihotri in the year 2005 and she also left the job. In any case she had ceased to be a member of the family of the deceased therefore, it was baseless finding against the applicant on the point of indigency criteria. After passing an order dated 09.1.2006,

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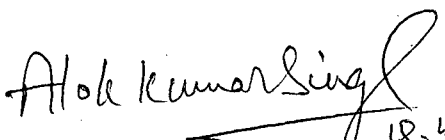
a representation dated 10.02.2006 was made from the side of the applicant which too was rejected vide order dated 29.03.2006. In both the orders dated 09.01.2006 and 29.03.2006 a mention has also been made in respect of family pension and terminal benefits which has been paid to the widow. The law has been settled on this point. The receipt of family pension and terminal benefits cannot be sole ground for denying the compassionate appointment. If that is accepted as plausible reason for refusing such appointments, no dependent of central government can get it because monthly pension is invariably more than 1767.20 which is the poverty line, which has been taken as a benchmark for assessing the financial condition of the family. In the case of Govind Prakash Verma (Supra) the Hon'ble Apex Court has even said that inference of gainful employment of elder brother of claimant for compassionate appointment could not be acted upon.

10. In view of the aforesaid discussions, I come to the conclusion that impugned order dated 30.03.2009 rejecting the claim on the indigency criteria was without any basis. Similarly, the order dated 07.01.2010 rejecting the representations dated 02.09.2009 and 11.11.2009 also suffers from embellishment as discussed above.

11. Besides everything, having regard to the settled principles of 'legitimate expectation' also the respondents are required to consider and provide the compassionate appointment to the applicant in pursuance of their offer of compassionate appointment dated 24.09.2008 as discussed hereinbefore.

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12. In view of the above, OA is allowed. The impugned orders dated 09.01.2006, 29.03.2006, 30.03.2009 (wrongly typed as 09.03.2009 in the relief clause, but duly covered in relief clause 8. (iii)) and 07.01.2010 are hereby quashed. The respondents are directed to consider for providing compassionate appointment to the applicant in pursuance of their offer of compassionate appointment dated 24.09.2008 within a period of three months from the date a certified copy of this order is produced before them. No order as to costs.


(Justice Alok Kumar Singh) 18-4-2011
Member (J)

Amit/-