

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No.260/2005

This the 9th day of September, 2005

HON'BLE SHRI SHANKER RAJU, MEMBER (J)

Brijesh Kumar aged about 26 years son of late Sri Jag Prasad Vishwakarma resident of Village Bitiya P.O. Babhani (Wazirganj) District Gond.

Applicant

By Advocate: Sri Sri M.K.Sharma

Versus

1. Union of India through its secretary, Ministry of Defence, New Delhi.
2. Chief of the Army Staff, Army Head Quarters, DHQ, PO New Delhi.
3. Director General, Supplies and Transport, Quartermaster General's Branch, Army Headquarters, DHQ, P.O., New Delhi.
4. Commanding Officer, HQ Central Command (Supplies and Transport), Lucknow.
5. Commanding Officer (CSD), HQ Central Command, Lucknow.
6. Commanding Officer, Reserve Supply Depot, Lucknow.

... Respondents

By Advocate: Shri K.K.Shukla

ORDER (ORAL)

By Hon'ble Shri Shanker Raju, Member (J)

Claim of the applicant for compassionate appointment, which has been turned down by the respondents on the ground that the retiral benefits have been accorded to the family of the deceased which has no liability of the unmarried daughter.

2. Learned counsel for the applicant placed reliance of a decision of the Hon'ble Allahabad High Court in **Subhash Chandra Yadav Vs. State Bank of India, 2005 (1) LBESR 459** and **Mritunjay Mishra Vs. Chief General Manager, State Bank of India, Lucknow reported in 2005 (1) E.S.C. (Allahabad), 134** to contend that retiral benefits i.e. family pension, provident fund should not be considered to refuse the compassionate appointment. The above law has been overruled by a decision of the Apex Court in **Punjan National Bank and others Vs. Ashwini Kumar Taneja 2005 (1) SLJ (SC) 30** where it is held that retiral benefits are valid consideration for considering the compassionate appointment.

3. However, keeping in light of hearing both the counsel for the parties, rejection of the request of the applicant which has taken any consideration only retiral benefits but has not considered the liability of minor sons and other

circumstances as per DOPT guidelines issued in 1998. This order is a mechanical order and does show application of mind to the scheme. Accordingly, as compassionate appointment cannot be claimed as a right, whereas there is a right of only consideration, O.A. is partly allowed by setting aside the order and directing the respondents to reconsider the case of the applicant. It is trite law that whatever in the order passed cannot be supplemented by the pleadings taken in the counter reply or otherwise. The case law cited by the counsel for respondents would not cover the issued involved in this O.A. as the very order passed by the respondents shows non application of mind. In the wake of decision of the **Chief Election Commissioner Vs. Mohinder Singh Gill** reported in AIR 1978 SC 851 where it is laid down that an order passed by the Union of India cannot be supplemented by reasons taken in the reply. In this view of the matter, respondents are directed to pass a reasoned order reconsidering the case of the applicant for compassionate appointment within a period of three months from the date of receipt of copy of this order. With the above directions, O.A. is disposed of. No costs.

S. Raju
(Shanker Raju)
Member (J)

HLS/-