

Lucknow this the 21st day of November, 2006.

Hon. Mr. Justice Khem Karan, Vice Chairman.

Amit Kumar Mishra, aged about 22 years, son of late Sri Shobh Nath, resident of C-3554, Sapna Colony, Rajajipuram, Lucknow.

Applicant.

By Advocate Shri Jawed Murtaza.

Vs.

1. Union of India through its Secretary, Ministry of Science and Technology, New Delhi.
2. Industrial Toxicological Research Center, Lucknow, through its Director, Lucknow.

Respondents.

By Advocate Shri P.K. Srivastava for Shri A.K. Chaturvedi.

Order (oral)

By Hon. Mr. Justice Khem Karan, Vice Chairman.

1. The applicant A.K. Mishra son of late Shri Shobh Nath Mishra, is praying for directing the respondents 1 and 2 to consider and decide his request for compassionate appointment. There is no dispute that his father was in employment of respondent No. 2 and he died on 12.10.2004, while still in service, leaving behind him the applicant and others as mentioned in para 4.3 of the O.A. He says that he applied on 3.11.04 to the respondent No. 2, for appointment under dying in harness rules and his mother also repeated that request by sending letter, dated 3.11.04 (A-3) and letters dated 6.11.04 and 6.4.05 (Annexures 4 and 5 respectively). His complaint is that till the date of filing of O.A., he was not informed about the decision, if any, taken on the request for compassionate appointment.

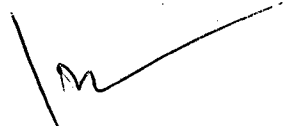


2. In their reply, the respondents have taken one of the pleas that the O.A. is bad for non-joinder of necessary party, namely Council of Scientific and Industrial Research (for short CSIR). They have stated in para 7 that the case of the applicant together with such other cases, was considered by the committee in its meeting dated 31.1.06 in accordance with the orders dated 9.10.98, 3.12.99, 28.12.99 and 5.5.03 (Annexures R-3 to R-6) issued by the Government but owing to non-availability of vacancy in the quota for compassionate appointment, none of them could be recommended for appointment. They have further stated that the applicant's claim for appointment on compassionate grounds shall be considered by the committee on availability of vacancies in subsequent years, in terms of the above mentioned government orders on the subject. They say that they have informed the applicant accordingly by sending a letter dated 6/8.2.2006 (copy of which is Annexure -7) and letter dated 22.2.06 (Annexure R-8).

3. By filing Rejoinder, the applicant has tried to point out that the case of the applicant was not considered in accordance with Govt. orders and that the excuse for not giving compassionate appointment to the applicant is not well-founded.

4. Shri P.K. Srivastava has submitted that CSIR is the necessary party, as I.T.R.C. (Respondent No.2) is only a Laboratory of CSIR and is not separate entity to that of CSIR. He says that whatever the directions are given by CSIR, are followed by ITRC and the applicant ought to have ^{impleaded} ~~implemented~~ CSIR as well. He has cited Prabodh Verma vs. State of U.P. (1984(4) SCC 251) in support of this argument.

5. Relying on Kasturi vs. Iyyam Perumal (2005(23), LCD, 1473, SC Shri Murtaza has tried to reply by saying that CSIR is not a necessary party as Director of ITRC (already impleaded as respondent No. 2) is the appointing authority and he is the sole authority to decide whether compassionate appointment should or should not be given. Shri Murtaza says that CSIR does not come into picture, in the case of the present applicant in so



far as compassionate appointment is concerned. The Tribunal has considered the respective submissions and is of the view that since Director ITRC is the appointing authority, and it is he who has to consider the request of the applicant, in accordance with the Government orders, so CSIR is not a necessary party. CSIR may be said to be a proper party but it is difficult to say that it is a necessary party, so preliminary objection is overruled.

6. Shri Murtaza has tried to say that the respondent No. 2 ought to have disclosed the details as pointed out in para 5 of the Rejoinder. He has also said that the respondents are under the wrong impression that such compassionate appointments are to be made against 5% vacancies of the direct recruit quota, but according to him, such appointments are to be made against 5% of the cadre strength of the direct recruitment. Shri P.K. Srivastava has taken the Tribunal through the relevant Govt. orders available on records as R-3 to R-6 and has submitted that under the rules, such compassionate appointments are permissible only against 5% vacancies of direct quota.

7. As, it is clearly stated in reply, that applicant's case is to be considered, on availability of such vacancies, so there appears no need to touch the merits⁴ of the claim of the applicant. None is challenging the provisions contained in above mentioned Govt. orders on the subject, so there is no need for entering into the discussion, as to whether, such compassionate appointments are to be made, against 5% of vacancies or of cadre strength available in a year or years of direct recruitment

8. The Tribunal is not expressing any opinion on the point as to whether the applicant is or is not entitled to any compassionate appointment as that has to be considered by the committee in accordance with the said orders.

9. So, this O.A. is finally disposed of with the directions to respondent No. 2 to ensure that the matter of the applicant relating to his compassionate appointment is considered in accordance with relevant Govt. orders on the subject as soon



as such vacancies become available and apprise the applicant of the decision so taken on his request. No order as to costs.

1. du - 4
21.11.06

Vice Chairman

s.a.