

**Central Administrative Tribunal, Lucknow Bench, Lucknow**

**Original Application No. 455/2008**

This the <sup>9</sup>~~7~~<sup>th</sup> day of March, 2010

**Hon'ble Dr. A.K.Mishra, Member (A)**

Manish Kumar Srivastava, aged about 23 years son of late Sri Shyam Behari r/o 568 K/14, Krishnapalli, Alambagh, Lucknow.

Applicant

By Advocate: Sri P.K. Srivastava

**Versus**

1. Union of India through its Secretary, Ministry of Science and Technology, Mausam Bhawan, Lodhi Road, New Delhi.
2. Director General of Meterology, Mausam Bhawan, Lodhi Road, New Delhi.
3. Director, Meteorology Centre, Amausi Airport, Lucknow.

Respondents

By Advocate: Sri Atul Dixit

**ORDER**

**Hon'ble Dr. A.K. Mishra, Member (A)**

The applicant has challenged the order dated 9.9.2008 of respondent No.2 in which the prayer of the applicant for appointment on compassionate ground had been rejected on the ground of non-availability of vacancies.

2. The father of the applicant, late Sri Shyam Behari, was working in the office of respondent No.3 on the post of Meteorological Attendant. He died on 26.1.2006 and the applicant made a representation on 25.8.2007 before respondent No.2 requesting for his appointment under dying-in-harness rule on compassionate ground. The mother of the applicant also made a representation on 8.9.2008 requesting the respondent authorities to give a suitable employment to the applicant, as the financial condition of the family was not good. The respondent No.2, however, rejected the representation in the impugned order dated 9.9.2008, on the ground that the applicant's position on the merit list drawn up by the committee which considered all such applications was at 12<sup>th</sup> and since, there were 10 vacant posts earmarked for



compassionate appointment, his case could not be considered. His representation was accordingly rejected.

3. The grounds taken by the applicant are that the financial conditions of his family were not good and there was no other source of livelihood for the family except the meager amount of pension received by his mother; that the respondent authorities did not take any decision within one year of the death of his father, although, it was incumbent on them to do so; that his representation has been rejected in an arbitrary manner without making proper verification of the financial conditions of his family; that mere non-availability of post could not be a legitimate ground to reject the application for compassionate appointment and the respondent authorities were required to create supernumerary post, if necessary, to adjust the claims of the applicant.

4. The respondents have stated that there were 21 candidates whose applications for compassionate appointment were considered by the committee constituted for the purpose in its meeting held on 20.12.2006. The applicant, on assessment of various factors as per Govt. guidelines, was assigned 12<sup>th</sup> position in the priority list. There were 10 vacancies which were earmarked for compassionate appointment, being 5% of vacancies coming under direct recruitment quota. The applicant's family got Rs.5,52,310/- towards retiral dues and subsequently another Rs.76,660/- towards arrears on account of VI<sup>th</sup> Central Pay Commission recommendation. The family was also in receipt of Rs.4715/- per month + Dearness Allowance as applicable from time to time. Since the case of the applicant could not come within first ten, he could not be considered for appointment against the available compassionate quota of 10 vacancies.

5. In the Additional Counter Reply, the respondents have filed a detailed evaluation statement (Annexure RA-1) of the cases which were considered by the committee meant for compassionate appointment. It shows that the applicant had scored total 56 points and was placed at 12<sup>th</sup> position. A list of candidates arranged in order of priority as per the evaluation made by the committee has been annexed at R-3. It gives the names and details of the first



ten candidates who scored more than the applicant, as far as weightage points were concerned. The evaluation sheet at Annexure RA-1 gives the details of candidates and the weightage points assigned to different factors as well as the points scored by the applicant along with others.

6. At the time of arguments, the learned counsel for the applicant requested for summoning of records to find out who were the candidates selected against the 10 vacancies and whether they were deserving ones vis-à-vis the claim of the applicant.

7. I have gone through the pleadings and given thoughtful consideration to the rival contentions. Annexure R-3 filed by the respondents clearly indicates the order of priority and the respective positions occupied by the 21 candidates, whose cases were considered by the committee. Annexure RA-1 also gives the weightage given to different aspects of the families of candidates who were being considered. Therefore, no useful purpose would be served to summon the records when the relevant information is already available in our file.

8. The contention of the applicant that a supernumerary post should be created to adjust all the candidates who have applied under dying-in-harness rules is not supported by law. On the other hand, guidelines prescribe that only 5% of direct recruitment vacancies should be earmarked for compassionate appointment, which has been followed in the present case. These guidelines have been issued pursuant to the principles enunciated by the Supreme Court. The position has been clarified in the observation made by the Supreme Court in the case of **Union of India and others Vs. Joginder Sharma [JT 2002(7) SC 420]**. Relevant extracts are given below:-

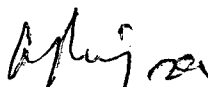
“Compassionate appointment is intended to enable the family of the deceased employee to tide over the sudden crises resulting due to death of the sole breadwinner, who died leaving the family in penury and without sufficient means of livelihood. If under the scheme in force any such claim for compassionate appointment can be countenanced only as against a specified number of vacancies arising, in this case 5 per cent, which ceiling it is claimed came to be imposed in view of certain observations emanating from this court in an earlier decision, the tribunal or the High Court cannot compel the department concerned to relax the ceiling and appoint a person. Since, this method of appointment is in deviation of the normal recruitment process under the rules, where people are waiting in queue indefinitely, the policy laid down by the government regarding such appointment should not be departed from by the



court/ tribunals , merely on account of sympathetic consideration or hardships of the person concerned.”

9. It may be mentioned that appointment on compassionate ground is not a matter of right. As a matter of fact, it runs counter to the constitutional provision which guarantees equal opportunity to all. However, special dispensation has been granted keeping in view the distress of families of Govt. servants which are left with no livelihood on the death of earning member of the family but this dispensation has been circumscribed by conditions that the quota for compassionate appointment should not exceed 5% of available vacancies for direct recruitment and others prescribed in the guidelines. There is no support to the contention that supernumerary posts should be created to adjust all the claimants. On the other hand, the Apex Court in cases of **Himachal Road Transport Corporation Vs. Dinesh Kumar (JT 1996 (5) SC 319 on May 7, 1996** and **Hindustan Aeronautics Limited Vs. Smt. A. Radhika Thirumalai (JT 1996 (9) SC 197)** have said that compassionate appointment could be made only if vacancies existed.

10. In the circumstances, I do not find any merit in this application, which is accordingly dismissed. No costs.

  
(Dr. A.K. Mishra)  
Member (A) 09/10/10

HLS/-