

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

**Original Application No. 331/2008**

This the 13th day of May, 2010

**Hon'ble Mr.Justice Shiv Charan Sharma, Member (J)**

Alok Kumar Shukla aged about 24 years son of late Sri Satya Prakash Shukla resident of Village Locha, Post Office Hadha, District- Unnao- Uttar Pradesh.

**Applicant**

By Advocate: Sri S. Lavania

**Versus**

1. Union of India through Secretary, Ministry of Defence, South Block, New Delhi.
2. Engineer-in-Chief, Army Headquarters, Kashmir House, Rajaji Marg, DHQ PO, New Delhi-110011.
3. Chief Engineer, Headquarters, Central Command, Lucknow-2.
4. Chief Engineer, Lucknow zone, Lucknow-2.
5. Km. Gaisu Saxena, aged about 26 years d/o late Sri U.K. SAxena c/o Headquarters Chief Engineer, Central Command, Lucknow Zone, Lucknow.

**Respondents**

By Advocate: Sri K.K. Shukla

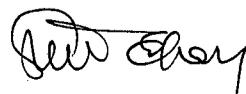
**ORDER**

**Hon'ble Mr. Justice Shiv Charan Sharma, Member (J)**

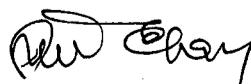
The instant O.A. has been filed by the applicant for quashing/ setting aside the order dated <sup>10TH</sup> ~~2nd~~ March, 2008 contained in Annexure A-1. Further prayer has also been made to direct the respondents to consider the case of the applicant and appoint him from the date those having lesser marks than him were appointed under the scheme for compassionate appointment with consequential benefits.

2. Pleadings may be summarized as follows:-

It has been alleged in the application by the applicant that consequent on the death of his father on 15<sup>th</sup> June, 2002, the applicant in the month of July, 2002 applied for compassionate appointment. Under the scheme of compassionate appointment, marks were awarded to each individual on the basis of a prescribed proforma. The marks were allotted considering the degree of hardships of the candidates applying for appointment under the scheme. Higher marks means greater degree of hardship. Preference must be



given over the individual securing lesser marks. Under the scheme, applicant secured 41 marks. His case was considered by the Board of Officers (later on called BOO) on 12<sup>th</sup> April, 2005 and on subsequent days and was placed at SI. No.11 of the recommended candidates for appointment (Annexure A-2) is the copy of proceedings. Later on the case of the applicant was considered on 16/17.8.2005 and was recommended showing at SI.No.11. Later on, the meeting of the BOO was convened on 21.1.2006 but the applicant was not recommended for appointment as evident from Annexure A-4. Again, he was considered on 16<sup>th</sup> August, 2006 in the meeting of BOO and he was recommended for appointment but later on the applicant was not considered for appointment and he was ignored whereas preference was given to the individual cases securing less marks. One Km. Gaisu Saxena d/o late U.K. Saxena obtained only 36 marks but she was appointed on the post of LDC on compassionate ground vide letter dated 24<sup>th</sup> March, 2006. Even the name of dependent of a person who died in 1990 was considered. The act of the committee is discriminatory and arbitrary. Earlier, an O.A. was instituted and the same was disposed of on 19<sup>th</sup> December, 2007. Certain directions were given by the Tribunal for considering the name of the applicant for appointment while disposing of O.A. No. 49/2007. The Tribunal observed " that order dated 27.6.2007 does not furnish any information in respect of the contention raised by the applicant." In spite of the direction of the Tribunal, the application of the applicant was rejected and the matter was finally closed as being more than 3 years old. Km. Gaisu Saxena secured 36 marks whereas the applicant obtained 41 marks. In accordance of scheme of compassionate appointment, the name of the applicant ought to have been considered and recommended and appointment should have been given to him. The BOO observed while rejecting the application of the applicant that he had already completed 3 years period as laid down as maximum consideration period and his case was finally closed. Km. Gaisu Saxena had rightly been appointed. The act of respondents are discriminatory, arbitrary and most unjustified.



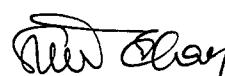
3. Respondents contested the case filed counter affidavit to the O.A. and they have specifically denied the allegations of the applicant. However, it has been accepted that the father of the applicant died while performing duty. That his case was duly considered but in accordance with the office Memorandum of DOP&T, due to expiry of 3 years, his application was rejected and the matter was closed. In view of the rules and regulations on the subject, the name of the individual for compassionate appointment is to be considered 4 times in compassionate board in a year. But the name of the individual was not considered for the post of LDC due to more deserving cases and limited vacancies available. A final speaking order was passed in pursuance of the direction of the Tribunal. In view of several judgments of the Hon'ble Apex Court, the appointment on compassionate ground is not a matter of right. As per scheme of compassionate appointment, the dependents of the deceased are considered on the merits basis as per 100 points system laid down by the DOP&T, New Delhi in their letter No. 19(4) /824-99/1997 (D) (Lab) dated 19.3.2001. The individuals with higher marks are being given appointment as per vacancies available for particular post. The applicant, earlier was placed at SI. No. 11. The name of the applicant was not approved for the post of LDC due to more deserving cases and limited vacancies. Proceedings of the BOO has been filed as Annexure No.1. The case for compassionate appointment have been considered upto 30<sup>th</sup> June, 2002 considering three years period prior to the cut off date of the board of the QE June, 2005 i.e. 30<sup>th</sup> June, 2005. The date of death of father of the applicant was 15<sup>th</sup> June, 2002 whereas the date of death of father of Km. Gaisu Saxena was 19<sup>th</sup> December, 2002. Hence Km. Gaisu Saxena was found eligible and appointed whereas the case of the applicant was not found fit as per DOP&T O.M. No. 14014/19/2003 (D) dated 5<sup>th</sup> May, 2003. The selection of Km. Gaisu Saxena is based on the directions and policies issued by DOP&T from time to time. The letter of DOP&T has been annexed as Annexure No.2 to the Counter Reply. The case of the applicant for appointment on compassionate ground was considered 4 times by virtue of order dated 10<sup>th</sup> March, 2008 but he was not

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found fit for appointment hence in view of direction of the DOP&T letter, the case of the applicant has been closed. There are several judgments of the Apex Court to the effect that the compassionate appointment is not a matter of right and it is subject to quota of 5%.

4. I have heard Sri S. Lavania, Advocate for the applicant and Sri K.K.Shukla, Advocate for the respondents and I have also considered the entire material of records.

5. In view of the judgment passed by this Tribunal in O.A. No. 49/2007 decided on 19<sup>th</sup> December, 2007, the entire controversy is not required to be considered. It is an undisputed and established case of the parties that the father of the applicant died in the Month of June 2002 while discharging duties. It is also an admitted fact that an application for compassionate appointment was submitted by the applicant to the respondents in the month of July, 2002. It is also established fact that there is a scheme laid down for compassionate appointment ~~and~~ in view of the scheme of compassionate appointment, certain marks are to be allotted to the individual. By following that procedure, respondents awarded 41 marks to the applicant whereas Km. Gaisu Saxena was awarded 36 marks. It is also undisputed facts that according to the scheme of the appointment, a person securing more marks is to be given preference in comparison to the individual to whom lesser marks are awarded. Hence, in view of the scheme of compassionate appointment as the applicant was allotted 41 marks hence preference ought to have been given to him over Km. Gaisu Saxena who secured only 36 marks. All these facts were considered by the Tribunal in the judgment dated 19<sup>th</sup> December, 2007. Vide the above judgment, the Tribunal set aside the order of rejection regarding the appointment of the applicant and it was directed "In view of the above circumstances, this O.A. is disposed of with a direction to the respondents authorities to reconsider the claim of the applicant for compassionate appointment as per rules and pass a reasoned order furnishing the details as per rules within a period of three months. No order as to costs." Hence, in pursuance of the direction of the Tribunal, the case of the applicant was reconsidered and again the case of the



applicant was rejected solely on the basis of a letter of DOP&T as the father of the applicant died more than 3 years earlier to 30<sup>th</sup> June, 2005 whereas the father of Km. Gaisu Saxena died in the month of December, 2002, hence her case was within 3 years of the date of consideration i.e. on 30<sup>th</sup> June, 2005 and hence she was appointed and the case of the applicant was rejected solely on this ground. Under these circumstances, while deciding this O.A., only it is required for consideration that whether the ground for rejection of the applicant's case is justified or not.

6. Annexure A-1 is most relevant in this connection. It is a letter dated 10<sup>th</sup> March, 2008. It has been observed in the letter that:-

"5. DOP&T O.M. No. 14014/19/2003 –Estt (D) dated 5<sup>th</sup> May, 2003 lays down the time limit for making compassionate appointment and prescribes the maximum time a person's name can be kept under consideration for offering compassionate appointment will be three years subject to the conditions that the prescribed committee has reviewed and certified the penurious condition of the applicant at the end of first and second year. After three years, if compassionate appointment is not possible to be offered to the applicant, his case will be finally closed and will not be considered again.

6. Therefore, all the new, old and VIP reference cases irrespective of date of death are included in Board of Officer as per policy to consider them as per laid down guidelines /rules and reach a conclusion for offering appointment as per availability of vacancy. No applicant can be considered for appointment though he might have been included in the BOO after lapse of three years from date of death as per DOP&T referred above. The case of Sunita Kumari d/o late Mool Chand Chaudhri Maz, who died on 29<sup>th</sup> November, 1990 was also included in the board and she has secured 66 marks. However, based on DOP&T guidelines she has not been offered appointment being more than three years old case.

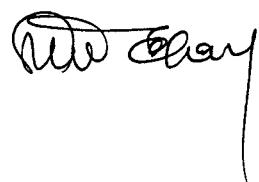
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7. Therefore, after due circumspection and consideration in the light of the guidelines of DOP&T and various judgments of the Hon'ble Supreme Court and that the appointment on compassionate grounds is not a matter of right and after a balanced and objective assessment of the totality of the circumstances of the case, the competent authority has considered the case but could not select Sri Alok Kumar s/o late Satya Prakash Shukla for the employment assistance on compassionate grounds since applicant had already completed three years period laid down as maximum consideration period. Hence your case was finally closed and disposed of by issue of final speaking order vide our letter No. 120425/AK SHUKLA/9/EIC (1) dated 27<sup>th</sup> June, 2007."

Hence the above wordings of the letter of the respondents shows that his case was rejected mainly on the ground that his father died more than 3 years earlier to 30<sup>th</sup> June, 2005.

7. Respondents also alleged that the case of the applicant was considered for compassionate appointment as per direction of the Tribunal but in view of memorandum of DOP&T, his case was not found fit. Copy of the office memorandum of DOP&T has also been annexed. Because the case of the applicant was rejected solely on the basis of letter of DOP&T, hence it is also essential to consider the O.M. issued by DOP&T on 5<sup>th</sup> May, 2003. It has been laid down in this O.M. –

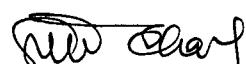
"It has, therefore, been decided that if compassionate appointment to genuine and deserving cases, as per the guidelines contained in the above OMs is not possible in the first year, due to non-availability of regular vacancy, the prescribed committee may review such cases to evaluate the financial conditions of the family, to arrive at a decision as to whether a particular case warrants extension by one more year, for consideration for compassionate appointment by the committee, subject to availability of a clear vacancy within the prescribed 5% quota. If on scrutiny by the committee, a case is considered to be deserving, the



name of such a person can be continued for consideration for one more year.

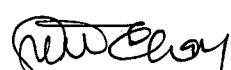
The maximum time a person's name can be kept under consideration for offering compassionate appointment will be three years subject to the condition that the prescribed committee has reviewed and certified the penurious condition of the applicant at the end of the first and the second year. After three years, if compassionate appointment is not possible to be offered, to the applicant his case will be finally closed and will not be considered again."

8. It is evident from the perusal of this O.M. dated 5th May, 2003 that certain guidelines have been laid down by the DOP&T for making compassionate appointment. It has not been provided in this O.M. that the case of a particular individual shall be considered only after 3 years and then the case will be rejected by the respondents on the ground that as per O.M. of the DOP&T due to expiry of 3 years, the applicant's case cannot be considered for appointment and hence it is rejected and closed. It laid down certain conditions. Undisputedly, the appointment shall be made subject to availability of vacancy that only upto 5% quota. It is laid down in guidelines that the case of a particular individual is to be considered in the first year but if due to non-availability of regular vacancy, it is not possible to make appointment, then his case will be reviewed by extending one more year. But if during second year also, it is not possible to make appointment subject to non-availability of a clear vacancy within prescribed 5% quota, then the case of the deserving persons can be continued for consideration for one more year and thereafter it has been provided that the maximum time for keeping the persons name pending for consideration is 3 years. It means, beyond three years period, no compassionate appointment shall be given to an individual. But there are certain obligations specifically provided for the respondents to fulfill prior to rejecting the case of individual after expiry of 3 years. The case of a person shall be considered in the first year of the death and if due to non-availability of vacancy within 5 % quota, it s not possible to make appointment, then his case

  
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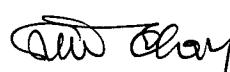
will be reviewed second year and if during 2<sup>nd</sup> year also, due to non-availability of vacancy, it is not possible to appoint a particular person then the period may be extended for one more year but it will not exceed 3 years. It is essential to consider that whether the respondents had followed the guidelines of the above O.M. of DOP&T in its true letter and spirit. Respondents cannot be permitted to have an excuse for rejection on the strength of the letter of DOP&T but respondents are duty bound to disclose that continuously for 3 years, the case of the applicant was considered for appointment and due to non-availability of the vacancies upto the limit of 5% each year, the appointment could not be given to him and hence it was extended upto maximum 3 years. The respondents shall have to show that the case of the applicant was considered during all the three years then only the respondents are within their rights to reject the case of the applicant according to O.M. of DOP&T. The respondents are not entitled to reject the case of the applicant merely on the basis of letter of DOP&T as 3 years had already expired. To show their bonafide and fairness, the respondents will have to show that in all the three years, the case of the applicant was considered, reviewed and due to non-availability of vacancy, appointment could not be offered to him. This is not the case regarding the applicant's matter. The respondents are required to state specifically that the case of the applicant was considered on 30<sup>th</sup> June, 2003 then extended for further one year as vacancy was not available during the first year and upto 30<sup>th</sup> June, 2004 and hence again extended for one more year and even during 3<sup>rd</sup> year upto 30<sup>th</sup> June, 2005, no vacancy was available to offer employment to the applicant and hence in view of the O.M. of DOP&T, beyond the period of 3 years, the case of the applicant was not considered.

9. The proceedings of the BOO has been filed by the applicant with the O.A. and it shows that appointments were given to several persons and there is no mention to the effect that during these 3 years, the case of the applicant was considered but appointment could not be offered to him due to non-availability of vacancy. It is an admitted and undisputed case that certain



scheme has been laid down by the respondents for considering the case of individual for compassionate appointment. Certain marks were to be allotted to the individual persons on certain hardships and after considering this scheme, the applicant was allotted 41 marks whereas in the case of Km. Gaisu Saxena, 36 marks were allotted to her. It means , if upto a period of 3 years and during the first and 2<sup>nd</sup> year, it was not possible for the respondents to offer compassionate appointment to the applicant then preference ought to have been given to the applicant in comparison to the case of Gaisu Saxena because as per scheme, a person securing more marks will have to be given preference over an individual who is securing lesser marks and naturally the applicant was allotted 41 marks, hence he was to be given preference over Km. Gaisu Saxena to whom 36 marks only were allotted. The case of the applicant was not rejected on other grounds but his case was rejected solely on the ground that in view of DOP&T O.M. , father of applicant died about more than 3 years and hence appointment is not being offered to him whereas the father of Gaisu Saxena died in December, 2002, hence preference was given to her for appointment. But I have considered the order passed by the respondents in the case of the applicant and O.M. issued by the DOP&T and I am of the opinion that the case of the applicant was not considered according to O.M. The respondents have to specify specifically that during 3 years, no vacancy was available for offering appointment to the applicant and hence in view of the letter of DOP&T, his case was closed.

10. It has been argued by the learned counsel for the respondents that appointment was given to some deserving persons and hence the case of Km. Gaisu Saxena was more deserving and appointment was given to her but it has not been disclosed in the letter Annexure A-1 passed by the respondents that how the case of the applicant was not deserving in comparison to Gaisu Saxena. Only it can be inferred from the perusal of the letter of rejection that his case was not considered according to the guidelines of the letter of DOP&T. I am of the opinion that this letter of DOP&T was not complied by the respondents in its true letter and spirit. The letter of DOP&T cannot be used as

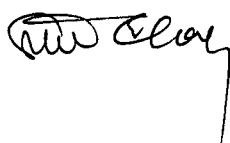


a shield for the arbitrary, discriminatory act of the respondents. The respondents are duty bound to show their bonafide and fairness in their conduct and acts while offering appointment to the deserving person and as the case of the applicant was more deserving, he ought to have been considered for appointment in comparison to Gaisu Saxena. The respondents are not entitled to any protection for their discriminatory and arbitrary act on the strength of letter of DOP&T.

11. Learned counsel for the applicant cited judgments of the Hon'ble High court of Allahabad reported in **(2009)3 UPLBEC 2212 in the case of Hari Ram Vs. Food Corporation of Indian and others** and on the strength of this judgment of the Hon'ble High Court of Allahabad, he argued that the letter of DOP&T has been declared as irrational, arbitrary and violative of Article 14 and 16 of Constitution of India and hence the order was quashed by the Hon'ble High Court. In view of this judgment, the respondents' are not entitled to reject the case of the opposite party for compassionate appointment merely on the ground that 3 years had expired. It has been observed by the Hon'ble High Court that:-

"The writ petition is allowed. The instructions contained in the Office Memorandum dated 5<sup>th</sup> May, 2003 of the DOP&T, Ministry of Personnel, Public Grievances and Pension, Govt. of India fixing time limit of three years for offering compassionate appointment is declared to be irrational, arbitrary, unreasonable and violative of Articles 14 and 16 of the Constitution of India.

12. Although, I have observed above that respondents have not followed the O.M. of DOP&T dated 5<sup>th</sup> May, 2003 in its true letter and spirit but at the same time it is relevant that Hon'ble High Court in the above judgment had declared the O.M. issued by the DOP&T as unreasonable, arbitrary, irrational and violative of Article 14 and 16 of Constitution of India. Hence, in view of judgment of the Hon'ble High Court, the respondents are not entitled to reject the case of applicant on the ground of expiry of three years.



13. Further , the applicant's counsel also cited a judgment of Hon'ble High Court reported in **2010(1) ALJ, 272 in the case of Awadhesh Kumar Vs. Central Administrative Tribunai, Lucknow** bench and others and on the basis of this judgment of the Hon'ble High Court, Lucknow Bench, applicant counsel argued that it is the respondents who are responsible for expiry of 3 years period and hence it cannot be used as shield by the respondents. It has been observed in this judgment that:-

"Accordingly , the time lapsed because of pendency of present writ petition shall also not come in the way of petitioner to be considered for appointment on compassionate ground. Petitioner seems to be entitled to be considered for appointment on compassionate ground keeping in view the scheme/ rules occupying the field in October, 2009 i.e. the time when petitioner had submitted a representation."

14. Hence, in the present case, I am of the opinion that it was the respondents who are solely responsible for lapse of a period of 3 years. Firstly, the respondents allowed 3 years to expire and afterwards rejected the case of the applicant for offering compassionate appointment on the ground that in view of O.M. of DOP&T, the period of 3 years have already expired and his case cannot be considered and his case stands closed. The respondents are not entitled to take the benefit of their own fault and laches.

15. Learned counsel for the respondents cited a number of judgments of Hon'ble Supreme Court :-

- i) **(1994) 2 Supreme Court Cases, 752 State of Rajasthan Vs. Chandra Narain Verma;**
- ii) **1995 Supp (4) Supreme Court Cases 597 Pepsu Road Transport Corporation Vs. Satinder Kumar and another**

But these rulings are not applicable to the facts of the present case. It is not the case of the respondents that applicant was not fulfilling the requisite qualification for appointment as LDC. In the case before the Hon'ble Supreme Court , a person was not fulfilling the requisite qualification but even then

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direction was given for their appointment. The present case is entirely different to the facts of above rulings.

16. The respondents counsel also cited the judgments :-

i) **1999 Supreme Court Cases (L&S) 729 , Orissa State Electricity Board Vs. Raj Kumari Panda etc.**

ii) **JT 1996 (9) SC 197, Hindustan Aeronautics Ltd. Vs. Smt. A. Radhika Thirumalai**

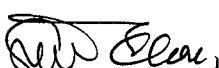
iii) **JT 1996 (5) SC 319, Himachal Road Transport Corporation Vs. Smt. Dinesh Kumar**

But these rulings are also not applicable to the facts of the present case. This is not the case of either of the parties that applicant was demanding compassionate appointment beyond 5% quota. The applicant is only alleging that the posts were available and instead of offering appointment to the applicant, the appointment was offered to Km. Gaisu Saxena, who secured 36 marks whereas the applicant was allotted 41 marks and that as per guidelines of DOP&T, the preference must have been given to the applicant. On the basis of the above judgment of the Hon'ble Apex Court, no benefit can be given to the respondents.

17. On the basis of the above discussions, I am of the opinion that the case of the applicant was wrongly rejected on the basis of O.M. issued by DOP&T dated 5<sup>th</sup> May, 2003 and as per scheme of appointment on compassionate ground, appointment was given to Km. Gaisu Saxena is arbitrary, violative of Article 14 and 16 of Constitution of India. Prior to giving the appointment to Km. Gaisu Saxena, the case of the applicant must have been considered and preference should have been given to him. Moreover, the O.M. of DOP&T has been declared violative of Article 14 and 16 of Constitution of India.

18. The O.A. deserves to be allowed and the order dated 10 March 2008 (Annexure A-1) deserves to be quashed and set aside.

19. O.A. is allowed with cost of Rs. 5000/- .The order dated 10<sup>th</sup> March, 2008 (Annexure A-1) is quashed and set aside . The respondents are directed to reconsider the case of the applicant for compassionate appointment in its true



prospective strictly according to scheme for compassionate appointment and in the light of observations made in the body of this judgment. It is expected that respondents shall given preference in appointment in comparison to person to whom lesser marks were allotted and the case of the applicant shall not be turned down and rejected merely on the basis of O.M. issued by the DOP&T. The case of the applicant shall be reconsidered within a period of 3 months from the date when the copy of this order is received by them.

  
(Shiv Charan Sharma)  
Member (J)

HLS/-