

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO.268/2001
DATED THE 3rd DAY OF OCT. 2001**

CORAM: HON'BLE SMT. SHANTA SHASTRY, MEMBER(A)

Shri Rajkumar Vasant Shrivant,
Quarter No.207/2626, Type-II,
Sector VI, CGS Quarters,
Kanenagar,
Mumbai - 400 037. ... Applicant

By Advocate Shri H.D.Parcholia

V/s.

1. The Office of the Additional
Director, CGHS,
United India Building,
2nd Floor, Sir P.M.Road,
Mumbai - 400 001.
2. The Office of the Director
Central Government Health Scheme,
Nirmal Bhavan,
Moulana Azad Road,
New Delhi - 110 001.
3. The Estate Manager,
CGO Building,
3rd Floor, M.K.Road,
Churchgate,
Mumbai - 400 020. ... Respondents

By Advocate Shri V.G.Rege for R-1 & 2
Shri V.S.Masurkar for R-3.

(ORAL)(ORDER)

Per Smt.Shanta Shastri, Member(A)

This is a case for compassionate appointment as a sweeper on the death of the Mother. The applicant's Mother was serving as a female attendant in the CGHS Dispensary at Koliwada. While in service, the applicant's Mother expired on 15/10/98. She was allotted Government quarter. The applicant made an application for compassionate appointment on 29/12/98.

...2.

According to the applicant his name is the first in the seniority list for compassionate appointment and he was also asked to undergo medical examination and the report was handed over on 6/10/2000. Even police investigation is over and the applicant was orally informed that his papers for appointment were referred to the Ministry, at Delhi.

2. The applicant was asked to vacate the quarters as per rules after allowing him to retain the same up to 15/10/99. The applicant had approached the City Civil Court in the matter and a stay has been granted on eviction of the applicant from the aforesaid quarter allotted in the name of his mother who expired. // The question for consideration that now remains is for grant of compassionate appointment. // Though Shri V.S.Masurkar is present for respondent no.3, the name ^{of} respondent no.3 has already been deleted.

3. The learned counsel for the respondents submits that the process of considering the applicant for compassionate appointment was ^{Carefully} ~~definitely~~ gone through and a decision was taken at the level of Additional Director to give compassionate appointment to three people, the applicant being the first. However on making a proposal to the Ministry for relaxation of the Rule regarding 5% vacancies for compassionate appointment, the approval was not given. In the absence of vacancies, the applicant could not be appointed.

4. The learned counsel for the applicant submitted that one Smt.Kalpna Bangi was placed above the applicant for compassionate appointment though in her case there was neither the selection nor medical examination or police verification.

...3.

The learned counsel for respondents submits that in the case of Kalpana Bangi also no orders have been issued. In the absence of any vacancies it is very difficult to consider granting of compassionate appointment. The learned counsel for respondents has further added that it was by sheer mistake that the Additional Director had approved to give compassionate appointment to the applicant and two others before sending the request of 5% relaxation to the Ministry for approval. Actually there are no vacancies. Moreover, the applicant also cannot be said to be in dire need of such appointment as one of his family members i.e. his sister is employed in the^a Post Office. In any case, in view of the fact that there is no vacancy, the applicant cannot be considered for appointment according to the respondents.

5. The learned counsel for the applicant produced a judgement in the case of Smt. Sushma Gossain and Ors V/s. Union of India and Ors reported in AIR 1989 SC 1976 wherein the Supreme Court directed that the Appellant shall be appointed in an appropriate place in Delhi itself. The appointment shall be made immediately and if there is no suitable post for appointment then a supernumery post should be created. This Tribunal has not authority to give direction to create posts. I cannot therefore agree to issue similar directions in this case.

6. I have gone through the relevant record of the respondents concerning the recommendation for giving compassionate appointment to the applicant and two others. There is no denying that the applicant was selected. However, I have also to accept that there is no vacancy at present. The

applicant has not been able to point out any vacancy either. However, in case any vacancy arises in future the respondents can consider the case of the applicant on merits. I therefore direct the respondents to consider the applicant for compassionate appointment as and when a vacancy arises in future as per rules and as on merits. The OA is disposed of accordingly. No costs.

Shanta J-

(SMT. SHANTA SHASTRY)
MEMBER(A)

abp

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

CONTEMPT PETITION NO.10/2002
IN
ORIGINAL APPLICATION NO.268/2001

THIS, THE 12TH APRIL, 2002

CORAM: HON'BLE SHRI JUSTICE BIRENDRA DIKSHIT. VICE
CHAIRMAN
HON'BLE SMT. SHANTA SHASTRY. ... MEMBER (A)

Shri Rajkumar Vasant Shilwant
Quarter No.207/2626, Type II,
Sector VI CGS Quarters,
Kanenagar,
Mumbai.

Applicant

By Advocate Shri H.D. Parcholia.

Versus

1. Shri Pandurangrao,
Director, Central Govt.
Health Scheme, Nirmal Bhavan,
Maulana Azad Road,
New Delhi-110 001.
2. Dr. (Mrs.) S. Sahani,
Additional Director,
C.G.H.S. United India Building,
2nd Floor, Sir P.M. Road,
Mumbai-400 001.

... Respondents

By Advocate Shri M.I. Sethna along with Shri V.G.Rege.

O R D E R (ORAL)

Hon'ble Smt. Shanta Shastri. Member (A)

An order was passed on 03.10.2001 in OA No.268/2001. It was stated that though the applicant was selected for compassionate appointment, there was no vacancy at the relevant time. The respondents were, therefore directed to consider the applicant for compassionate appointment as and when a vacancy arises in future as per rules and on merits. No time limit was given.

...2.

2. The applicant has filed CP No.10/2002 for not complying with the order of the Tribunal and to direct the respondents to comply with the same. Notice was issued to the respondents. The respondents have submitted that there is no vacancy within 05% quota earmarked for compassionate appointment and therefore, they are not in a position to accommodate the applicant. The applicant has tried to point out that vacancies had arisen but the respondents have still not given appointment to the applicant. The respondents, in their sur-rejoinder to the rejoinder filed by the applicant have given a clear statement of the total number of vacancies and 05% quota available against those vacancies. According to the respondents, there are already persons who have been granted compassionate appointment in excess of the quota of 05%. The respondents also submit that audit objection has been raised about the excess appointment and the Additional Director, CGHS had no authority to grant any compassionate appointment in excess of the 05% quota. The respondents have also produced the relevant portion of the DOP&T OM dated 26th September, 1995 wherein, it has been clearly laid down that 05% of the vacancies to be filled by direct recruitment are to be filled through compassionate appointment. In view of this clear position stated by the respondents, in our considered view, it cannot be said that there has been any deliberate intention on the part of the respondents not

to implement the orders of the Tribunal. In fact, the order of the Tribunal was to adjust the applicant against any future vacancy as per rule and on merits. As long as no future vacancy arises within 05% quota, it cannot be expected of the respondents to consider the applicant against the vacancy which is not within the 05% quota, they have to follow the rules. There has been no wilful disobedience on the part of Respondent No.2 who is present today. We, however, observe that the respondents have considered adjusting the appointment of those who were appointed in excess of the 05% quota against the general vacancy. Further vacancies shall become available for the 05% quota. In view of the position mentioned above, contempt proceedings are dropped and the notice issued against Respondent No.2 is discharged accordingly, the contempt petition is dismissed.

Shanta

(SMT. SHANTA SHASTRY)
MEMBER (A)

B. Dikshit

(BIRENDRA DIKSHIT)
VICE CHAIRMAN

Gajan

order/judgment despatched
to Applicant/Respondent (s)
on 23.4.2002.
29/4.