

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.229/02

Date of order: 18.2.2003

Ghanshyam, S/o late Shri Rameshwar Lal, R/o Ward No.3,
near Roopdas ka Mandir, Bagar, Distt.Jhunjhunu (Raj).

...Applicant.

Vs.

1. Union of India through Secretary, Mini. of Human Resources & Development, Govt of India, New Delhi.
2. Commissioner, Kendriya Vidyalaya Sangathan, 18 Institutional Area, Sahid Jeet Singh Marg, New Delhi.
3. Education Officer, Kendriya Vidyalaya Sangathan, 18 Institutional Area, New Delhi.
4. Assistant Commissioner, Kendriya Vidyalaya Sangathan, Regional Office, Jaipur.
5. Principal, Kendriya Vidyalaya, Jhunjhunu (Raj.).

...Respondents.

Mr.Sunil Kumar - Counsel for applicant.

Mr.V.S.Gurjar - Counsel for respondents.

CORAM:

Hon'ble Mr.M.L.Chauhan, Judicial Member.

PER HON'BLE Mr.M.L.CHAUHAN, JUDICIAL MEMBER.

The applicant is son of late Shri Rameshwar Lal, Ex-Group-D employee, KV, Jhunjhunu. It is submitted that father of the applicant died on 1.7.01 while he was in service. He left behind his wife Smt.Saroj, 5 sons and 3 daughters. It is further submitted that the applicant and his family members are fully dependent upon the deceased employee. After death of his father, the applicant moved an application to respondent No.3 for compassionate appointment. The said application was forwarded to respondent No.2 on 10.8.01 but the appointment on compassionate ground was refused vide order dated 24.9.01

(Annex.A1) by respondent No.3 on the ground that there is no vacancy of Gr.D posts due to privatisation of Gr.D Post and it was informed that the request of the applicant for the post of Gr.D on compassionate ground could not be accepted to. Thereafter the applicant has also made representations to higher authorities which according to the applicant has not been replied to. Further case of the applicant is that though the applicant was denied compassionate appointment vide order Annex.A1 on the post of Group-D but he was engaged as casual employee at KV Jhunjhunu w.e.f. 1.2.02 to 1.4.02 on daily wage basis. Thereafter vide order dated 2.4.02 (Annex.A2), he was informed that his services were terminated due to abolition of one post of Gr.D employee. It is, against these orders that the applicant has filed the present O.A praying for quashing the order dated 24.9.01 (Annex.A1) and order dated 2.4.02 (Annex.A2) with further direction to the respondents to consider the case of the applicant for appointment on Gr.D or equivalent post on compassionate grounds.

2. The respondents have filed detailed reply. It has been submitted that from a bare perusal of order Annex.A1, it would reveal that the request of the applicant in reference to appointment to the post of Gr.D on compassionate grounds was duly considered. But now in Kendriya Vidyalaya Sangathan, private agencies have been engaged/hired on contract basis to take up the tasks of gardening, cleaning, watch & ward which were hitherto looked after by Gr.D employees. Due to this policy decision, the vacancies in Gr.D have been abolished and there is no direct recruitment made for Gr.D posts. As such the request for compassionate appointment of the applicant as Gr.D could not be acceded to by the respondents.

3. The applicant has filed rejoinder thereby reiterating the

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submissions already made in the O.A.

4. I have heard the learned counsel for the parties and perused the material placed on record.

5. In this scenario, the question ^{hitherto} ~~as to~~ requires consideration is ~~as to~~ ^{whether} whether direction should be given to the respondents to consider the case of the applicant for appointment on compassionate grounds especially when there is no Gr.D post and the decision has been taken by the department to get done such work in future by hiring private agency.

6. The law in this regard is well settled by the decision of the Apex Court. In the case of Hindustan Aeronautics Ltd. Vs. A.Radhika Thirumalai (Smt) 1996 SCC (L&S) 1427 which was also a case of appointment on compassionate grounds, there was no vacancy at the relevant time and a ban on fresh recruitment was in operation. The High Court ordered the department to consider the candidature of the applicant and to give her compassionate appointment by creating a supernumerary post. The Apex Court in para 9 held as under:

"A situation similar to the present case arose in Himachal Road Transport Corpn. Vs. Dinesh Kumar. In that case this Court was dealing with two cases where applications had been submitted by the dependents of the deceased employees for appointment on compassionate grounds and both of them were placed on the waiting list and had not been given appointment. They approached the Himachal Pradesh Administrative Tribunal and the Tribunal directed the Himachal Road Transport Corpn, to appoint both of them as Clerk on regular basis. Setting aside the said decision of the Tribunal this Court has observed that '....In the absence of a vacancy it is not open to the Corporation to appoint a person to any post. It will be a gross abuse of

the powers of a public authority to appoint persons when vacancies are not available. If persons are so appointed and paid salaries, it will be a mere misuse of public funds which is totally unauthorised. Normally even if the Tribunal finds that a person is qualified to be appointed to a post under the kith and kin policy, the Tribunal should only give a direction to the appropriate authority to consider the case of the particular applicant, in the light of the relevant rules and subject to the availability of the post. It is not open to the Tribunal either to direct the appointment of any person to a post or direct the authorities concerned to create a supernumerary post and then appoint a person to such a post."

7. Similar view has also been held by the Apex Court in the case of Regional Manager, A.P.SRTC v. M.Sampoornamma 1999 SCC (L&S) 1162 which was a case relating to powers of the High Court to direct the employer to appoint on compassionate grounds. The Apex Court held that once it is found that the decision of the employer not to make any fresh appointment is bonafide it would not be proper for the Court to question the same and inspite of the decision to that effect, direct him to consider appointing the person on compassionate grounds. Merely because a vacancy existed it was not proper for the High Court to direct the appellant Corporation to consider the respondent and give her appointment ignoring the ban on any fresh appointment.

8. The learned counsel for the respondents has also brought to my notice the order passed by the Patna High Court in the case of Geeta Kumari Vs. Union of India & Ors, which also relates to the appointment on compassionate ground and the

learned Single Judge in the operative part held as under:

"I do not find any substance in the contention. It is well settled that no person can claim compassionate appointment as a matter of right i.e. to say there is no vested right of such appointment. Such appointment comes as a measure of help to the bereaved family so that the family is able to mitigate the hardship suddenly besetting it on account of premature death of the bread earner. It does not mean that in all cases of the government servant dying in harness there must be compassionate appointment. This appointment is also subject to the circular and other policy decision which may be in vogue from time to time. If on Group D posts, for which the petitioner was aspirant, appointments are not to be made and work is to be done by hired agencies, as per the above said office memo dated 10.12.99, it is obvious that no departure can be made in case of the petitioner, that may amount to discrimination between similarly situate persons, who might have been refused compassionate appointment."

9. In view of the ratio laid down by the Apex Court and taking guidance ^{from} ~~of~~ the decision taken by the Patna High Court, I am of the view that the applicant is not entitled to any relief especially when the vacancies have been abolished and there is no direct recruitment made for Group-D posts and the respondents have decided to take such work through private agencies. The applicant has not made out any case that there are still vacancy existing in Group-D category against which his case can be considered for compassionate appointment. However, the learned counsel for the applicant argued that direction may be given to the respondents to consider the case of the applicant against any Group-D vacancy which may arise in

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future. According to me, the submission of the applicant is misconceived and no such direction can be given at this stage.

10. For the foregoing reasons, the O.A is dismissed with no order as to costs.



(M.L.Chauhan)

Member(J).