

30/100

3

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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O.A./T.A No. 351/2002

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SECTION OFFICER (Judl.)

(SEE RULE -4)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI
....

ORDER SHEET

Original Application No : 351 / 02
Misc. Petition No. _____
Contempt Petition No. _____
Review Application No. _____

Applicant (s) Smt. Anoma Sarkia

Respondent (s) -Vs-
H.O.I. Jom

Advocate for the Applicant (s) M. K. Mazumder

Advocate for the Respondent(s) Case

| Notes of the Registry | Date | Order of the Tribunal |
|--|-----------|---|
| <p>2657539/1 8.10.02 h. ABMB 28/10/02</p> | 21.11.02 | <p>Put up after steps taken by the applicant. List on 3.12.2002 for admission.</p> <p>Member Vice-Chairman</p> |
| <p>no line not yet served on respondents</p> <p>Steps received. 22/11/02</p> | 3.12.2002 | <p>None appears for the applicant. Issue notice on the respondents to show cause as to why this applic- ation shall not be admitted. List the case on 23.12.2002 for admission.</p> <p>Member Vice-Chairman</p> |

6.1.2003

Present: Hon'ble Mr Justice V.S. Aggarwal,
Chairman

Hon'ble Mr K.K. Sharma,
Administrative Member

Heard Mr M.K. Majumder, learned
counsel for the applicant. There is no
representation on behalf of the
respondents. Hearing concluded. Judgment
delivered in open court, kept in separate
sheets. The application is dismissed.

Member

Chairman

nkM

23.1.2003

Copy of the judgment
has been sent to the
d/Sec. for forwarding
the same to the
applicant as well
as to the Respondent
No. 5 by post.

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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A. / Rxx No. 351 . . . of 2002

(At admission stage)

6.1.2003
DATE OF DECISION

Smt Anima Saikia APPLICANT(S).

Mr M.K. Majumder ADVOCATE FOR THE
APPLICANT(S).

- VERSUS -

The Union of India and others RESPONDENT(S).

None present for the respondents ADVOCATE FOR THE
RESPONDENT(S).

THE HON'BLE MR JUSTICE V.S. AGGARWAL, CHAIRMAN

THE HON'BLE MR K.K. SHARMA, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble Chairman

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.351 of 2002

Date of decision: This the 6th day of January 2003
(AT ADMISSION STAGE)

The Hon'ble Mr Justice V.S. Aggarwal, Chairman

The Hon'ble Mr K.K. Sharma, Administrative Member

Smt Anima Saikia,
Wife of Late Gajen Ch. Saikia,
Village- Majgaon Salikatika,
P.O.- Tazpur,
District- Sonitpur, Assam.
By Advocate Mr M.K. Majumder.

.....Applicant

- versus -

1. The Union of India,
Represented by the Ministry of Defence,
Engineer-in-Chief's Branch,
Army Headquarters, DHQ,
New Delhi.
2. The Chief Engineer,
Eastern Command,
Engineers' Branch,
Fort William,
Kolkata.
3. Head Quarters,
Chief Engineer,
Shillong Zone,
Spread Eagle Falls, Shillong.
4. The Commandar, Works,
Engineer,
Solmara, P.O- Dekergaon,
Tezpur.
5. The Garrison Engineer,
M.E.S., Solmara, P.O.-Tezpur,
District- Sonitpur, Assam.

.....Respondents

None present for the respondents.

.....

O R D E R (ORAL)

V.S. AGGARWAL. J. (CHAIRMAN)

By virtue of the present application, Smt Anima Saikia (hereinafter described as the applicant) seeks a direction to the respondents to consider the case of the



applicant for her appointed to any post in Grade 'D' on compassionate ground under the Garrison Engineer, Tezpur.

2. Some of the relevant facts are:

That, as per the applicant her husband was employed in the Office of the Garrison Engineer, Tezpur as a Mazdoor. He died on 6.8.1993. On his death the applicant submitted an application for compassionate appointment contending that she has no source of income for the family. Her husband died after a prolonged mental insanity and that presently she should be appointed to a Grade IV post as a Mazdoor.

3. According to the applicant on receipt of the application on 17.7.1997 she was intimated that documents for compassionate appointment had been received and her case shall be considered on her turn on the merits of the case subject to release of vacancies from the competent authority. Thereafter, the respondents took no steps to provide a job to the applicant and she in this process has been denied the appointment on compassionate ground. Finally, the request has been turned down on 30.3.2002 on the ground that the applicant's family comprises of three persons and they are receiving family pension of Rs.1849/- which is above the poverty line. By virtue of the present application, therefore, the relief already referred to above in the preceding paragraph has been claimed.

4. We have heard Mr M.K. Majumder, the learned counsel for the applicant.


5/ The facts on the record, particularly the reply filed rejecting the claim of the applicant indicates that the husband of the applicant died on 6.8.1993. He died leaving behind the applicant, his son and a daughter. According to the respondents the applicant and her family




are.....

are receiving Rs.1849/- as family pension per month and therefore, their income is above the poverty line. Consequently, the applicant is not entitled to the appointment on compassionate ground. This fact is not being disputed. In the peculiar facts, it cannot be termed that there is any violation of Articles 14, 31, 41 and 43 of the Constitution of India.

6. Resultantly, the applicant cannot be held to be having a right for appointment on compassionate ground. The application must fail. Accordingly it is dismissed.


(K. K. SHARMA)
ADMINISTRATIVE MEMBER


(V. S. AGGARWAL)
CHAIRMAN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI BENCH.

(An application under section 19 of the
Administrative Tribunals Act, 1985).

Title of the case - V.A. No. 351 / 2002

smti Anima Saikia.

..... petitioner.

-versus-

Union of India & others.

..... Respondents.

I N D E X.

| <u>Sl.No.</u> | <u>Particulars.</u> | <u>Annexures.</u> | <u>Page.</u> |
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| 1. | C.A. | - | 1 - 9. |
| 2. | verification. | - | 9. |
| 3. | Receipt letter dt.17.3.97. | I | 10. |
| 4. | Letter dated 30.4.97. | II | 11. |
| 5. | " " 27.5.2000. | III. | 12. |
| 6. | " " 30.3.2002. | IV | 13 - 14. |
| 7. | " " - | V | |
| 8. | " " 9.8.2002. | VI | |

Filed by - *MK Majumdar*
Advocate.

Filed by Mr. Appellant
Shri. Mr. Mynder
Advocate
21/10/02

9

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: GUWAHATI BENCH.

(An Application under section 19 of the
Administrative Tribunal Act, 1985).

C.A. NO. 351 / 2002.

BETWEEN -

Smti. Anima Saikia,
w/o. late Gajen Ch. Saikia,
vill. - Majgaon Salikatika.
P.O. - Tezpur.
Dist. - Tezpur (Assam).

..... Applicant.

-AND-

1. Union of India,
Represented by Ministry of Defence,
New Delhi.
Engineer-in-Chief's Branch,
Army Headquarters,
HQ, New Delhi - 110011.
2. Chief Engineer,
Eastern Command,
Engineers' Branch,
Fort William, Kolkata - 700021.
3. Head Quarters,
Chief Engineer,
Shillong Zone,
Spread Eagle Falls,
Shillong - 793011.

4.....

Anima Saikia

4. commander, works,
Engineer,
Solmara,
P.O. - Dekengon, Tezpur.
5. Garrison Engineer,
M.E.S., Solmara, P.O. -
Tezpur, District Sonitpur.

..... Respondents.

1. DETAILS OF THE APPLICATION.

Particulars of order(s) against which
this application is made.

subject in Brief :- Denial for considering the
appointment of the petitioner on
compassionate ground on death of her
husband due to mental insanity on
6.8.93.

2. Jurisdiction of the Tribunal.

The applicant declares that the subject matter of
this application is well within the jurisdiction of
this Hon'ble Tribunal.

3. Limitation : The applicant further declares that, the
application is not barred by limitation.

4. Facts of the case :

4.1. That the applicant is a citizen of India and
as such she is entitled to all the rights, protections
and privileges as guaranteed under the constitution of
India.

4.2.....

Anima Sankia

4.2. That the applicant lost her husband on 6.8.93 when he was an employee of the office of G.E. Tezpur in the post of Mazdoor.

4.3. That the husband of the applicant died of mental insanity after prolong treatment leaving behind the Applicant wife in distress and a small female kid.

4.4. That on death of the husband, the applicant filed application for compassionate appointment of petitioner contending inter alia that there is no source of income in the family and the husband died after prolong treatment of mental insanity for which she had to spend money like anything but unfortunately he died which caused her economically suffered and since there was no other source of income she had to borrow money from relatives and from other persons meet up the day to day expenses as well as to repay the loans taken for treatment, the applicant prayed to appoint her on compassionate ground.

A copy of the receipt letter of the application dated 17.3.97 is annexed as Annexure - I.

4.5. That on receipt of the application on 17.7.97 the Respondent No. 3 intimated the applicant that the documents for compassionate appointment have been received from Respondent No. 5 and also assured to consider the applicant's case on her turn on the merit of the case subject to release of vacancies from higher/competent authority and accordingly applicant waited for early disposal of the matter by the respondent.

Anima Santhia

4.6. That thereafter on 30.3.97 the Respondent No. 2 again intimated the applicant that her case had been examined in detail and her name had not then come up to be considered for appointment and therefore she was advised to wait for her then until allotment of additional vacancies would made.

A copy of the letter dated 30.3.97 is annexed as Annexure - II.

4.7. That as the Respondents did not take any step to provide job to the applicant for a long time and as the financial condition of the applicant became miserable one due to heavy loan taken at the time of treatment, the applicant again submitted another representation to the respondent and on 27th May, 2000 reiterating the facts inter alia that she already applied earlier one time on 3.2.97 for appointment herself on compassionate ground but no appointment offer have been given to the applicant, and this time also the applicant was simply assured that her case is under process on the basis of seniority release of vacancy by the higher authority and asked her to wait.

A copy of the letter dated 27.4.2000 is annexed as Annexure - III.

4.8. That thereafter Respondent No. 3 denied to appoint the applicant on compassionate ground for the death of her husband vide a letter vide No. 70 201/9/SO/85/E1C(2) dated.....

Anima Soikia

dated 30.3.2002 on the ground that the applicants family containing only 3 (three) members is receiving more than Rs. 1849/- as family pension which is above the poverty line as per DOP & T norms moreover the death of the Govt. servant i.e. late Sri Gojen Ch. Saikia occurred on 6.8.93 more than 8 years back, as such same cannot be considered.

A copy of the letter dated 30.3.2002 is annexed as Annexure - IV.

4.9. That after receiving the denail message the applicant represented another application for considering the matter of compassionate appointment to the respondent No. 3 on 24.7.2002 to consider her case as she is under severe hardship and delay was caused by the authority.

A copy of the ^{representation} letter is annexed as Annexure-V.

4.10. That after receiving the application, Respondent No. 3 on 9.8.2002 again rejected the appeal of compassionate appointment of the applicant on the ground of instructions issued by MOD.

A copy of the letter dated 9.8.2002 is annexed as Annexure - VI.

4.11. That since submission of first application in the year 1993 the authority have not considered the case of the applicant they have unnecessary dragging the matter asking time and assuring the applicant to wait for an indefinite period which is against the formulated scheme of the Government which resulted to ruin the family along with the applicant.

4.12.....

Anima Saikia

4.12. That the applicant most humbly submits that, due to non-consideration of the appointment of the petitioner after dragging the matter for 8 years, the family is being forced to a helpless situation where the request of compassionate appointment is negatived by the Respondent as such, finding no other alternative the applicant approaching this Hon'ble Tribunal for protection of her legitimate right and it is a fit case where the Hon'ble Tribunal ~~may~~ may take lenient view to interfere with and to protect the right and interest of the applicant by directing the Respondent to consider the case of the applicant. That the respondents by way of delaying policy have been depriving the candidates of North East Region and made the scheme a mockery.

4.13. That this application is made bona fide and for the cause of justice.

5. Grounds for relief(s) with legal provision :

5.1. For that, the respondents acted illegally and arbitrarily by non-considering the case of the applicant for a long time and violated formulated scheme and policy of the Govt. of India.

5.2. For that the Respondents rejected the prayer of the applicant for compassionate appointment on the ground that the need for immediate assistance by way of compassionate employment to tide over emergency and crisis is lacking in the case of the applicant as the death of her husband occurred on 6.8.93 more than 8 years back but in reality the first application for compassionate appointment was submitted on 3.2.93 to the Respondent No. 5 which was

dragged.....

Anima Sainkia

dragged unnecessarily upto March/2002 by the Respondents purposely with a view to deny the service to this unfortunate widow.

5.3. For that the Respondents have considered the cases of other applicants who are similarly circumstanced but have not considered the case of the applicant and thus violated the provision of Article 14 and 16 of the Constitution of India.

5.4. For that, as per the formulated scheme, the dependent family of the deceased who died in harness, shall be immediately extended help to serve them from immediate necessity providing appointment on application. But in the instant case, the Respondents in total defiance of the scheme delayed the matter without even considering the spirit of the scheme by refusing to appoint the applicant and thereby frustrated the right guaranteed under Article 19, 38, 39, 41 and 43 of the Constitution of India.

5.5. For that, the application was filed on 3.2.97, being eligible to be considered, but since then the applicant was assured and the applicant acted on legitimate and bona fide expectation, but the Respondents kept the matter pending and lastly denied to appoint the applicant while denying, the Respondents did not give opportunity of hearing which violates principle of natural justice and administrative fair policy.

6. Details of remedies exhausted :

That the applicant states that she has exhausted all the remedies available to her by filing application after another and there is no other alternative and efficacious remedy then to file this application.

7.....

Anima Saitia

7. Matters not previously filed or pending with any other court :

The applicant further declares that, she had not previously filed any application, writ petition or suit before any court or any other Bench of the Tribunal regarding the subject matter of this application, nor any such application, writ petition or suit is pending before any of them.

8. Relief(s) sought for.

In view of the facts mentioned in para 4 above the applicant prays for the following relief(s) :-

- I) to direct the Respondents to consider the case of the applicant appointing her in any post of Group-D on compassionate ground and/or grant the approval/ sanction for appointment on compassionate ground under Garrison Engineer, Tezpur, within a very short period.
- II) any other appropriate relief(s) as the Hon'ble Tribunal may deem fit and proper.

9. Interim order, if any, prayed for :

Pendency of this application shall not be a bar to consider the case of the applicant as as per scheme of the Govt.

10. Particulars of the I.P.O.

- i) I.P.O. NO. -
- ii) Date of issue :
- iii) Issued from -
- iv) payable at .

11.. ..

Anima Saitia

11. List of enclosure.

As given in the Index.

V E R I F I C A T I O N .

I, smti. Anima Saikia, wife of late Sri Gojen Chandra Saikia, aged about 32 years, resident of Majgaon, Salikatika, P.O. - Tezpur, Dist. - Sonitpur, do hereby verify that the statement made in paragraphs 1 to 4 and 6 to 11 are true to my knowledge and those made in paragraph 5 are true to legal advice and I have not suppressed any material fact.

And I sign this verification on this 21st day of October, 2002.

Anima Saikia

signature of the
Applicant.

Annexure - I.

Tele : 6015.

Registered.

Headquarters
Chief Engineer
Shillong Zone,
Spread Eagle Falls,
Shillong - 793 011.

70 201/5/883./EIC(2),

17 Mar 97.

Smt. Anima Saikia,
C/O. Deba Kanta Saikia,
Vill. Mazgaon Salikatika,
PO. - Mahabhairab,
Dist. Tezpur (Sonitpur)
(Assam),

COMPASSIONATE APPOINTMENT.

Madam,

1. Reference your representation dated 03 Feb. 97.
2. It is intimated that the documents for compassionate appointment have been received from CWE Tezpur on 18 Feb. 97 vide their letter No. 1060/R/N Devi/02/EIC(1) dated 13 Feb 97. Your case may be considered only on your turn on the merit of the case subject to release of vacancies from higher/competent authority.

Yours faithfully,
sd/- Illegible.
(A.K. Doley),
AO II
for Chief Engineer.

Copy to -

HQ CEEC Calcutta. - For information with reference to
your HQ letter No. 131528/3A/2954/
Engrs/EIC(2) dated 03 Mar 97.

M. K. Doley

Annexure - II.

Tele : 222-2313.

HQ Eastern Command
Engineers Branch,
Fort William,
Calcutta - 2.

Smt. Anima Saikia,
W/O. Late Gajen Ch. Saikia,
C/O. Shri Deba Kanta Saikia,
Vill. - Majgaon Salikatika,
P.O. - Mahabhairab,
~~P.O. - Mahabhairab.~~
Tezpur, Sonitpur,
Assam - 784001

COMPASSIONATE EMPLOYMENT OF SMT. ANIMA SAIKIA
WIFE OF LATE GAJEN CHANDRA SAIKIA.

1. Reference your representation dated 03 Feb. 97 addressed to E-in-C's Branch, AHQ, in connection with your employment on compassionate grounds.
2. In this connection it is to inform you that your case has been examined in detail at this HQ. Your husband late Gajen Chandra Saikia expired in Aug, 93. Therefore, your name has not yet come up to be considered for appointment.
3. In view of the above, you are advised to wait for your turn until allotment of additional vacancies is made.

sd/- Ill egible.
(R. C. Sharma),
Lt. Col.
SO-1 (P),
for Chief Engr.

Copy to :-

Engineer-in-Chief's Branch (EIC-4), - for information with
Army Headquarters,
DHQ PO New Delhi-110011.

reference to their HQ
letter No. 65926/Pet/
06/97/EIC(4) dated
19 Mar 97, Original
representation of the
petitioner is enclosed
herewith as desired
please.

M. Majumdar

Annexure - III.

Tele : 6315.

Headquarters,
Chief Engineer
Shillong Zone,
Spread Eagle Falls.
Shillong - 793011.

70 201/5/22/EIC(2).

27 May 2000.

smt. Anima Saikia,
W/O. Late Gajen Saikia,
Vill. Mazgaon Kharati,
PO. - Tezpur,
Dist. - Sonitpur (ASSAM).

APPLICATION FOR APPOINTMENT ON COMPASSIONATE
GROUND: SMT. ANIMA SAIKIA, W/O. LATE GAJEN SAIKIA.

1. Reference your application dated 10 Apr. 2000.
2. Your case for appointment on compassionate ground will be considered in your own turn/seniority basis on release of vacancy by the higher authority.

Thanking you.

Yours faithfully,
sd/- Illigible.
(O. Khongwir),
AO I
for Chief Engineer.

M. K. Mondal

Annexure - I V.

Headquarters
Chief Engineer,
Shillong zone,
Spread Eagle Falls,
Shillong - 7930.

70 201/o/SO/85/ETC(2).

30 Mar 2002.

COMPASSIONATE APPOINTMENT.

Dear Madam,

1. Reference your application dated 19.10.97 for appointment xx under the scheme of compassionate ground in this department on expiry of your husband late Shri Gojen Ch. Saikia, of GE Tezpur.
2. Your request for compassionate appointment was examine by the competent authority under the relevant instructions of Dept. of Pers Trg. and Hon'ble Supreme Court ruling on the subject are enclosed.
3. According to available information, the following is the position/status of the case :-
 - (a) The death of Govt. servant occurred 06.08.93. He was survived by his wife one son and one daughter.
 - (b) The family is receiving more than 1849/- as family pension per month (the minimum amount) as such it is above the poverty line as per DOP & T norms.
 - (c) The need for immediate assistance by way of compassionate employment to tide over the emergency and crisis is lacking in this case as the death of the Govt. servant occurred on 06.08.93 more than 8 years back.

M. K. G. S. D.

Annex. IV.

4. After due circumstpection and consideration of the case in the light of the enclosed guidelines of DOP&T and also various judgements of the Hon'ble Supreme Court and after a balanced and objective assessment of the totality of the circumstances of the case, the competent authority, it is regretted to mention, has not approved your case for compassionate appointment in this Department.

Yours faithfully,
sd/- Ill egible.
(KS Mukhopadhyay),
SE (SG),
SOI (Pers),
for Chief Engineer,

Endo : As above.
Smt. Anima Saikia,
Vill. - Mazgaon Kharati,
PO/PS : Tezpur.
Dist - Sonitpur (Assam).

Copy to :-

| | |
|---|--|
| Engineer-in-Chief's Branch Army Headquarters, DHO New Delhi-11. | - For information with refer to this HQ letter No. 70601/25/ 192/EIC(1) dated 22 Oct. 2001 & 70601/25/06/EIC(1) 08 Nov. 2001. |
| HQ Eastern Command Engineers Branch Fort William Kolkata-7000 2 | - For information with reference to above. |
| CWE Tezpur GE Tezpur, Internal, EI (Legal). | |

Mukhopadhyay

13

Annexure - V.

To

Tezpur,

Date - 14.7.2002,

The Chief Engineer,
Shillong zone,
Spread Eagle Falls,
Shillong - 793011.

Sub:- Prayer for compassionate appointment.

Respected sir,

I humbly and respectfully beg to state that I am a widow of late Gojen Ch. Saikia, Mazdoor in the office of G. E. who expired on 6.8.93 while in service. He had left behind one small female kid along with me floating in the ocean of tears as well as sorrows and sufferings. Earlier on Feb. 3 also, I applied to your honour for compassionate appointment of myself. But after assuring me to wait for the release of vacancies. But the letter dtd. 30.3.2002 has disapproved my application for compassionate appointment in your department.

Therefore sir, I humbly pray to your honour to consider my case of compassionate appointment in your dept. to survive me from sufferings.

With profound respect to you,

Yours faithfully,

Mrs. Anima Saikia,
widow of late Gojen Ch.
Saikia,

Tezpur.

Margunda

24

- - - 18

Annexure - VI.

Tele : 5032.

HQ Chief Engineer,
Shillong Zone
SE Falls Camp,
Shillong - 793011.

70 201/9A/SO/28 EIC(2).

09 Aug 2002.

Smti. Anima Saikia,
W/O. Late Gajen Saikia,
Vill. - Mazgaon Kharahati,
Tezpur (Assam).

COMPASSIONATE APPOINTMENT.

Dear Madam,

1. Reference your application dated 24.7.2002.
2. It is mentioned herewith that your application amongst others was considered by the competent authority based on the guidelines issued by DOP & T and also Supreme Court ruling on the subject matter. Copy of which has already been enclosed along with this HQ letter No. 70 201/9/SO/85/EIC(2) dated 30 Mar, 2002.
3. Moreover, based on stringent instructions issued by MOD, the maintenance of earlier waiting/seniority list had to be dispensed with and all cases were reviewed on merit basis based on yardstick formulated by DOP & T instructions and other Govt. Orders.
4. Since your case does not fulfil all the requirements as laid down by Govt. orders, the same was rejected.

Yours faithfully,
(O. Khongwir),
Adm. Offr-I.
For Chief Engineer,

Copy to :-

E-in-C's Branch)
AHQ HQ-PO,)
New Delhi,)
CE East Comd.)
Kolkata.)
CWE Tezpur,)
GE Tezpur.)

Wrt.

Wrt. this HQ letter No. 70 201/9/
SO/85/EIC(2) dt. 30 Mar 2002.

Mukherjee