

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
CIRCUIT COURT SITTING AT GWALIOR

Original Application No.203 of 2005

Gwalior this the 26th day of October, 2005

Hon'ble Mr. M.P. Singh, Vice Chairman
Hon'ble Mr. Madan Mohan, Judicial Member

Smt. Hemlata Shivhare ~~W/o~~ Late Shri
Harvillas Shivhare, Aged-about 52 years,
R/o Shri Ram Kripa, Zatar Gali, Near
Shagun place, Laxmiganj, Lashkar,
Gwalior (M.P.)

APPLICANT

(By Advocate - Shri S.C. Sharma)

V E R S U S

1. Union of India through
Comptroller & Auditor General of
India, 10, Bahadur Shah Zafar
Marg, New Delhi.
2. Principal Accountant General
(Audit-1) Madhya Pradesh, Moti
Mahal, Gwalior (M.P.)
3. Dy Accountant General (Admin.)
Officer of the A.G. (Audit-1)
Gwalior (M.P.)
4. Union of India, Ministry of
Personnel, P.G. and Pensions,
Department of Personnel &
Training, North Block, New Delhi.

RESPONDENTS

(By Advocate- Shri M.Rao)

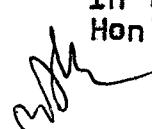
O R D E R (ORAL)

By M.P. Singh, Vice Chairman -

By filing this OA, the applicant has sought the
following main reliefs :-

"(a) That, the impugned orders dated 28.9.2004
passed by respondent No.3 contained in Annexure A/8
and the order dated 11.1.2005 passed by respondent No.2
contained in Annexure A/10 may kindly be quashed.

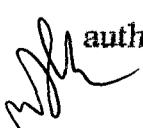
(b) That the respondents may kindly be directed to
issue appointment order to the son of the applicant
Shri Punit Shivhare on Class "C" post after properly
considering the case according to the policy contained
in Annexure A/7 and the earlier directions of this
Hon'ble Tribunal."



2. The brief facts of the case are that the applicant is wife of deceased Government servant, who was working under respondent-department as Sr. Auditor. He died in harness on 30.10.1998. The applicant has submitted an application to the respondents for compassionate appointment in favour of her son, but the respondents had rejected the application of the applicant. Earlier the applicant has filed OA No. 260/2003 and the Tribunal vide order dated 8.7.2004 had directed the respondents "to reconsider the claim of the applicant's son for compassionate appointment keeping in view the family circumstances of the applicant and also the responsibilities of the applicant to be shouldered and take a decision by passing a reasoned, detailed and speaking order". In pursuance to these directions the respondent No.3 namely Deputy Accountant General has passed the order dated 28.9.2004 rejecting the claim of the applicant for compassionate appointment, thereafter another order has been passed by the Sr. Audit Officer on 11.1.2005 whereby the request of the applicant for compassionate appointment has again been rejected. Since the request of the applicant has again been rejected by the respondents, he has approached this Tribunal by filing this OA.

3. Heard the learned counsel for the parties.

4. The learned counsel for the applicant has submitted that the order dated 28.9.2004 was passed by the incompetent authority, however the order dated 11.1.2005 has been passed by the competent authority. He has also submitted that the directions given by the Tribunal, particularly on the financial conditions of the family, have not been taken into consideration while deciding the case of the applicant for compassionate appointment. Instead, the respondents have considered the cases of families of those Government servants who died as earliest ^{as} ~~in~~ 1991. According to him the Accountant General who had granted the compassionate appointment to the dependents of the deceased Government servant is not a competent authority to give such appointment, and in the belated cases only the



Comptroller and Auditor General is the competent authority, ~~and not the Accountant General~~. The learned counsel for the applicant has further submitted that the case of the applicant is more deserving whereas the respondents have granted the compassionate appointment to least deserving and very old cases and ~~also~~ particularly where the family of the deceased Government servant are already having earning members. He has also submitted that there is a discrimination and while considering the case of the applicant, the respondents have deliberately not considered any of the grounds mentioned by the Tribunal in para 6 of its order dated 8.7.2004 passed in OA No.260/03. The learned counsel for the applicant further submitted that in view of these facts, the orders ~~were~~ passed by the respondents on 28.9.2004 and 11.1.2005 deserve to be set aside and the respondents ~~may~~ be directed to reconsider the case of the applicant in the light of the aforesaid order of the Tribunal passed on 8.7.2004 in OA No.260/03.

5. The learned counsel for the respondents has submitted that the order dated 28.9.2004 (Annexure-A-8) has been passed by the competent authority. He has drawn our attention to Annexure-R-2 wherein the Principal Accountant General had directed the Dy. Accountant General to pass a speaking and reasoned order. Therefore it cannot be said that the order dated 28.9.2005 has not been passed by the competent authority. He has also submitted that the office of the Accountant General is not the subordinate office of the Comptroller and Auditor General of India. The Accountant General and the Principal Accountant General are the competent authorities to grant the compassionate appointments even in ~~the~~ belated cases. As regards the contention of the learned counsel for the applicant that the belated case of Shri Pawan Prasana Sharma son of late Shri Ramadhar Sharma has been considered and he has been appointed on compassionate ground by the incompetent authority, the learned counsel for the respondents has submitted that appointment of Shri Pawan Prasana Sharma was made after obtaining the approval of the



Comptroller and Auditor General. He has also submitted that the case of the applicant has been considered alongwith other similarly placed candidates and within 5% vacancies of direct recruitment. The committee recommended the names of more deserving candidates and the case of the applicant has not been found fit for compassionate appointment. Therefore, the competent authority has rejected the claim of the applicant. He also submitted that keeping in view the fact that the compassionate appointment cannot be granted in all cases, it was only for this reason that the respondents have appointed a committee to go and look into all aspects of each case including the financial conditions of the family of deceased Government servants and then considered the cases of more deserving persons within ^{number of} ~~limited~~ vacancies available with the respondents.

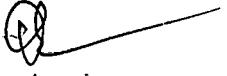
6. We have given careful consideration to the rival contentions made by the parties.

7. We find that in pursuance of the directions given by the Tribunal on 8.7.2004 in OA No.260/03, the Deputy Accountant General has passed the order dated 28.9.2004 who was not the competent authority. However, the Sr. Audit Officer has passed the order dated 11.1.2005 on behalf of Principal Accountant General, who is the competent authority. In the order dated 11.1.05, the grounds and aspects, which were required to be considered as per the directions given by the Tribunal in the aforesaid OA No.260/03, have not been considered by the respondents. Accordingly, the order passed by the Sr. Audit Officer cannot be said to be a detailed and reasoned order and, the same is liable to be quashed and set aside.

8. In the result, for the reasons stated above the impugned orders dated 28.9.2004 and 11.1.2005 are quashed and set aside. The respondents are directed to reconsider the case of the applicant taking into consideration all the aspects and grounds mentioned in para 6 of the earlier order of the Tribunal dated 8.7.2004 and take a decision by passing a detailed, reasoned and speaking order in accordance with the rules and instructions issued by the Government from time to time

[Signature]

within a period of 2 months from the date of receipt of a copy of this order. The OA stands disposed of accordingly. No costs.


(Madan Mohan)
Judicial Member


(M.P. Singh)
Vice Chairman

skm