

Central Administrative Tribunal
Jabalpur Bench

OA No.664/05

Jabalpur, this the 10th day of January 2006.

CORAM

Hon'ble Mr.M.K.Gupta, Judicial Member

Lachho Bai
Wife of late Mahadeo Choudhary
R/o H.No.365, Sidh Baba Road
Madar Tekri
Sidhi Camp
Jabalpur.

Applicant.

(By advocate Shri H.R.Bharti)

Versus

1. Union of India through
Secretary
Defence Ministry
New Delhi.

2. General Manager
Gun Carriage Factory
Jabalpur.

Respondents.

(By advocate Shri S.K.Mishra)

O R D E R

By M.K.Gupta, Judicial Member

In this second round of litigation, the applicant challenges validity of the order-dated 9.2.05 (A-11) rejecting her request for compassionate appointment for her son Kamlesh Kumar.

2. Shri Mahadeo Choudhary, Carpenter H.S.II, died in harness on 22.4.92, while in service, and left behind him the applicant i.e. his widow, three sons and three daughters. The applicant applied for compassionate appointment for her eldest son, namely Kamlesh Kumar and the required formalities were completed in the year 1996

in the form of interview, police verification etc. but no appointment letter could be issued. In such circumstances, the applicant approached this Tribunal and instituted OA No.878/04 which came to be disposed of vide order dated 20.10.2004, at admission stage, directing respondents to consider the applicant's representation sympathetically in terms of Government's instruction on the subject by passing a speaking, detailed and reasoned order. In purported compliance of the said directions, the respondents passed impugned order dated 9.2.2005 stating that in terms of DoPT's OM dated 30.6.87 as well as the orders of the Ministry of Defence dated 2.11.93, a 100-point grading scale had been formulated for attributing to the various parameters for assessing similarly placed individuals for a comparatively balanced objective assessment to ascertain the most deserving cases; namely, the family pension, terminal benefits, movable/immovable property, number of dependents, number of minor children and left over service. On awarding marks, in terms of the aforesaid 100-point grading, Shri Kamlesh Kumar obtained 59 marks and, therefore, was considered for appointment to the post of Messenger Boy, but at that stage he could not be offered the said appointment for two reasons; namely he was a minor at that time and that there was no vacancy in the said post at that point of time. The said order further indicated that the applicant had once again applied in the year 2001 and in terms of OM dated 30.6.87 of the Department of Personnel, Public Grievances and Pension, the case had become time barred. As per the said OM, 5 years time limit had been prescribed for consideration in such cases. Subsequently, vide DoPT's OM dated 5.5.2003, the time limit was restricted to 3 years. The aforesaid order further indicated that since the applicant's case was more than 12 years old, the very purpose for which compassionate appointment is contemplated, stood defeated as the applicant's family had been able to survive for 12 long years and thus required no immediate financial assistance.



3. Learned counsel appearing for the applicant vehemently contented that since the applicant's son had been selected for appointment as Messenger Boy but could not be appointed as he was a minor at the relevant point of time, the respondents should have explored the possibility of allowing such benefit immediately on his attaining the age of majority. Since the respondents had not taken sufficient care on this aspect, the applicant and her family members stand to lose permanently. As the applicant is required to manage and run a large family of 3 daughters and 3 sons- all unemployed, the respondents be directed to consider the case once again sympathetically following the principle of natural justice, contended learned counsel.

4. The respondents, on the other hand, contested the claim and stated that they passed a reasoned and speaking order dated 9.2.2005 strictly keeping in view the mandate of DoPT OM dated 30.6.88, as amended from time to time, besides the law laid down on the said subject by the Apex Court in Umesh Kumar Nagpal Vs. State of Haryana (1994) 27 ATC 537. It was further contended that such appointment is to be granted only if the Government is satisfied that the family would not be able to meet the crisis. Compassionate appointment is not a source of employment but is a benefit extended to tide over the sudden crisis in which the family is left in penury condition. Reliance was also placed on 2002 SCC (L&S) 1111 Union of India Vs. Joginder Sharma, wherein it has been held that administrative decision of limiting or ceiling of 5% of the vacancies under the direct recruitment quota reserved for grant of compassionate appointment cannot be relaxed and the courts/tribunals cannot compel the authority to accord such relaxation. Further reliance was placed on 2000 (87) FLR 132-Sanjay Kumar Vs. State of Bihar, wherein it has been held that there cannot be reservation of a vacancy till such time as the petitioner becomes a major after a number of years unless and until there are some specific provisions in the rules. With reference to the DoPT OM dated 30.6.87, wherein initially the time limit was

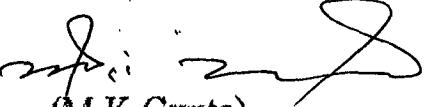
restricted to 5 years for such consideration, as amended on 9.10.98 as well as 5.5.03, whereby the time limit has been prescribed only for 3 years, it was pointed out that there is no unlimited waiting for such cases.

5. I have heard the learned counsels appearing on both sides and perused the pleadings carefully. The object behind compassionate appointment is that a dependent of the Government Servant who dies in harness leaving the family in penury and without any means of livelihood could be appointed on compassionate ground to enable the family to tide over the sudden crisis and to relieve the family from financial destitution and to help it get over the emergency. Furthermore, compassionate appointment cannot be granted after a lapse of a reasonable period as it is not a vested right, which can be exercised at any time in future, as held in the aforesaid judgement in Umesh Kumar Nagpal (Supra). Further more, it is settled law that appointment on compassionate ground can be made only if vacancies are available for the purpose and not otherwise. In the case of Joginder Sharma (Supra), the Hon'ble Supreme Court went to the extent of holding that the prescribed limit of 5% quota neither be breached nor relaxed by courts/tribunals. It is an admitted fact that the applicant's son could not be appointed as a Messenger Boy despite his selection for want of a vacancy. In such circumstances, it cannot be said that there was no proper and reasonable consideration of the applicant's claim for compassionate appointment by the respondents. *A person has only a right for consideration of his/her claim for such appointment and it cannot be claimed as a matter of right.*

6. On a careful consideration to the above aspects, I find no justification in interfering with the impugned order passed by the respondents on 9.2.2005, which order & communication, in my considered view, is a detailed, analytical and speaking order. Since more than 13 years, as on date, have passed from the date of death of the deceased in the year 1992, I do not see any justification to accede

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to applicant's request for compassionate appointment to her son at this stage. Finding no merit in the claim, the OA is dismissed. No costs.


(M.K. Gupta)
Judicial Member

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सूचना एवं उपलब्धता दर्शाते हैं।

H.R. Bharti PDV.208
S.K. Mishra PDV.208

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उप रजिस्ट्रार


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