

**Central Administrative Tribunal
Jabalpur Bench**

Jabalpur, this the 7th day of March, 2006

OA No. 831/05

CORAM

Hon'ble Mr. Justice G. Sivarajan, Vice Chairman

Anil Kumar Kori
Aged about 27 years
S/o Late Shri Ganga Ram
Kori R/o 1704 West Kariya
Pathar, Bola Nagar
Jabalpur (M.P)

Applicant

(By Advocate – Shri M.B. Shrivastava)

Versus

1. Union of India
Through The Secretary
Ministry of Defence, New Delhi.

2. General Manager,
Vehicle Factory,
Jabalpur.

Respondents

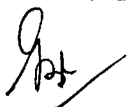
(By Advocate – Shri R.S. Siddiqui)

ORDER (Oral)

By Justice G. Sivarajan, Vice Chairman

Heard Shri M.B. Shrivastava, assisted by Mr. Jitesh Shrivastava, learned counsel appearing for the applicant and Mr. M. Chaurasia, learned standing counsel for the respondents.

2. The matter relates to compassionate appointment under the Scheme for Compassionate Appointment to Dependents of Government Employees Dying in Harness. The applicant's father Gangaram Kori, who was an employee under the second respondent, died while in service on 26.4.01. The applicant made an application for grant of compassionate appointment on 29.6.01. The said



application was rejected by the second respondent approximately after 2 years vide order-dated 5.5.03 (Annexure A3). The order admittedly did not mention the circumstances under which the application was rejected. Therefore, the applicant had made another representation-dated 7.10.04 (A-4) to the second respondent. Since there was no response to the said representation, the applicant caused a lawyer's notice dated 14.3.05 (A-5) issued to the 2nd respondent. The present grievance of the applicant is that the representation Annexure A-4 and the lawyer's notice A-5 remain unresponded. Applicant in the above circumstances has filed this OA seeking a direction to the respondents to consider the name of the applicant for appointment on compassionate ground and also call for the policy dated 9.3.01 of the Ministry of Defence as also of the Army Headquarters dated 30.7.99.

3. Here it must be noted that the applicant did not challenge the order at A-3 rejecting the application. So long as this order remains unchallenged, in the normal course, it will not be proper for this Tribunal to consider the reliefs sought for in this OA.

4. The respondents have filed reply on 26.12.05. However, they have not taken any such objection in the said reply.

5. Learned counsel for the applicant submitted that the order (A-3) rejecting the claim of the applicant for compassionate appointment is not a speaking order and that no reasons have been stated for rejecting the claim of the applicant. The counsel further submits that it is in the peculiar circumstance that the applicant, instead of challenging A-3 order, has chosen to file the representation and then caused the lawyer's notice projecting his case. The counsel further submits that the 2nd respondent was bound to consider the said representation and the lawyer's notice and to pass appropriate orders granting compassionate appointment to the applicant.



6. Shri M.Chaurasia, learned standing counsel for the respondents, based on the averments in the reply of the respondents, submits that the family of the deceased was paid terminal benefits to the tune of Rs.3,20,903/- and family pension of Rs.2250/- + admissible dearness relief from time to time; that the mother of the applicant Smt.Sakuntala had submitted an application dated 29.6.2001 seeking appointment to one of her 3 sons; that on verification of the family circumstances of the deceased employee through Assistant Labour Welfare Commissioner in order to assess the pecuniary condition of the family before considering the case of compassionate appointment, it was found that the family of the deceased employee had sufficient means to tide over the situation caused by the death of the lone breadwinner of the family. The counsel further submitted that the Board which was constituted to consider the application considered the matter as per the guidelines and the applicant could secure only 42 points.; that because of large number of such cases being referred to and only a limited number of vacancies available, a minimum eligibility of 55% marks out of 100 was fixed. The counsel further submitted that for want of sufficient vacancies, even candidates who scored 55 or more marks could not be accommodated and that they are still in the waiting list.

7. It is too well known that the reason for rejection of a statutory application cannot be supplemented by any affidavit filed thereafter. In the instant case, the impugned order dated 5.5.03 (A-3) does not give any reason for rejection of the application. It would appear from the reply that it is on account of the fact that the applicant had received terminal benefit to the tune of Rs.3,20,903/- and the family pension of Rs.2250/- plus admissible dearness relief, it is stated that the dependents of the deceased government employee have got financial resources. If the respondents were inclined to reject the case of the applicant on that ground, it was certainly for the respondents to intimate the applicant/dependents of the deceased government



employee so that if the dependents had anything to say in the matter, that could have been intimated so that the Board which considers the application could have taken into consideration the said circumstances also. Even though terminal benefits are being received, there may be cases where deceased government employees may have created a lot of liabilities by way of taking housing loan/loan from banks/private parties etc, which the dependents have to pay back from out of the terminal benefits received. I am not saying that in the present case, such situations are present. It is a matter for the respondents, particularly the Assistant Labour Welfare Commissioner who is entrusted with the task of verifying the financial position of the family of the deceased government employee to afford such an opportunity to the dependents in writing. I do not propose to dwell further on these aspects, for, according to me, it is a matter for consideration by the respondents in the first instance. Since there is no such consideration, as is evident from the impugned order, the said order is quashed and the respondents are directed to consider the application afresh, keeping in mind the very scheme in accordance with law and in the light of the observations made herein above and to take a decision thereon as expeditiously as possible at any rate within 4 months from the date of receipt of this order. The applicant will produce this order before the second respondent for compliance. The standing counsel for respondents will also ensure that this order is complied with.

8. The OA is disposed of as above. In the circumstances, the parties will bear their respective costs.

(G. Sivarajan)
Vice Chairman

पूठांकन सं ओ/न्या.....जबलपुर, दि.....

पतिलिखित. अन्वेषित:-

- (1) सचिव, उच्च न्यायालय जार एसोसिएशन, जबलपुर
- (2) आवेदक श्री/श्रीमती/शु.....के काउंसल
- (3) प्रत्यक्षी श्री/श्रीमती/शु.....के काउंसल
- (4) अध्यक्ष, को.प्र.अ., जबलपुर न्यायाधीश

सूचना एवं आवश्यक कार्यवाही हेतु

M. B. Shrivastava / Adv
R. S. Shrivastava / Adv

14.3.06