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CENTRAL ADMINISTRATIVE TRIBUNAL,
JABALPUR BENCH,
JA BALPUR

Original Application No. 874 of 2005

Jabalpur this the 21st day of March, 2006.

Hon'ble Mr. G.Shanthappa, Judicial Member

1. Smt. Khimma Bai, W/o late Rewa Prasad,
H.No.1404, Rani Durgawati Ward,
B.T.Tiraha, Garha, Jabalpur.

2. Sunil Kumar Burman, S/o late Rewa Prasad,
H.No.1404, Rani Durgawati Ward,
B.T.Tiraha, Garha, Jabalpur.

Applicant

(By Advocate – Shri M.N.Banerji)

V E R S U S

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

2. General Manager, Vehicle Factory,
Jabalpur.

3. Jt.General Manager, Admn, Vehicle Factory,
Jabalpur.

- Respondents

(By Advocate – Shri A.P.Khare)

O R D E R (Oral)

By filing this Original Application under Section 19 of the Administrative Tribunals Act, 1985, the applicant has sought the following main relief :-

“...directions to the respondents to give employment to the applicant no.2 on compassionate ground....”.

2. The brief facts of the case, according to the applicants are that the husband of the applicant no.1 died in harness on 11.12.2001, leaving behind the 1st applicant, widowed daughter,



two sons and two unmarried daughters. The 1st applicant is getting family pension and also she has received the terminal benefits. The grievance of the applicant is that the widowed daughter of the deceased is dependent on her parents. The other children are unemployed. Two daughters are minor. Among the children, the deceased's son - Tekchand is mentally sick. The amount which was received as terminal benefits has been spent for the treatment of Tekchand. The family of the deceased is in financial distress. The second applicant had submitted an application for compassionate appointment. The same was rejected earlier on 27.9.2002 (Annexure-A-3). The said order was challenged in OA 220 of 2003. The said OA was allowed vide order dated 13.8.2004, and the aforesaid order dated 27.9.2002 was quashed. A direction was given to the respondents in the said OA to pass speaking and reasoned order. As per the direction of the Tribunal, the impugned order dated 8.11.2004 (Annexure-A-1) has been passed. The said order is challenged in the present OA on the ground that they have fixed the minimum 55 marks for eligibility for compassionate appointment.

3. While arguing the case, the learned counsel for the applicant has submitted that the scheme does not provide for minimum 55 marks. The indigency of the applicant has not been properly calculated on the basis of the scheme for compassionate appointment, which was issued in pursuance of the OM dated 9.10.1998 as per Annexure-A-2. Hence, the applicant no.2 is entitled for the relief as prayed for in this OA.

4. Per contra, the respondents have filed their detailed reply rejecting the relief of the applicant. It is contended by the respondents that the husband of the 1st applicant died in harness on 11.12.2001, while he was working as Painter. The family of the deceased consists of widow and three sons. The left out of service of the deceased employee was only 4 years and 8 months. The 1st applicant has received the terminal benefits of Rs.2,38,985/- and



she is getting family pension of Rs.2250/- plus dearness relief admission on pension from time to time. The 1st applicant submitted an application for compassionate appointment on 15.4.2002 seeking appointment to her son Sunil Kumar on compassionate grounds. The family circumstances of the deceased employee were verified through Assistant Labour Welfare Commissioner, as per rule, in order to assess the penury condition of the family before considering the case of compassionate appointment. The case of the applicant was placed before the Board of Officers for consideration in accordance with the policy. The Board allotted marks to each aspect of the case as per prescribed guidelines and the second applicant score only 45 points. Because of large number of cases being referred for appointment on compassionate ground and very limited number of vacancies become available for such appointment within 5% quota, the factory administration fixed minimum cut-off marks of 55 out of 100 marks as minimum qualifying marks for consideration for appointment if vacancy is available. Even many cases, which scored 55 or more marks, are still in the waiting list for appointment on compassionate grounds because of non-availability of suitable vacancies. The applicant no.2 could not be accommodated, and it was rejected by the competent authority and intimated through order dated 27.9.2002 (Annexure-R-1). The income of the family of the deceased has been considered. The case of the applicant no.2 is not such a case which requires the relief of compassionate appointment. The family of the deceased has received a substantial amount as terminal benefits, apart from monthly family pension being drawn with dearness relief from time to time. As per the direction of this Tribunal given in OA 220/2003, the case of the applicant no.2 was reconsidered and thereafter the impugned order 8.11.2004 was passed. This is the second consideration. Earlier on 27.9.2002 the applicant's case was considered. Since the applicant no.2 was not entitled, with



comparison with other applicants, the impugned order has been passed rejecting the relief of the applicant. The respondents have supported their action and have prayed for rejection of this OA.

5. I heard the learned counsel for both the sides and perused the pleadings available on record.

6. After hearing and perusal of the pleadings, the short question that arises for consideration is whether the stand taken by the respondents for fixing the cut off point at 55 is in accordance with the scheme for compassionate appointment dated 9.10.1998. While arguing the case, the learned counsel for the respondents has submitted that because of large number of cases being referred for appointment on compassionate ground and very limited number of vacancies become available for such appointment within 5% quota of direct recruitment, the General Manager, Vehicle Factory, Jabalpur has fixed minimum cut-off marks of 55 out of 100 marks as minimum qualifying marks for consideration for appointment if vacancy is available. I do not find this fixing of cut off point at 55% from the scheme of compassionate appointment. To alter the scheme for compassionate appointment, the General Manager, the second respondent is not the competent authority to fix the cut off point of 55%. The case of the applicant has been rejected only on that account. Thus, the impugned order suffers from infirmities and the same is liable to be quashed.

7. The learned counsel for the respondents has produced a copy of the said instructions issued by the General Manager of the Vehicle Factory, Jabalpur, which are in hand writing with reference to noting OS/11/DIH/E dated 11.2.2000. I recorded the statement made by the learned counsel for the respondents on the basis of the document which is produced today.

8. The admitted facts from either side are that the husband of the applicant died in harness leaving behind the applicants, widowed daughter, and two other sons & two minor daughters. It is also an admitted fact that the 1st applicant received terminal

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benefits amounting to Rs.2,38,985/- and she is also receiving monthly pension of Rs.2250/- per month. The case of the applicant has been considered earlier which was challenged before this Tribunal in OA 220/2003, and on the direction of this Tribunal, the impugned order has been passed on the basis of the cut off point of 55%.

9. I considered the argument of the learned counsel for the applicant and respondents. The impugned order suffers from the instructions issued by the General Manager, Vehicle Factory, Jabalpur. When there is no scheme to fix the cut off point of 55%, the impugned order is liable to be quashed. I accordingly, quash the impugned order.

10. While considering the case of the applicant, the respondents shall consider the scheme for compassionate appointment as per Annexure-A-2, however, terminal benefits shall not be considered. Since the impugned order does not stand on the stand taken by the respondents, I direct the respondents to consider the case of the applicant by applying the OM dated 5.5.2003 and consider the case of the applicant afresh in accordance with the scheme and also the direction of the Apex Court.

11. With the above observation, the OA is allowed in part and a direction is given to the respondents to consider the second applicant for compassionate appointment as observed in the earlier para. No costs.

(Signature)
(G. Shanthappa)
Judicial Member

पृष्ठांकन सं (ओ/न्या).....जबलपुर, दि.....

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- (4) *rkv* के कारुण्य

M. V. Benarjee, Adv. JBT
A. P. Khare Adv. JBT.

28.3.06
(Signature)
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