

**CENTRAL ADMINISTRATIVE TRIBUNAL
JABALPUR BENCH**

OA No.865/04

Jabalpur, this the 11th day of February, 2005.

Smt.Sunita Shrivastava
Wife of late Shri Santosh Kumar Shrivastava
Residing near Indira Stambh
Katangi, Tehsil Patan
District Jabalpur (M.P.)

Applicant

(By advocate Shri Manish Chaurasia)

Versus

1. Union of India through
Secretary
Ministry of Defence
New Delhi.
2. General Manager
Gun Carriage Factory
Jabalpur (M.P.)

Respondents.

(By advocate Shri A.P.Khare)

O R D E R (oral)

By Madan Mohan, Judicial Member

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

- (i) The impugned order dated 3.9.2004 (Annexure A1) by which the compassionate appointment has been refused to the applicant be quashed and the respondents be directed to give compassionate appointment to the applicant within a fixed period.
2. The brief facts of the case are that the husband of the applicant Late Santosh Kumar Shrivastava who was working under the respondents died on 5.2.2001, leaving behind his dependents i.e. his wife and one son and one daughter. The applicant does not possess any property or other source of income. The applicant moved an application for compassionate appointment for any post according to her eligibility (Annexure A4). The

applicant passed B.A in the year 1990 (Annexure A5). Vide letter dated 3.9.2004, the applicant was informed by respondent No.2 that she cannot be given compassionate appointment on the ground that there are far more eligible and deserving candidates than the applicant (Annexure P-1). The applicant is ready to work against any post of Class III under the respondents in any place. Annexure A-1 is arbitrary and discriminatory. Hence the OA is filed.

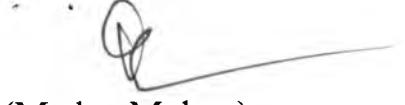
3. Heard the learned counsel for both parties. It is argued on behalf of the applicant that the deceased employee Santosh Kumar Shrivastava has left behind his widow and two children. The applicant has no source of income or property to maintain the family. Learned counsel for the applicant has drawn my attention to 2003 (4) MPHT 167. The applicant is a qualified person having passed B.A and she is ready to work on any post of Class III anywhere. The respondents have rejected the application of the applicant vide the impugned order without any cogent reason.

4. In reply, the learned counsel for the respondents argued that the aforesaid ruling cited on behalf of the applicant does not apply in the present case. In the case cited on behalf of the applicant, the deceased employee was suffering from cancer and the retiral dues were said to have been spent on his treatment. The learned counsel for the respondents has again argued that the case of the applicant was considered by 3 consecutive boards and also argued that the Apex Court in the case of UOI Vs. Joginder Sharma 2002 SCC (L&S) decided on 30.9.02 held that "The administrative discretion of limiting or ceiling of 5% of vacancies arising provide in the Scheme – denial of compassionate appointment on ground that that quota reserved therefore under the scheme already exhausted and that DoPT declined to relax the regulation relating to 5% - held question of relaxing ceiling limit of 5% being in the discretion of the authority concerned which is purely administrative and not statutory in nature." The case of the applicant was considered even

within the limit of 5% and she was not found eligible all the three times. Hence the impugned passed was perfectly in accordance with the rules.

5. After hearing the learned counsel for both parties and carefully perusing the record, I find that the case of the applicant was considered by the respondents for three times as mentioned in the impugned order dated 3.9.04 (Annexure A1) i.e in the year 2002 i.e. on 14.11.03 and 25th May 2004 respectively. The retiral dues of the deceased have been paid to the family of the applicant and family pension is also being paid regularly to the applicant. But due to limited existing vacancies of 5%, the applicant's case could not be considered for compassionate appointment by all three consecutive boards and some more deserving candidates were considered by the Board.

6. Considering all the facts and circumstances of the case, I find the impugned order does not suffer from any illegality or irregularity. Hence the OA is dismissed. No costs.


(Madan Mohan)
Judicial Member

aa.

प्रतांकन सं. ओ/वा. जललपुर, दि.
प्रतिलिपि अवे.
(1) राधिका, उत्तर व्यावायालय, दिल्ली, जललपुर
(2) आधेदक श्री/महिला/वा. जललपुर
(3) पत्न्यर्थी श्री/महिला/वा. जललपुर
(4) वायपाल, देहराज, दिल्ली, जललपुर
सूचना एवं आवश्यक कार्यालय, दिल्ली, जललपुर
उप रजिस्ट्रार
*Issued
On 18.2.08*

*W. M. Singh Chauhan, Jr
Sh. R. L. Guptapuro
D. R. Khare BN
2008*