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CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 563 of 2003

Jabalpur, this the 13th day of February, 2004

Hon'ble Shri G. Shanthappa, Judicial Member

Smt. Kusum Dubey, Aged about
33 years, R/o. 2058 Uprenganj,
Jabalpur.

... Applicant

(By Advocate - Shri Aditya Ahiwasi on behalf of Shri
Sanjay Verma)

V e r s u s

1. Union of India,
through its Secretary,
Ministry of Defence.

2. Director General of Ordnance
Service Head Quarters, DHQ
P.O. New Delhi-110011.

3. Commandant, Central
Ordnance Depot, Post Box No.
20, Jabalpur.

... Respondents

(By Advocate - Shri S.P. Singh)

O R D E R (Oral)

By filing this Original Application the applicant has claimed the relief to set aside the order of rejection dated 31.12.2002 and 26.3.2003 of applicant for appointment on compassionate ground, and further relief to direct the respondents to appoint the applicant on compassionate ground.

2. The brief facts of the case are that the applicant is the wife of the deceased Chandrabhan Dubey who died in harness on 10.09.1994. The applicant submitted her representation for appointment on compassionate ground. The applicant had also submitted her application for pensionary benefits. Since there was a dispute regarding entries in the service records the respondents had asked the applicant for production of probation succession certificate. Accordingly the applicant approached the

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Civil Court and obtained the certificate and produced the same to the respondents. Earlier there was a proceedings before the ^{Central Government} Industrial Tribunal and after the decision of the said Tribunal the Government has approached the Hon'ble High ^{ep} Court. After completion of the proceedings before the Hon'ble High Court the applicant had approached the respondents for appointment on compassionate ground. Alongwith her application the applicant had submitted certain documents in support of her claim. The respondents have considered the same and passed the impugned order as per Annexure A-1 and Annexure A-2 dated 31.12.2002 and 26.03.2003 respectively. The impugned orders passed by the respondents is not a speaking order as no reasons have been assigned while rejecting the application. The reason assigned is that the applicant has submitted her application on 27.12.2002 and there is a delay in submitting the application. The applicant was supposed to submit the application within one year from the date of death of the deceased employee. Since the respondents have not considered the case of the applicant in accordance with the OM regarding appointment on compassionate ground the relief as prayed for in the application shall be granted.

3. The respondents have filed their reply contending that the application ^{is} time barred. The applicant has no legal right in view of the circular dated 3rd December 1999 as per Annexure R-3. The applicant was supposed to submit her application within one year. When the family has managed to live for such a long period, it seems that there is no financial distress due to the death of the Government servant. At this stage there is no necessity to provide employment to the applicant. In view of the judgment of the Hon'ble Supreme Court in the case of

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Umesh Kumar Naqpal Vs. State of Harayana and others,

JT 1994(3) SC 525, the applicant has not proved her^{er} case for grant of appointment on compassionate ground, hence the claim of the applicant in this OA shall be rejected. The reasons^{have been} assigned in the impugned order and that reason is sufficient for considering the case of the applicant. The advocate for the respondents has supported the action taken by the authorities. Hence the OA is liable to be dismissed.

4. Heard the learned counsel for the parties and perused the records carefully.

5. On perusal of the impugned orders, I find that the respondents have rejected the claim of the applicant only on the ground of delay in submitting the application. Admittedly the applicant has submitted her application for settlement of her pension. Since, in the service record there was a discrepancy, the respondents had directed the applicant to obtain probation^{and} succession certificate from the Civil Court. Accordingly, the applicant approached the Civil Court and obtained the certificate and^{then} submitted the same to the respondents. A dispute was raised before the Central Government Industrial Tribunal for termination of the service of applicant's husband. Against the order of the said Tribunal the respondents have approached the Hon'ble High Court. The Hon'ble High Court dismissed the writ petition. After lapse of more than 8 years the applicant has submitted one more representation dated 27.12.2002 requesting the respondents for grant of appointment on compassionate ground. The respondents have issued a non-speaking order. Hence the impugned order is not sustainable in the eye of law. The respondents have stated in

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their reply that since the applicant has no legal right as they have managed to live for such a long period, in view of the judgment of Hon'ble Apex Court in the case of UMesh Kumar Nagpal (supra) she is not entitled for appointment on compassionate ground. On the ground of delay the impugned order has been passed. The respondents have produced a circular dated 3.12.1999 in support of their contention, wherein it has been provided that the application for compassionate appointment should be submitted within one year from the date of the death of the Government servant.

4. In view of the above I am of the considered view that the impugned orders passed by the respondents as per Annexure A-1 and Annexure A-2 is a non-speaking order. The Hon'ble Supreme Court in the case of Director, Defence Metal Research Laboratory and another Vs. G. Murali, 2003 SCC (L&S) 1183 has observed as under :

"Compassionate appointment - Belated claim - Respondent who at the time of his father's death was two years old, seeking compassionate appointment on attaining majority - His request rejected by appellant organisation - CAT upholding this rejection on the ground that "the family has been managing somehow for the last 18 years. As such the case is not covered under the existing instructions issued by the Government" - High Court reversing this order observing that the respondent's application was rejected by the Tribunal "on flimsy grounds and on mere technicalities" - High Court directing creation of a post to accommodate respondent - View of the Tribunal endorsed by the Supreme Court and held, issue of direction for compassionate appointment, that too by creating a post, in the circumstances of the case was not warranted - However in view of fair stand taken by respondent's counsel in not supporting the High Court judgment, the Supreme Court impressing upon the Government to reconsider respondent's case in the light of guidelines contained in Department of Personnel and Training instructions dated 17.2.1988."

In view of the judgment of the Hon'ble Supreme Court in the case of Director, Defence Metal Research Laboratory and another (supra) the respondents should consider the case of the applicant and pass a reasoned and considered order within specific time period and the same should be

communicated to the applicant.

5. Accordingly, I allow the Original Application ^{in part} by quashing the impugned orders at Annexure A-1 and Annexure A-2 dated 31.12.2002 and 26.3.2003, and direct the respondents to consider the case of the applicant for appointment on compassionate ground as per rules and law, within a period of three months from the date of receipt of copy of this order. No costs.


(G. Shanthappa)
Judicial Member

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पृष्ठांकन सं ओ/व्या.....जबलपुर, दि.....

प्रतिनिधि का पते निम्न:-

- (1) सचिव, न्यायालय, न्यायाधीश, जबलपुर
- (2) न्यायाधीश, न्यायालय, जबलपुर
- (3) प्रत्यक्षी, न्यायालय, जबलपुर
- (4) न्यायाधीश, न्यायालय, जबलपुर

सूचना एवं आवश्यक कार्यवाही हेतु

उप रजिस्ट्रार

S. Verma
Singh, Adv.

*Issued
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4-3-04*