

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH  
JABALPUR

Original Application No. 667 of 2003

Jabalpur, this the 10<sup>th</sup> day of October, 2003

Hon'ble Mr. Anand Kumar Bhatt, Administrative Member  
Hon'ble Mr. G. Shanthappa, Judicial Member

Smt. Nisha Sharma, aged about 37 years,  
widow of late Rakesh Deep Sharma,  
resident of H-15, Hathital Colony,  
Jabalpur

- Applicant

(By Advocate - Shri A. Mukhopadhyaya)

Versus

1. Union of India through the Secretary,  
Ministry of Defence, Government of India,  
New Delhi.
2. Director General of E.M.E. (Civil), Master  
General of O.R.D. Branch, E.M. Army  
Headquarters, New Delhi.
3. Commanding Officer, Station Workshop,  
E.M.E., Jabalpur-482001.

- Respondents

O R D E R

By G. Shanthappa, Judicial Member -

The applicant has filed the above OA challenging the order dated 14.7.2003 (Annexure-A-8) passed by the 3rd respondent, rejecting the request of the applicant for appointment on compassionate grounds, and also seeking a prayer for commanding the respondents to give compassionate appointment to the applicant.

2. The learned counsel of the applicant Shri A. Mukhopadhyay submitted the brief facts of the case. The husband of the applicant died in harness while he was in service, under the respondents, on 2.3.2001, leaving behind the applicant i.e. the wife and a minor child. The applicant is now receiving a family pension of Rs. 2300/-. The applicant has received a lump sum financial benefit of Rs. 1,80,000/-. On the said amount it is very difficult to maintain herself and her small child. Hence she had approached the respondents and submitted an application for appointment on compassionate grounds. The respondents have issued a

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letter dated 25.5.2001 (Annexure-A-5) offering to work on any Class-III post. Accordingly, she gave willingness. When she could not get any kind of reply from the respondents, she submitted her detailed representation dated 1.4.2003 with a request to provide her appointment on compassionate grounds, since she had already complied all the requisite conditions. When the said representation was not decided by the respondents, she filed OA No.276/03. This Tribunal had disposed of the said OA vide order dated 9.5.2003. Para 2 of the said order is as follows:-

"2. After hearing the learned counsel of the applicant and after perusal of the material available at the time of admission of this original application, we are of the view that the pending matter regarding compassionate appointment of the applicant should be decided expeditiously by respondent No.2. Therefore without expressing any opinion on the merits of the claim of the applicant, the applicant is directed to send a copy of this order alongwith a copy of the original application to respondent No.2 within a period of 2 weeks from today. In case, the applicant complies without our direction, the respondent No.2 is directed to take a decision in the matter of compassionate appointment of the applicant and pass a speaking and reasoned order under intimation to the applicant, within a period of 2 months from the date of receipt of the copy of the order alongwith the OA".

In pursuance of the above order, the 3rd respondent has passed the impugned order dated 14.7.2003 rejecting the request of the applicant. The reasons assigned in the said order are as follows-

"4. AND WHEREAS, the number of vacancies for compassionate quota are limited to 5% of the total wastage of vacancies per year in Group 'C' and Group 'D' to be filled by direct recruitment only.

5. AND WHEREAS, the case of compassionate appointment in year respect was considered by the boards ie. Mar 2002, Jun 2002, Sep 2002 and Dec 2002 in accordance with the provisions contained in Department of Personnel and Training and Public Grievances (DOP&T) OM No. 1404/6/94-Estt(D) dated 08 Oct 98 as amended from time to time. Merits of cases were decided by the Board of Offrs by allotting points to the applicants based on various attributes like family pension, terminal benefits, moveable/ immoveable property, number of dependents, number of minor children, number of unmarried daughters and left over service.

6. AND WHEREAS, out of 28,34,32 & 35 applicants considered in the respective Board of Offrs, you

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were placed at serial Nos.14,20,19 & 18 on obtaining 66 marks as per 100 points scale for the specified parameters. A total number of vacancies within the ceiling of 5% meant for the purpose were 01, 01, 01 & 01 in the respective board.

7. NOW THEREFORE, the undersigned on behalf of the Director General of Electronics and Mechanical Engineering has observed that the board of officers at Army Headquarters are of the view that as your case did not come up in the relative merit against the ceiling of 5% quota due to constraints of grossly inadequate vacancies, no employment assistance can be provided to you. Hence your case has been finally rejected".

3. The case of the applicant is that the respondents have not considered the case of the applicant properly. The respondents <sup>are</sup> ~~have~~ not justified in rejecting the application for appointment on compassionate grounds. They have not followed the guidelines in tota while denying the request of the applicant. Hence the same is liable to the quashed and a direction ~~shall~~ be given to the respondents to <sup>issue</sup> ~~pass~~ an order of appointment on compassionate <sup>grounds</sup> ~~appointment~~ in favour of the applicant.

4. Before admitting and without issuing the notice to the respondents, the case is heard and decided on merits.

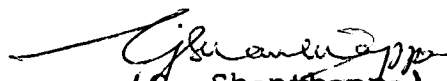
5. After <sup>we are afraid that</sup> hearing the case at a considerable length of time, ~~the~~ learned counsel for the applicant, ~~has~~ has not made out any case to interfere with the order of the 3rd respondent. The respondents have considered the case of the applicant in detail. The Board of Officers have considered all the aspects of the matter in accordance with the guidelines in four consecutive boards, as extracted in para 2 above. Hence the applicant is not entitled for appointment on compassionate grounds. The decision taken by the respondents is perfect and we are not inclined to interfere with the same.

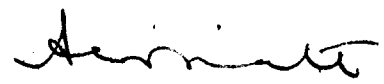


6. It is pertinent to mention here that in a similar circumstances the Hon'ble Supreme Court has decided a matter reported in Union of India Vs. Joginder Sharma, 2002 SCC(L&S) 1111. According to the said judgment the Tribunal or Court cannot compel the authority to consider the case of the applicant by relaxing the guidelines/instructions.

7. On the facts of the case and applying the decision of the Hon'ble Supreme Court cited supra we are of the opinion that the applicant has not made out her case for grant of relief by exercising judicial power interfering with the administrative discretion as prayed in the OA.

8. Accordingly, the OA is dismissed. No costs.

  
(G. Shanthappa)  
Judicial Member

  
(Anand Kumar Bhatt)  
Administrative Member

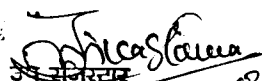
rkv


पूरांकन सं ओ/न्या.....जयपुर, दि.....

प रिशुद्धि करे निम्न:-

- (1) न्यायाधीश, जयपुर, जयपुर, जयपुर
- (2) जयपुर, जयपुर, जयपुर, जयपुर
- (3) जयपुर, जयपुर, जयपुर, जयपुर
- (4) जयपुर, जयपुर, जयपुर, जयपुर

सूचना एवं आवश्यक कार्रवाई हेतु

  
14.10.03

  
17/10/03

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