

CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

OA No. 43/2006.

Jaipur, this the 8th day of February, 2006.

CORAM : Hon'ble Mr. M. L. Chauhan, Judicial Member.

Rohitash Meena,
S/o Bhagwan Ram,
Aged about 24 years,
R/o Hari Das Ka Bas
Via Jharli,
Srimadhopur, District Sikar.

... Applicant.

By Advocate : Shri Prakash Kaushik.

Vs.

1. Union of India
Through Secretary,
Ministry of Information & Broadcasting,
New Delhi.
2. Director General,
All India Radio (broadcasting Corporation of India)
Directorate, S-VI Section,
All India Radio,
New Delhi.
3. Station Engineer, All India Radio,
M. I. Road, Jaipur.

... Respondents.

: O R D E R (ORAL) :

The applicant is the son of Late Shri Bhagwan Ram who while working as Security Guard, All India Radio, Jaipur, died on 19.9.1996. After the death of late Shri Bhagwan Ram, the widow Smt. Patashi Devi made a representation dated 17.7.1997 on plain paper for compassionate appointment of her son namely Shri Rohitash Meena (applicant) on Group-D post. As the said application was not on prescribed Performa, widow

was informed to submit the application on prescribed Performa vide letter dated 25.7.1997. It is further borne out from the material placed on record that in turn the applicant applied for compassionate appointment on 22.9.1999 in the prescribed application format after a lapse of two years from the date of sending prescribed performa i.e. on 25.7.1997 for appointment in Group-D post. On the receipt of the prescribed format from the applicant on 22.9.1999, his name was included in the waiting list prepared by the respondents for compassionate appointment in Rajasthan zone for Group-D post on 13.10.1999. In the said list, the name of the applicant was accordingly placed at Sl. No.2 and copy of the said list was forwarded to Director General, All India Radio, New Delhi, for his information and record. However, vide letter dated 22.6.2004, the Administrative Officer informed that the applicant cannot be given appointment on compassionate grounds in view of the letter dated 5.5.2003 of the DOP&T by virtue of the fact that such compassionate appointment can be made only within 5% of the vacant post subject to limitation of three years. The applicant feeling aggrieved by the said order filed OA in this Tribunal which was registered as OA No.294/2004. The contention raised by the applicant in the said OA was that since the death of the father of the applicant has occurred prior to the issuance of the notification of the DOP&T in 2003, as such, his case should have been considered in the light of instructions and guidelines as available on the relevant date and that subsequent direction of the DOP&T cannot be made applicable

in his case. This Tribunal after considering the submissions made by the parties, quash the letter dated 22.6.2004 and directed the respondents to treat the OA as representation and pass reasoned and speaking order within a period of 90 days. Accordingly, the respondents have passed fresh order Annexure A/1 and again rejected the representation of the applicant on the ground that it has not been found proper to offer appointment on compassionate grounds due to non availability of the vacancy in the impugned year. The respondents have indicated the year wise vacancies position which occurred in Group-D post and relevant 5% vacancy to be filled through Rajasthan Zone since 1999 to 2004. At this stage, it will be useful to quote the said part of the order where the vacancies position in Group-D category in Rajasthan zone since the year 1999 to 2004 has been indicated and the reasons why the applicant could not be given appointment, which is as under :-

Year	Total vacancies in Group.D in Rajasthan Zone	Vacancies fall in 5% quota for compassionate ground
1999	7	Nil
2000	5	Nil
2001	3	Nil
2002	5	Nil
2003	7	Nil
2004	6	Nil

WHEREAS no vacancy arose in the 5% quota to be filled through compassionate grounds in the Group 'D' in Rajasthan Zone since the year 1999 to the year 2004, as tabulated above, even then the Screening Committee constituted for the compassionate appointment in Rajasthan Zone, considered the case of Shri Rohitash Meena, along with the other enlisted applicants for appointment, but due to non availability of the vacancies

in the 5% quota his request could not be acceded to and he could not offered any appointment and his name was still kept pending to be taken into consideration for future vacancies.

WHEREAS as per the instructions of DOPT's OM No.14014/19/2002 dated 5th May 2003 and DG:AIR, New Delhi's letter No.4/18/2003-S.IV(A)/285 dated 13.5.2004 that the maximum time a person's name can be kept under consideration for offering Compassionate Appointment will be three years, subject to the condition that the prescribed Committee has reviewed and certified the penurious condition of the applicant at the end of the first and the second year. After three years, if compassionate appointment is not possible to be offered to the Applicant, his case will be finally closed and will not be considered again. Accordingly the case of Shri Meena, being time barred case, was closed on 22.06.2004 vide this Office letter No.jai-19(Raj. Zone)/1(17)/2004-S dated 22.06.2004."

As already stated above, now this is the order which is under challenge before this Tribunal. The applicant has prayed for quashing the said order with a direction to the respondents to issue appointment order in his favour. The main contention raised by the applicant in this OA is that in view of the law laid down by the Apex court in the case of Smt. Sushma Gosain and other vs. Union of India and Others AIR 1989 SC 1976, it was incumbent upon the respondents to offer the appointment and if there is no suitable post for appointment supernumerary post should be created to accommodate the applicant.

2. I have heard the learned counsel for the applicant at admission stage.

3. I am of the view that the applicant is not entitled to any relief. The Apex Court in number of decisions has held

that the method of appointment on compassionate ground is in deviation of the normal recruitment process under the rules where peoples are waiting in the queue indefinitely. The decision of the Apex court as relied by the applicant came for consideration before the Apex court in the case of Umesh Kumar Nagpal vs. State of Haryana and Others, JT 1994 (3) SC 525. The Apex Court has held that as a rule appointments in the public service should be made strictly on the basis of open invitation of applications and merit. However, to this general rule there are some exceptions carved out in the interests of justice and one such exception is in favour of the dependents of an employee dying in harness and leaving his family in penury and without any means of livelihood. It is only in such an exceptional cases where the condition of family is such that does not able to meet the immediate crisis that a job is to be offered to the eligible member of the family, otherwise such appointment is in violation provisions contained in Article 16 (2) of the Constitution of India. The Apex court has further observed that the decision rendered by the Apex Court in the case of Smt. Gosain (supra) has been misinterpreted to the point of distortion and the judgment of some of the High Courts which have justified and even directed compassionate employment either as a matter of course or in posts above Classes III and IV cannot be appreciated.

4. Further, I am of the view that the direction given by the Apex Court in the case of Sushma Gosain was given in the

facts and circumstances of that case. That was a case where the applicant was denied appointment on the ground that the Notification dated 25.01.1985 issued by the Central government prohibited the appointment of ladies in establishment, though there was no such prohibition in the scheme for compassionate appointment as was issued vide OM dated 25.11.1978 and was in vogue. Such appointment was denied despite the fact that the appellant has also qualified the written test, trade test. It was further pleaded on behalf of department that the case of the appellant therein was also taken up with the department to get an employment, in order to, mitigate her hardship, but everyone regretted. It was on those facts and circumstances, the Apex court held that since the appellant therein has passed the trade test and interview in the year 1983, there was absolutely no reason to make her to wait till 1985 when the ban on appointment of ladies was imposed. Thus, the denial of appointment was held to be patently arbitrary and it was under these circumstances that direction was given to give appointment to the appellant in the post to which she had already qualified. Thus, the ratio laid down by the Apex Court in the case of Smt. Sushma Gosain (supra) is not applicable in the instant case. In the instant case, the Scheme for compassionate appointment which was prevalent at the relevant time and amended vide OM dated 26.9.95 was restricted up to 5% of vacancies falling under direct recruitment quota in any Group-C or on Group-D post thereby modifying para 5 of the earlier scheme issued vide DOP&T OM 16

No.14014/6/86-Estt. Dated 30.6.1987. The said scheme came up for consideration before the Apex Court in the case of Union of India & ors. vs. Joginder Sharma, 2002 SCC (L&S) 1111. That was a case where the respondent's father was working as a Security Guard in the office of Noida Export Processing Zone, Ministry of Commerce, died while in service. The respondent claim compassionate appointment. Since the appointments on compassionate grounds could be only against the 5 per cent of the vacancies arising the request for his appointment could not be complied with in view of the provisions contained in Para 5 of the DOPT OM. The respondents approach the CAT which directed the appellant to consider relaxing the limit or ceiling of 5 per cent in the scheme and consider appointing the respondent against one of the posts available in the office of the Development Commissioner, subject, of course, to his fulfilling the required qualifications etc., within a period of two months from the date of receipt of a copy of the order. The appellant moved a writ petition which was dismissed. Consequently, the matter was carried to the Apex Court. The Apex court set aside the order of the Tribunal as affirmed by the High Court and has made the following observations in Para 4 and 5, which is reproduced herein below :-

"4. The compassionate appointment is intended to enable the family of the deceased employee to tide over the sudden crisis resulting due to death of the sole breadwinner, who died leaving the family in penury and without sufficient means of livelihood. If under the Scheme in force any such claim for compassionate appointment can be countenanced only as against a specified number of vacancies arising, in this

case 5 per cent, which ceiling it is claimed came to be imposed in view of certain observations emanating from this Court in an earlier decision, the Tribunal or the High Court cannot compel the department concerned to relax the ceiling and appoint a person. Since this method of appointment is in deviation of the normal recruitment process under the rules, where people are waiting in the queue indefinitely, the policy laid down by the Government regarding such appointment should not be departed from by the courts/tribunals by issuing directions for relaxations, merely on account of sympathetic considerations or hardships of the person concerned. This court as early as in the decision reported in LIC of India vs. Asha Ramchhandara Ambekar held that the courts cannot direct appointments on compassionate grounds dehors the provisions of the Scheme in force governed by rules/regulations/instructions. If in a given case, the department of the Government concerned declines, as a matter of policy, not to deviate from the mandate of the provisions underlying the Scheme and refuses to relax the stipulation in respect of ceiling fixed therein, the courts cannot compel the authorities to exercise its jurisdiction in a particular way and that too by relaxing the essential conditions, when no grievance of violation of substantial rights of parties could be held to have been proved, otherwise.

5. So far as the case on hand is concerned, both the Tribunal as well as the High Court seem to have fallen into great and same error. A mere recommendation or expression of view by an authority at the lower level that if relaxation is accorded, there is scope for appointment does not obligate the competent authority to necessarily grant relaxation or that the courts/tribunals can compel the competent authority to grant relaxation. The reasons assigned by the High Court to reject the challenge made by the appellant, seem to be no reasons in the eye of the law apart from they being totally oblivious to the very stipulations in the Scheme and the very object underlying the Scheme of making appointments on compassionate grounds. Where the question of relaxation is in the discretion of an authority in the government and not even in the realm of any statute or statutory rules but purely administrative and that authority as a matter of policy declines to accord relaxation, there is hardly any scope for the tribunal/court to compel the exercise to grant relaxation. The two factual instances, sought to be relied upon, on behalf of the respondent, have been properly explained by the appellant to be not really and in substance a deviation from the general policy not to relax so as to alter the ceiling and create more than the stipulated number of vacancies, to appoint persons on compassionate grounds.

5. The present case is squarely covered by the decision rendered by the Apex court in the case of Jogender Sharma (supra), the relevant portion of which has been extracted herein above. As such, I am of the view that since there was no vacancy available within the limit of the ceiling of 5% as stipulated in the Scheme, I see no infirmity in the order passed by the respondents whereby compassionate appointment was denied to the applicant on the ground of non availability of the post.

6. For the foregoing reasons, the OA is dismissed with no order as to costs.



(M. L. CHAUHAN)
JUDICIAL MEMBER

P.C./