

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

Jaipur, this the 03rd day of August, 2010

ORIGINAL APPLICATION NO. 280/2007

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HON'BLE MR. M.L. CHAUHAN, JUDICIAL MEMBER

1. Smt. Sumitra Devi wife of Late Shri Ram Gopal Meena, resident of C/o Shiv Narayan Meena, Shri Ram Pavitra Bhojanalaya, Nayapura Circle, Kota (Rajasthan).
2. Suresh Kumar Meena son of Late Shri Ram Gopal Meena, aged about 28 years, resident of C/o Shiv Narayan Meena, Shri Ram Pavitra Bhojanalaya, Nayapura Circle, Kota (Rajasthan).

.....Applicants

(By Advocate: Mr. Shailendra Shrivastava)

VERSUS

1. Union of India through Narcotics Commissioner, Central Bureau of Narcotics, 19, Mall Morar, Gwalior (M.P.).
2. General Manager, Govt. Opium & Alkaloid Works, Neemuch (M.P.).
3. Chief Controller, Govt. Opium & Alkaloid Works, 11/17 Mall Morar, Gwalior.

.....Respondents.

(By Advocate: Mr. T.P. Sharma)

ORDER (ORAL)

Applicant nos. 1 & 2 are the wife and son respectively of deceased Ram Gopal Meena, who have filed this OA thereby praying for the following reliefs:-

- (A) That this Hon'ble Tribunal may graciously be pleased to direct the respondents to consider the case of the petitioner no. 2 for compassionate appointment vice his father under the scheme and issue an appointment order in favour of the petitioner no. 2 keeping in view the indigent condition of the family of the humble petitioners.
- (B) Respondents may also be directed to produce entire record to show how many vacancies meant for very purpose in question were available since the demise of petitioner's

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father till date in the department and how many persons have been provided compassionate appointment against those vacancies and on what ground. Respondents may further be directed to disclose the manner in which they use to calculate vacancies for the purpose of providing compassionate appointment.

- (C) Respondents may also be directed to dispose of the representation of the petitioners with regard to the matter in question which is still pending.
- (D) Any other relief which this Hon'ble Tribunal may deem fit and proper as per the facts and circumstances of the case.
- (E) Award the cost of the petitioner in favour of the petitioners."

2. Briefly stated, facts of the case are that the father of the applicant no. 2 died in harness on 27.09.99 while he was working as Assistant Chief Accounts Officer under subordination of General Manager, Government Opium & Alkaloid Works, Neemuch (M.P.) [Respondent no. 2]. The grievance of the applicant no. 2 in this case is that his case for compassionate appointment has not been considered by the respondents; as such directions may be given to the respondents to consider his case for giving him appointment on compassionate grounds.

3. Notice of this application was given to the respondents. The stand taken by the respondents in the reply is that the case of the applicant for giving appointment on compassionate grounds was kept under consideration but due to non-availability of vacancies under 5% of direct recruitment quota, the case of the applicant could not be considered. It is further stated that the matter has been taken up with the Ministry for relaxation of 5% quota for the purpose of making appointment on compassionate grounds as one time measure. It is further stated that Ministry vide letter dated 13.11.2003 asked to review all pending cases in the light of DOP&T's OM No.

14014/19/2002/Estt(D) dated 05.05.2003. It is further stated that as per the aforesaid instructions, a Compassionate Appointment Committee was constituted by the Department, which met on 03.09.2004 and the said committee had recommended that the case of the applicant being more than 3 years may be finally closed in terms of the OM dated 05.05.2003. According to the respondents, as per OM dated 05.05.2003, maximum time limit of 3 years has been fixed upto which the name of a person can be kept under consideration for offering compassionate appointment 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 would be finally closed and would not be considered again.

4. The applicant has filed rejoinder. Alongwith the rejoinder, the applicant has annexed a copy of letter dated 14.08.2009, which was received by him under the Right to Information Act. In this letter, the names of ward, who have been given appointment on compassionate ground after the death of father of the applicant no. 2 on 27.09.1999 have been shown. As can be seen from this document, appointment on compassionate grounds has been given to one Shri Narendra Kumar Arya on 29.01.2001 whose father died on 29.12.1996 whereas in the case of Smt. Aruna Kapadia, whose father died on 10.05.2005, she has been given appointment on 26.12.2007. There is no violation of the policy decision as per OM dated 05.05.2003 in respect of Smt. Aruna Kapadia whereas in the case of Shri Narendra Kumar Arya, who was given appointment in the year 2001, OM dated 05.05.2003 had

not come in operation. The grievance of the applicant is in respect of wards of persons mentioned at sr. nos. 3 to 7. The wards of persons mentioned at sr. no. 3, 4, 5 and 7 have been given appointment on 15.04.2008, 10.04.2008, 27.08.2008 and 10.12.2008 respectively whereas date of death of their father is 29.03.2004, 13.05.2004, 21.01.2004 and 24.06.2004 respectively. The person mentioned at sr. no. 6, Smt. Guddi Devi has been given appointment on 30.01.2009 and in her case date of death of her father was 13.08.2005. Based on this information, learned counsel for the applicant argued that this is a case of discrimination in as much as the case of applicant no. 2 has not been considered in the light of OM dated 05.05.2003 whereas the aforesaid persons have been given compassionate appointment even after the period of three years.

5. I have heard the learned counsel for the applicant and have gone through the material placed on record. OM dated 05.05.2003 (Annexure R/14) prescribes the time limit for making appointment on compassionate grounds. Para No. 3 of this OM makes it clear that the maximum time for which 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. These instructions further stipulates that 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.

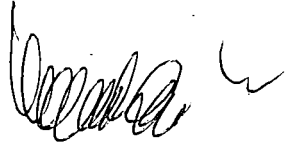
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6. Thus in the light of the instructions, as mentioned above, I see no infirmity in the action of the respondents whereby the case of applicant no. 2 has been closed in the light of the aforesaid policy decision as father of the applicant had died on 27.09.1999 and after the death of father of applicant no. 2, vacancy occurred only in the year 2001, 2007, 2008 and 2009. The case of one Shri Narendra Kumar Arya, whose father had died on 26.12.1999, had been considered and he was given appointment on 29.01.2001. The applicant has not challenged the validity of this order after 2001. As already stated above, the vacancies had occurred in the year 2007, 2008 and 2009, by that time OM dated 05.05.2003 has come into operation and the case of the applicant could not have been considered in the light of the provisions contained in Para No. 3 of OM dated 05.05.2003. Thus according to me, the applicant is not entitled to any relief, more particularly, when the applicant has not challenged the validity of OM dated 05.05.2003 being arbitrary or against the constitutional provisions. So far as the other grievance of the applicant is concerned that some of the candidates have been offered appointment after a period of four years is concerned, the said plea has been taken for the first time in the rejoinder, as such, it cannot be concluded whether their cases were considered by the committee within a period of three years, though there may be some delay in giving appointment to these candidates. Be that as it may, this new point raised by the applicant in the rejoinder cannot be taken into consideration. Even otherwise also, the applicant cannot be granted relief solely on this ground that some of the persons have been given appointment in violation of the policy decision of OM dated 05.05.2003 and such relief should be granted to him. Suffice it to say that Article

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14 cannot be enforced in a negative way as Article 14 is a ~~policy~~ ^{positive} concept. In any case, if the persons, as mentioned by the applicant as per letter dated 14.08.2009 (Annexure RA/1) have been given appointment in violation of the policy decision contained in OM dated 05.05.2003, it is a matter to be seen by the appropriate authority.

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



(M.L. CHAUHAN)
MEMBER (J)

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