

(3)

22.04.2010

OA No. 33/2009

Mr. H.R. Kumawat, Counsel for applicant.

Mr. Mukesh Agarwal, Sr. Standing Counsel for respondents.

Additional reply not filed. Let the same be filed within a period of four weeks.

Let the matter be listed on 20.07.2010.

BL
(B.L. KHATRI)
MEMBER (A)

AHQ

20-7-2010

OA. 33/2009

Sh. H.R. Kumawat, Counsel for applicant.

Sh. Mukesh Agarwal Sr. standy. counsel
for respondents.

Heard.

RECORDED

for the reasons to be dictated

Separately the OA is disposed of.

After hearing for ten minutes, I wish to record the

following points and you have done what is necessary
to do and to submit a written

order no SC no date and number, for (K.S. Sugathan)

Member (A)

RECORDED

MS

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 20th day of July, 2010

ORIGINAL APPLICATION No.33/2009

CORAM :

HON'BLE MR.K.S.SUGATHAN, ADMINISTRATIVE MEMBER

Rajeev Joshi
S/o Shri Laxmi Narayan Joshi,
R/o 71 Rama Bhawan, Shiv Nagar,
Benar Road, Dadi Ka Phatak, Jhotwara,
Jaipur.

... Applicant

(By Advocate : Shri H.R.Kumawat)

Versus

1. Union of India through
Secretary ,
Ministry of Urban Development,
Nirman Bhawan,
New Delhi.
2. Additional Director (Adm),
O/o Chief Engineer, CPWD (E) NZ,
East Block-I, Level-VII, R.K.Puram,
New Delhi.
3. Superintendent Engineer,
CPWD (Central Electrical Zone),
Nirman Bhawan, Sector-10,
Vidyadhar Nagar,
Jaipur.

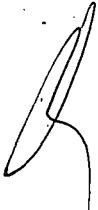
... Respondents

(By Advocate : Shri Mukesh Agarwal)

ORDER

PER HON'BLE MR.K.S.SUGATHAN

The applicant sought compassionate appointment in the year 2002. His father was a permanent employee under the



respondents and passed away on 24.3.2002. Immediately thereafter, the applicant submitted an application for compassionate appointment as a Khalasi. Subsequently, vide letter dated 22.11.2002 (Ann.A/2), the applicant was directed to provide additional information regarding his family. The required information was provided. The local office namely Central Electrical Division, CPWD, Jaipur, submitted necessary papers to the Chief Engineer, CPWD, New Delhi, on 20.8.2003 (Ann.A/3). Subsequently, the applicant has been pursuing the matter with the respondents. The pleadings also contain copies of correspondence exchanged between the local office of the respondents with New Delhi office. In December, 2004, vide letter dated 14.12.2004 (Ann.A/9), the CPWD Coordination Circle informed the office of the Chief Engineer that after the necessary guidelines are received from the Director General, the case will be placed before the Committee.

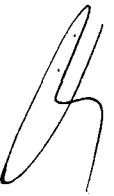
After some more exchange of letters, office of the Chief Engineer, New Delhi, informed the applicant's mother that the request of compassionate appointment for her son is under consideration and that her son's name is kept at the second place (Ann.A/15). Finally, vide communication dated 22.1.2008 (Ann.A/1), the applicant was informed that due to non-availability of vacancies in the 5% quota for compassionate appointment, it was not possible to consider his case. Subsequently, vide representation dated 1.10.2008 (Ann.A/19), the applicant expressed his readiness to accept any other post (other than Khalasi) anywhere in the country. In reply to the said request, the applicant was advised vide



communication dated 14.11.2008 (Ann.A/20) that he can also apply for the post of LDC on compassionate grounds. The applicant thereafter applied for consideration of his case for the post of LDC on compassionate grounds (Ann.A/21).

2. The respondents have filed reply. It is stated in the reply that the information contained in the earlier letter of the Jaipur Circle regarding vacancies was not correct. The correct information regarding the number of vacancies is given in Ann.R/2. According to Ann.R/2, against 4 posts available under the 5% quota, five persons had already been appointed on compassionate grounds. Names of those five persons appointed on compassionate grounds are also mentioned in Ann.R/2. There is no vacancy available under 5% quota for compassionate appointment. Due to non-availability of vacancy under 5% quota, the applicant could not be considered for compassionate appointment. Based on the vacancies submitted by various Circles, the applications for compassionate appointment are considered at ADG/Zonal Level. Applications received from the entire zone are considered at Zonal Level. As per the guidelines issued by the Department of Personnel, the applications for compassionate appointment can be considered only for a maximum period of three years.

3. I have heard learned counsel for the applicant Shri H.R.Kumawat and learned counsel for the respondents Shri Mukesh Agarwal. I have also perused the records carefully.



4. The object of the scheme of compassionate appointment is to relieve the family of the deceased employee from financial destitution and tide over the immediate emergency. Compassionate appointment cannot be claimed as a matter of right. Several judgements of the Apex Court have emphasized the said principle. In **Umesh Kumar Nagpal v. State of Haryana and Others** [1994 (2) SLR 677], Hon'ble Supreme Court has held that;

"2. The question relates to the considerations which should guide while giving appointment in public services on compassionate ground. It appears that there has been a good deal of obfuscation on the issue. As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment or any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. 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. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependents of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the



provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Class - III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependent of the deceased employee in such posts has a rational nexus with the object sought to be achieved, viz., relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employments which are suddenly up turned."

4. It would be seen from the aforesaid extract that the main factor to be considered is the financial condition of the family. There is nothing on record to indicate that the financial condition of the family has been assessed by the respondents with reference to an objective criteria. Such an objective criteria which gives weightage to various parameters such as amount of family pension and other terminal benefits, number of dependents, ownership of property etc. on a 100-Point scale has been accepted by the respondents' organization for assessment of the financial condition of the family but there is nothing in the reply to show that financial condition of the family has been assessed on the basis of that criteria.

5. It is seen from the available pleadings that the applicant has been considered against the vacancies in the cadre of Khalasis only. Even though the applicant had applied for the post of Khalasi, the respondents could have considered the case of the applicant for other suitable jobs also on the basis of his qualification provided the financial condition of the family justifies offer of compassionate employment.

6. During the course of arguments, learned counsel for the respondents stated that the question of assessing the financial condition of the family did not arise as no vacancy was available in the cadre of Khalasis. I am unable to agree with the contention of the respondents' counsel. The main factor that needs to be assessed is the financial indigency of the family. After assessing the financial indigency, if the applicant is found deserving, he has to be considered for any suitable job in accordance with his educational qualifications. It is seen from the record that the applicant has been considered only for vacancies in the Khalasis cadre. Even though the applicant subsequently specifically requested for consideration of his case for an LDC job, that has so far not been done by the respondents.

7. In view of the above discussion, I am of the considered opinion that applicant's case has not been considered by the respondents in accordance with the objective of the scheme of compassionate appointment. It is, therefore, a fit case in which a direction should be given to the respondents to



consider the case of the applicant for any suitable post (other than Khalasi also) on the basis of his educational qualifications, provided the family is found to be deserving based on an objective assessment of the financial condition of the family.

8. For the reasons stated above, this OA is disposed of with a direction to the respondents to objectively assess the financial condition of the family and if after such assessment, the applicant's case is found to be deserving, reconsider the case of the applicant for any vacancy in any other cadre according to his educational qualification and communicate their decision through a speaking order within a period of three months from the date of receipt of a copy of this order. No costs.



(K.S. SUGATHAN)
MEMBER (A)

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