

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

Jaipur, this the 22nd day of February, 2011

ORIGINAL APPLICATION NO. 20/2010

CORAM

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

Vijay Kumar Verma son of Late Shri Gulab Chand aged about 29 years, resident of MES, IB NO. 33, Sardar Patel Marg, Laxmi Path, Jaipur.

.....Applicant

(By Advocate: Mrs. Kavita Bhati)

VERSUS

1. Union of India through the Engineer in Chief, Army Headquarters, Kashmir House DHQ, PO New Delhi.
2. The Chief Engineer, Military Engineering Services, Headquarters Southern Command, Pune-I,
3. The Chief Engineer, Military Engineering Services, Jaipur Zone, Power House Road, Bani Park, Jaipur.

.....Respondents

(By Advocate: Mr. Mukesh Agarwal)

ORDER (ORAL)

The applicant has filed this OA against the impugned order dated 18.09.2010 (Annexure A/1) whereby he in reference to his application dated 11.09.2009 was informed that his case for compassionate appointment cannot be finalized as there is dispute between Smt. Munni Devi and Smt. Narmada Devi and the case filed by Smt. Narmada Devi is still pending for finalization in the court. The applicant by way of this OA has prayed that directions may be given to the respondents to consider his case for compassionate appointment. At this stage few facts may be noticed, that the applicant is the son of Late Shri Gulab Chand, who while working with the respondents died on 04.06.2000. Application for compassionate appointment was moved

by the applicant on 04.07.2000 followed by repeated representations. Last representation was made by the applicant on 11.09.2009. Vide impugned order dated 18.09.2009 (Annexure A/1), the applicant was informed that his case for compassionate appointment cannot be considered at this stage because of pendency of dispute between two widows namely Smt. Munni Devi and Smt. Narmada Devi.

2. Notice of this application was given to the respondents. The respondents have filed their reply. By way of preliminary objections, it is stated that the deceased employee was having two wives i.e. Smt. Munni Devi and Smt. Narmada Devi and since there is dispute between ~~the~~^{fix} two wives, as such the matter relating to family pension and compassionate appointment has not been decided so far. It is further stated that after a lapse of about 10 years after the death of Late Shri Gulab Chand, which is a reasonable period, compassionate appointment cannot be granted to the applicant in terms of the law laid down by the Apex Court in the case of **Umesh Kumar Nagpal vs. State of Haryana & Others**, JT 1994 (3) SC 525, whereby the Apex

court has held that compassionate appointment cannot be granted after lapse of reasonable period and it is not a vested right which can be exercised at any time. The respondents have further stated that the applicant has filed this OA after a lapse of period of about 10 years.

Thus as per Section 21 (1) (b) of the Administrative Tribunal's Act, 1985, the limitation for filing Original Application is one year from the date of expiring six months from the date of submitting representation dated 04.07.2000 i.e. 03.01.2001. The respondents have further stated that submission of just a memorial or representation to the Head of the establishment shall not be taken into consideration in the

matter of fixing limitation, as held by the Constitution Bench of the Apex court in the case of **S.S. Rathore vs. State of M.P.**, 1989 (4) SCC 582. Thus according to the respondents, the present OA is time barred and deserves to be dismissed.

3. On merits, the respondents have stated that although all the terminal benefits have been paid but the case of family pension could not be finalized due to dispute pending before the court between two wives of Late Shri Gulab Chand i.e. Smt. Munni Devi and Smt. Narmada Devi. It is further stated that Smt. Narmada Devi has submitted a copy of the judgment dated 11.03.1986 passed by the Family Court whereby the learned Family Court has held that she is the legally wedded wife of late Shri Gulab Chand and further entitled her for the maintenance of Rs.150/- per month. Thus according to the respondents, so long as the dispute between the two wives is not decided, the matter regarding family pension and compassionate appointment has been kept pending for want of decision pending before the Court. It is further stated that the applicant has also not submitted requisite documents and 'No Objection Certificate' from all the family members that they are not willing for compassionate appointment alongwith his compassionate appointment application. Thus according to the respondents, the application of the applicant for compassionate appointment is also incomplete.

4. I have heard the learned counsel for the parties and have gone through the material placed on record. In view of the facts that Smt. Narmada Devi has been held as legally wedded wife of Late Shri Gulab Chand and has been held entitled for maintenance by the Family court,

I see no infirmity in the action of the respondents where the case of the applicant for compassionate appointment has been kept pending. It may be stated that the widow has a preferential right for claiming compassionate appointment as against the applicant, who is the son of the deceased Gulab Chand. The applicant had neither submitted requisite documents and 'No Objection Certificate' from other family members, which was condition precedent for considering the case of the applicant for compassionate appointment nor had impleaded Smt. Narmada Devi as respondents in this OA. The Apex Court has repeatedly held that compassionate appointment cannot be granted after a long lapse of reasonable period and the very purpose of compassionate appointment, as an exception to the general rule of open recruitment, is intended to meet the immediate financial problem being suffered by the members of the family of the deceased employee. The Apex Court has further held that the very object of appointment to dependent of deceased employee who died in harness is to relieve immediate hardship and distress caused to the family by sudden demise of the earning member of the family and such consideration cannot be kept binding for years.

5. Thus keeping in view the law laid down by the Apex Court and the fact that compassionate appointment cannot be claimed as a matter of right and the very object of such appointment is to relieve immediate hardship and distress caused to the family by sudden demise of the earning member, no mandamus can be issued directing the respondents to consider the case of the applicant after a lapse of ^{and ~~more~~} about ten years, no infirmity can be found in the action of the respondents whereby the applicant was informed vide impugned order

dated 18.09.2009 (Annexure A/1) that his case has been kept pending till dispute between the two ladies regarding pensionary benefits and compassionate appointment is not resolved by the competent court. It may also be noticed that proceedings under Section 370 of the Succession Act is also pending before the competent court, which admittedly has not been finalized till date.

6. For the foregoing reasons, I am of the view that the applicant has not made out any case for the grant of relief, which is accordingly dismissed with no order as to costs.



(M.L. CHAUHAN)
MEMBER (J)

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