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**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORDER SHEET

ORDERS OF THE TRIBUNAL

29.01.2013

OA No. 323/2012

Mr. C.B. Sharma, Counsel for applicant.
Mr. Mukesh Agarwal, Counsel for respondents.

Learned counsel for the applicant submits that he does not want to file rejoinder. Thus the pleadings are complete.

List it on 19.02.2013.

Anil Kumar
(Anil Kumar)
Member (A)

ahq

19/02/2013

OA No. 323/2012

Mr. C.B. Sharma, Counsel for applicant.
Mr. Mukesh Agarwal, Counsel for respondents

Heard.

O.A. is disposed of by a
separate-order on the separate-
sheets for the reasons recorded
therein.

Anil Kumar
[Anil Kumar]
Member (A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR.

ORIGINAL APPLICATION NO. 323/2012

Jaipur, the 19th day of February, 2013

CORAM :

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

Smt. Pushpa Devi wife of Late Shri Dinesh Kumar Savita aged about 45 years, resident of 232/17, Chhipiwada, Lala Maharaj Ki Bagichi, Brahampuri. Aspirant for appointment of her son Shri Lokesh Kumar Savita on compassionate grounds on the suitable post.

... Applicant

(By Advocate : Mr. C.B. Sharma)

Versus

1. Union of India through Secretary to the Ministry of Corporate Affairs, "A" Wing, Fifth Floor, Shastri Bhawan, New Delhi.
2. Regional Director, North Western Region, ROC Bhavan, Opposite Rupal Park, Near Ankur Bus Stand, Naranapura, Ahmedabad, Gujarat.
3. Registrar of Companies Rajasthan, Jaipur, Corporate Bhawan, Second Floor, C/6-7, Residency Area, Civil Lines, Jaipur.

... Respondents

(By Advocate: Mr. Mukesh Agarwal)

ORDER (ORAL)

The applicant has filed this OA thereby praying for the following reliefs:-

- "(i) That the entire record relating to the case be called for and after perusing the same respondents may be directed to give appointment to the applicant/son on the suitable post on compassionate grounds by quashing letter dated 13.02.2012 (Annexure A/1) with the letter dated 09.03.2012 (Annexure A/18) with all consequential benefits.
- (ii) Any other order, direction or relief may be passed in favour of the applicant which may be deemed fit, just and proper under the facts and circumstances of the case.
- (iii) That the costs of this application may be awarded."

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2. The learned counsel for the applicant submitted that the husband of the applicant, Shri Dinesh Kumar Savita, was a substantive employee of the respondent department. That Shri Dinesh Kumar Savita expired on 20.10.2002.

3. At the time of death of Shri Dinesh Kumar Savita, the following were the members of his family:-

1. Smt. Pushpa Devi – Widow
2. Shri Lokesh Kumar – Son, aged about 19 years
3. Shri Chandra Shaker – Son, aged about 16 years,
4. Shri Ravi Kant – Son, aged about 14 years.

4. After the death of the husband of the applicant, the financial status of the family became below the poverty line. The respondent department extended the terminal benefits to the family, but the same were not sufficient.

5. That the applicant after the death of her husband made a request to provide appointment to the applicant on suitable post in the month of November, 2002 and thereafter on 13.03.2003. She also completed all required formalities.

6. The respondents at the relevant time informed the applicant vide letter dated 11.07.2003 (Annexure A/4) to the effect that no vacancy is available and the matter will be considered in future on availability of vacancy.

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7. Subsequently vide their letter dated 13.07.2006 (Annexure A/5), the respondents sought certain information with regard to providing compassionate appointment to her son. The applicant submitted the required information well within time.

8. The learned counsel for the applicant further submitted that the respondents vide their letter dated 19.05.2009 (Annexure A/6) informed that the case of compassionate appointment which have exceeded three years gestation period have been closed and in the list of these cases, the name of the deceased husband of the applicant, Shri Dinesh Kumar Savita, appears at sr. no. 13.

9. The learned counsel for the applicant argued that vide OM dated 05.05.2003 of the DOPT, the time limit for consideration of compassionate appointment is prescribed as three years but the case of the applicant has not been considered till date and, therefore, it cannot be closed, as stated by the respondents.

10. He further argued that the decision of the respondents of closing the case of the applicant vide order dated 19.05.2009 (Annexure A/6) was communicated to the applicant vide letter dated 13.02.2012 (Annexure A/1), therefore, it cannot be said that the present OA is time barred.

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11. Learned counsel for the applicant further submitted that the respondents without any base rejected the claim of the applicant and no-where disclosed the vacancy position as well as the date of consideration of the case of the applicant. The family of the applicant is in indigent condition, thus, the son of the applicant is entitled for appointment on compassionate grounds. Therefore, he argued that the OA be allowed and the respondents be directed to consider the case of the applicant's son for appointment on compassionate grounds.

12. On the other hand, learned counsel for the respondents argued that the applicant was informed vide letter dated 13.02.2012 (Annexure A/1) that on recommendations of Screening Committee, the Ministry vide letter dated 19.05.2009 has already closed 26 cases including her case. He further submitted that respondent no. 3 vide letter dated 19.03.2003 recommended the application of the applicant for compassionate appointment but since the vacancies under 5% quota of compassionate appointment were not available, therefore, the application of the applicant could not be considered for compassionate appointment at that stage. The decision of the competent authority was accordingly informed to the applicant vide letter dated 28.03.2003.

13. He further argued that the matter of the applicant remained pending and was considered by the Screening Committee held on 11.05.2009 but as the case of the applicant

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exceeded three years period, the same was closed vide letter dated 19.05.2009 (Annexure R/3).

14. He further submitted that the scheme for compassionate appointment is to give immediate financial assistance to the family in distress. Late Shri Dinesh Kumar Savita died on 20.10.2002 and the family survived for full ten years. This proves that the family is not in need of appointment under this Scheme.

15. Moreover, due to non availability of vacancy and in view of DOPT OM dated 05.05.2003, the case of the applicant as well as 25 other candidates was closed. It was further submitted that the family of the applicant received Rs.4,18,888/- as terminal benefits and the applicant is getting monthly family pension regularly. Thus, it cannot be said that the condition of the family is indigent. Therefore, he argued that the OA has no merit and it should be dismissed with costs.

16. Heard the learned counsel for the parties and perused the relevant documents on record. It is not disputed that the husband of the applicant died while in service on 20.10.2002. Thereafter, the applicant submitted an application for compassionate appointment on 08.11.2002. It is also not disputed that the respondent no. 3 vide letter dated 19.03.2003 recommended the application of the applicant for compassionate appointment. The competent authority after considering the request of the applicant vide letter dated

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11.07.2003 informed the respondent no. 3 that under quota of compassionate appointment that is 5% of direct recruitment vacancy, no vacancy was available at that point of time. Therefore, the matter of the applicant was kept pending. From the perusal of this letter dated 11.07.2003, it is clear that the case of the applicant was not rejected on the ground that the condition of the family of the applicant is not indigent. It was kept pending for want of vacancy.

17. Thereafter, the respondent department sought certain information from the applicant vide their letter dated 13.07.2006 (Annexure A/5). The applicant supplied this information but the respondents did not take any decision till 19.05.2009 and suddenly on 19.05.2009, the Ministry informed all the Regional Directors that the case of compassionate appointment which have exceeded three years gestation period be closed and in this list, the name of the deceased husband of the applicant also appears at sr. no. 13. I have carefully gone through the DOPT OM dated 05.05.2003, which prescribes time limit for compassionate appointment. Para No. 3 of the OM is quoted below:-

"3. 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."

This OM clearly provides that the prescribed committee has to review and certify the penurious condition of the

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applicant at the end of the first and 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.

18. From the perusal of the order dated 19.05.2009 (Annexure A/6), it is not clear as to whether the Screening Committee met every year after 2003 and considered the case of the applicant on merit but it appears that the Screening Committee met after six years and decided that those cases which have exceeded three years gestation period are to be closed. It did not consider the financial status of the applicant and, therefore, it appears that the case of the applicant was not considered on merit. It was closed on technical grounds that it has completed gestation period of three years. From the perusal of the OM dated 05.05.2003 (Annexure A/11), it is incumbent upon the prescribed committee to review and certify the penurious condition of the applicant at the end of the first and second year. In this case, it appears from the letter dated 11.07.2003 that the case of the applicant was considered but it could not be considered on the ground that there was no vacancy under quota of compassionate appointment. Thus the request of the applicant was kept pending. Then again in 2006 vide letter dated 13.07.2006 (Annexure A/5), certain information was sought from the applicant. This shows that even on that date, though three years' time was over from the date of death of the husband of the applicant but the case of the applicant was under consideration of the respondent department. The

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perusal of the order dated 19.05.2009 no-where indicates that the case of the applicant has been considered by Screening Committee on merit as to whether the condition of the family is indigent or not. The respondent department did not take any action from 2003 to 2009 on the request of the applicant and suddenly rejected it on the ground of exceeding three years' gestation period. The DOPT vide their OM No. 14014/3/2011-Estt.(D) dated 26.07.2012 has withdrawn the instructions contained in OM dated 05.05.2003, which provided the time limit of three years. Para No. 4 of this OM is quoted below:-

"4. The case of compassionate appointment may be regulated in terms of instructions issued vide OM dated 9.10.1998 as amended from time to time. The onus of examining the penurious condition of the dependent family will rest with the authority making compassionate appointment."

19. According to the condition laid down in Para No. 4 of the DOPT OM dated 26.07.2012, the onus of examining the penurious condition of the dependent family will rest with the authority making compassionate appointment. In order to examine the penurious conditions of the dependent family and in order to ensure transparency in offering appointment on compassionate grounds, certain parameters are looked into by the authority making compassionate appointment such as size of the family of the deceased employee, number of minor children, number of unmarried daughters, immoveable property including the house & agricultural land, income from other sources, retirement benefits & pension received by the family of the deceased etc. Taking into consideration the various parameters, the applicants desirous of having

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appointment on compassionate grounds are given marks and their comparative merit is prepared to examine the penurious condition of the dependent family. It appears that no such exercise has been done in this case.

20. Therefore, the respondents are directed to reconsider the case of the applicant on merit and also subject to the availability of vacancy under 5% quota meant for compassionate appointment. They will pass a reasoned & speaking order according to the provisions of law expeditiously but in any case not later than three months from the date of receipt of a copy of this order.

21. With these observations, the OA is disposed of with no order as to costs.

Anil Kumar
(Anil Kumar)
Member (A)

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