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**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...
ORIGINAL APPLICATION NO.060/00566/2014

Order Reserved on 08.04.2015
Pronounced on 17.4.2015

...

CORAM: HON'BLE MRS. RAJWANT SANDHU, MEMBER (A)
HON'BLE DR. BRAHM A. AGRAWAL, MEMBER (J)

...

Ashwani Kumar son of Late Shri Sheo Ram, resident of Village and Post Office Samalkha, Tehsil Saha, District Ambala.

... Applicant

Versus

1. Union of India through the Secretary, Ministry of Defence, Government of India, New Delhi.
2. Engineer-in-Chief/EIC (4), Integrated HQ of MoD (Army), Kashmir House, New Delhi-110011.
3. Chief Engineer, Military Engineering Services, HQ Chief Engineer, Chandigarh Zone, 'N' Area, Airport Road, Chandigarh-160003.
4. Garrison Engineer (Utility), Military Engineering Service, Ambala Cantt.

... Respondents

Present: Sh. K.S. Jetley, counsel for the applicant.
Sh. Arvind Moudgil, counsel for the respondents.

ORDER

BY HON'BLE MRS. RAJWANT SANDHU, MEMBER (A)

1. This O.A. has been filed under Section 19 of the Administrative Tribunals Act, 1985, seeking the following relief:

- "8 (b) Quashing of the impugned order bearing No.15078/Final S'Order/795/EIC-I dated 18.03.2014 passed by respondent no.3 for and on behalf of respondents no.1 and 2 as contained in Annexure P-1 and as a consequence of quashing, order the respondents to appoint the applicant on

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either of the post such as LDC/Peon/Mazdoor on compassionate grounds."

2. It has been stated in the O.A. that father of applicant Sh. Sheo Ram, MES No.368199 was working as FGM with the Garrison Engineer (Utility), Ambala Cantt., Respondent No.4, when he died while in service on 09.06.2008. The applicant applied for appointment on compassionate grounds but he was informed vide letter No.1508/Final S'Order/669/EIC-I dated 17.11.2012 that his case was considered for the post of LDC/Peon/Mazdoor by BOO based on the position of vacancies and comparative merit with other cases during the financial year 2010-11 and 2011-12. He had secured 61 points out of 100 points as per yardstick of the appointment of compassionate appointment cases but could not be offered appointment due to non-availability of vacancies. Later, the mother of the applicant was informed vide letter No.30522/Comp Appt/554/EIC (I) dated 04.03.2013 that Sh. Ashwani Kumar-her son, had been considered for appointment on compassionate grounds in the year 2010-11 as 1st consideration and thereafter in 2011-12 as 2nd consideration but appointment could not be given on account of non-availability of sufficient vacancies and being low in merit and that the case of her son will be considered during the year 2012-13 on release of vacancies from higher HQs. Outcome of this will be intimated to her (Annexure P-7). Subsequently, the applicant was informed vide letter dated 18.03.2014 that his case has been considered but he could not be

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considered for appointment due to non-availability of sufficient vacancies and his case has been finally closed (Annexure P-1). Hence this O.A.

3. In the written statement filed on behalf of the respondents it has been stated that compassionate appointment is not regular mode of recruitment but is an exception to the same and by its very nature such appointment is to be granted close to the date of death. Decision in CWP No.20460/2011 titled as "Sushil Kumar Versus Union of India & Others" passed by Hon'ble Punjab and Haryana High Court has been cited in this regard. Further, reference has been made to Para No.3(g) of DG (Pers.)/EIC(4), E-in-C's Br letter No.B/22560/Policy/Vol-9/EIC(4) dated 30.11.2011 (Annexure R-1) accordingly to which DOP&T had laid down time limit for making appointment on compassionate grounds. Maximum time a person's name can be kept under consideration for offering compassionate appointment will be three years subject to the pecuniary condition of the applicant at the end of the first and second year. After three years/three considerations, if compassionate appointment is not possible to be offered to the applicant, his/her case will be finally closed and will not be considered again.

4. Arguments advanced by learned counsel for the parties were heard when learned counsel reiterated the content of the O.A. rejoinder and written statement respectively. As

5. We have given our careful consideration to the pleadings of the parties, material on record and arguments advanced by learned counsel. From the material on record, it is evident that the case of the applicant could not be recommended for appointment on compassionate ground on all the three occasions when his case was considered by BOO since number of vacancies were limited and the applicant had lesser marks than the persons recommended for such employment considering the number of vacancies. The case of the applicant has been properly considered by the respondent Department but could not be recommended due to lack of vacancies. Appointment on compassionate ground not being a matter of right there is no infringement of any legal right of the applicant. Appointment on compassionate grounds can be made only if a vacancy is available for the purpose (Himachal Road Transport Corporation vs. Dinesh Kumar, J.T.1996(5) SC 319 and Hindustan Aeronautics Limited vs. Smt. A. Radhika Thirumalai, J.T. 1996(9) SC 197.

6. Hence the O.A. is rejected.

B. A. Agrewal
(DR. BRAHM A. AGRAWAL)
MEMBER (J)

Rs —
(RAJWANT SANDHU)
MEMBER (A)

Place: Chandigarh.

Dated: 17.4.2015.

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