

**ORAL**

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD  
BENCH, ALLAHABAD

(This the **13<sup>th</sup> Day of September**, 2018)

**Hon'ble Mr. Justice Bharat Bhushan, Member (Judicial)**

**Original Application No.330/1559/2010**  
(U/S 19, Administrative Tribunal Act, 1985)

Brijesh Kumar Son of Late Jung Bahadur Singh, Resident of House No.11/11/26 Adarsh Colony, Chak Mundera, Post Begam Sarai, District Allahabad.

..... **Applicant**

**By Advocate: Ms. Sarita Jhingan**

Versus

1. Union of India through Secretary, Ministry of Defence, Government of India, New Delhi.
2. The Chief Engineer, Central Command, Lucknow.
3. The Chief Engineer (Air Force), Military Engineers Service, Allahabad.
4. Commander, Work Engineer (Air Force), Military Engineers Service, Allahabad.
5. Garrison Engineer (Air Force), Military Engineers Service, Bamrauli, Allahabad.

..... **Respondents**

**By Advocate: Shri Himanshu Singh**

**ORDER**

The applicant, Brijesh Kumar, has preferred this Original Application (in short 'OA') No.1559 of 2010 under Section 19 of the Administrative Tribunals Act, (in short 'A.T. Act') 1985 for following relief(s):-

- “(a) The Hon’ble Tribunal may be pleased to quash the impugned order dated 06.08.2010 (Annexure No.1 to the compilation No.I to this Original Application).*
- (b). The Hon’ble Tribunal may be pleased to direct the respondents to give the compassionate appointment to the applicant.*
- (c) Any other order, direction may also kindly be issued by the Hon’ble Tribunal which deem fit and proper under the facts and circumstances of the case. ”*

2. Brief facts of this OA are that father of applicant late Shri Jung Bahadur was the permanent employee of Military Engineering Services (in short ‘MES’) working on the post of Mazdoor under the respondent and posted at Bamrauli at the time of his death on 31.07.2003.

3. The applicant has alleged that he is eligible to be appointed under the Scheme of Central Government to grant compassionate appointment to the dependent family member of an employee dying in harness.

4. Applicant claims that he submitted an application for appointment of Class-IV/ Group ‘D’ post on 09.10.2004 with all necessary documents required by the respondents. The claim of applicant is that despite his eligibility, he was not given compassionate appointment, therefore, he was forced to file OA No.428/2005 before this Tribunal which was decided on 02.02.2007 wherein a direction was issued to the respondents to

consider the request of the applicant by the Board as soon as the first vacancy in Group 'D' category occur under the compassionate quota. No time limit was fixed by the Tribunal by the aforesaid order.

5. The applicant's claim is that his request for appointment was rejected as his case was not found fit for offering the appointment on compassionate ground due to low comparative merit achieved by the applicant.

6. The applicant, thereafter, filed another OA No.1239 of 2008 (Brijesh Kumar vs. Union of India & Ors.) which was decided on 02.12.2008 wherein order dated 20.02.2008, 26.05.2008 and 16.06.2008 passed by respondents were quashed and set aside. Respondents were also directed to reconsider the whole matter taking into account the direction given by the Tribunal vide order dated 02.02.2007 passed in OA No.428 of 2005.

7. The applicant again filed 3<sup>rd</sup> OA No.244 of 2010 (Brijesh Kumar Vs. Union of India & Ors.) which was decided on 19.02.2010 wherein the Tribunal held that provision of limiting the consideration on compassionate ground for maximum of three years is not justified in view of certain judicial pronouncement. Therefore, the respondents were directed to passed fresh order by ignoring the Rule of 3 years vide DOP&T Circular No.14014 of

2002 – Estt (D) dated 01.05.2003 within a period of three months from the date of receipt of that order.

8. The applicant did not receive compassionate appointment, therefore, he again invoked the jurisdiction of this Tribunal by filing present OA.

9. Respondents have filed counter reply, supplementary counter reply etc. and have claimed that the directions of Tribunal have always been complied with. They have claimed that candidature of applicant was considered repeatedly for compassionate appointment but he was not found fit for such appointment due to low comparative merit achieved by him and for non availability of sufficient vacancies in a number of post/grade to which he had applied.

10. The applicant has filed Rejoinder reiterating his own claim.

11. Heard Ms. Sarita Jhingan, counsel for the applicant and Shri Himanshu Singh, counsel for the respondents and perused the pleadings available on record.

12. The record also contains that during the course of this case this Tribunal had on various occasions asked the Department to submit record of numbers/marks achieved by

various candidates. All these records have been submitted at least by three affidavits of compliance.

**13.** Late Shri Jung Bahadur, father of applicant died way back on 31.07.2003. Since then the applicant had been litigating continuous. Several directions have been given to consider his claim, even the period of three years was relaxed by order of this Tribunal. However, he was repeatedly found by Department of low merit. It is pertinent to point out that compassionate appointment cannot be sought as a matter of right. These appointments are creation of a particular statute or the Rules and same can be provided within the parameters of that particular Rule. The Full Bench of Hon'ble Allahabad High Court in ***Shiv Kumar Dubey vs. State of UP & Ors decided on 06.02.2014 in Special Appeal No.356, 371 and 379 of 2012***) has held that purpose and object underlying the provision for compassionate appointment is not to reserve a post for a member of the family of a deceased government servant who has died while in service. The basic object and purpose is to provide a means to alleviate the financial distress of a family caused by the death of its member who was in government service.

**14.** This Tribunal believes that if the Rule required that applicant for compassionate appointment needs to have a minimum eligibility then this requirement should be fulfilled. In the present case, the record and various compliance affidavit available on

record reveals that repeatedly the claim of applicant was considered but he achieved low marks in each consideration by Board of Officers.

**15.** The Full Bench of Allahabad High Court in the case of Shiv Kumar Dubey (supra) has further held that compassionate appointment cannot be treated as another source of recruitment or as a bonanza or a right to get an appointment in Government service.

**16.** In **Chief Commissioner, Central Excise and Customs, Lucknow & Ors. Vs. Prabhat Singh, reported in (2013) 1 UPLBEC 357**, the Apex Court has addressed words of caution in the following observations:

*"We are constrained to record that even compassionate appointments are regulated by norms. Where such norms have been laid down, the same have to be strictly followed...The very object of making provision for appointment on compassionate ground, is to provide succor to a family dependent on a government employee, who has unfortunately died in harness. On such death, the family suddenly finds itself in dire straits, on account of the absence of its sole bread winner. Delay in seeking such a claim, is an anti thesis, for the purpose for which compassionate appointment was conceived. Delay in raising such a claim, is contradictory to the object sought to be achieved... Courts and Tribunals should not fall prey to any sympathy syndrome, so as to issue directions for compassionate appointments, without reference to the prescribed norms. Courts are not supposed to carry Santa Claus's big bag on Christmas eve, to disburse the gift of compassionate appointment, to all those who seek a court's intervention. Courts and Tribunals must understand, that every such act of sympathy, compassion and discretion, wherein directions are issued for appointment on compassionate ground, could deprive a really needy family requiring financial support, and thereby, push into penury a truly indigent, destitute and impoverished family.*

*Discretion is therefore ruled out. So are, misplaced sympathy and compassion."*

**17.** In ***MGB Gramin Bank Vs. Chakrawarti Singh***, the Apex Court has held that person claiming compassionate appointment must possess required eligibility for the post. The Court, further, held that compassionate appointment cannot be claimed as a matter of right and has directed that Courts or Tribunal should not stretch the provision by liberal interpretation beyond permissible limits on humanitarian grounds.

**18.** In the present case, the request of applicant for compassionate appointment was repeatedly considered by Board of Officers and each time he was not found fit for appointment. The compliance affidavits indicate that he consistently scored lesser marks than the other applicants. This Tribunal has considered the request of the applicant repeatedly on several occasions. He filed several OAs and his request was considered sympathetically by the Tribunal on various occasions and respondents were directed to consider his case but this Tribunal cannot judge the competence and fitness of the applicant. The eligibility and fitness of applicant has been considered by the competent authority. He failed to achieve the required degree of marks therefore, this Tribunal cannot inflict him on the respondents merely on account of humanitarian consideration.

19. In any case, 15 years have elapsed since the death of his father. Evidently, the applicant has taken care of himself and his family during this period. There is no evidence of immediate financial distress. This Tribunal believes that OA is not sustainable and is liable to be dismissed.

20. Accordingly, **the O.A. is dismissed** with no order as to costs.

**(Justice Bharat Bhushan)**  
Member (Judicial)

Sushil