

# Central Administrative Tribunal Principal Bench, New Delhi

R.A. No.161/2017 in O.A. No.3579/2014

Order reserved on 09<sup>th</sup> August 2017

Order pronounced on 17<sup>th</sup> August 2017

## Hon'ble Mr. K.N. Shrivastava, Member (A)

1. Smt. Mohini Jain  
Aged 60 years, w/o late Shri Sushil Kumar  
Ex Head Clerk  
r/o 402, Kucha Bulaki Begum, Dariba Kalan  
Delhi – 110 006
2. Shri Ankit Jain  
Aged 24 years  
s/o late Shri Sushil Kumar Jain  
r/o 402, Kucha Bulaki Begum, Dariba kalan  
Delhi – 110 006

.. Applicants

(Mr. S M Arif, Advocate)

Versus

1. The Director General ESIC  
Panchdeep Bhawan  
CIG Road, New Delhi – 110 002
2. The Director (Medical)  
Delhi ESI Dispensary Complex Tilak Vihar  
New Delhi – 110 018
3. Union of India through its Secretary  
Ministry of Labour & Employment  
Shram Shakti Bhawan  
Rafi Marg, New Delhi

..Respondents

## **ORDER**

This R.A. has been filed under Section 22 (3) (f) of the Administrative Tribunals Act, 1985 seeking review of this Tribunal's order dated 05.05.2017 passed in O.A. No.3579/2014. The review applicants, who were original applicants in said O.A., had prayed for the following main reliefs in the O.A.:-

“(i) Allow the OA and direct the respondents to consider the case of the applicant No.2 on over-riding priority to save the applicant and her 03 children from the pangs of starvation.”

2. The Tribunal, after adjudicating the said O.A., dismissed it vide order dated 05.05.2017. The relevant parts of the said order are extracted hereinbelow:-

“7. In this case, the applicant has only taken the ground of discrimination vis-à-vis one Dr. Rajdeo Verma. The argument of the learned counsel for the applicant is that since in the applicants case, the Government servant was a UDC and late Sh. Rajdeo Verma was a Doctor, necessarily the applicants family would be more indigent than the doctor’s family. This is a conjecture only. The applicant has not been able to establish this to make a claim that he has been discriminated vis-à-vis Smt. Deepa Singh w/o late Dr. Rajdeo Verma. In the absence of that, there is no ground for questioning the decision of the Committee on compassionate appointment.

8. In fact, from the various judgments cited above, it is clear that the only question the Tribunal can look into is whether the decision making process rejecting the claim of the person concerned for compassionate appointment is vitiated or whether the order is not in conformity with the Scheme framed. It is not urged that the order passed by the competent authority is not in accordance with the Scheme. The only ground taken is that the applicants family is in more indigent condition than the Doctor’s family. But, as stated earlier, there is no evidence produced before the Tribunal to substantiate this.”

3. The review applicants have sought the review of the *ibid* order dated 05.05.2017 primarily on the ground that the averments made in the O.A. *qua* Dr. Rajdeo Verma was not a conjecture but was based on facts, which were obtained by the applicants through Right to Information Act, 2005. It is stated that said Rajdeo Verma was a doctor and after his death, his widow was seeking compassionate appointment, whereas the father of applicant No.2 was only an Upper Division Clerk (UDC), who died in harness and thus compassionate appointment has been prayed for the applicant No.2.

3. The arguments of Mr. S M Arif, learned counsel appearing for review applicants were heard. Mr. Arif stressed on the point that the family of the applicants was in more indigent condition in comparison to the family of the deceased Dr. Rajdeo Verma and hence the respondents were not justified in granting compassionate appointment to the widow of Dr. Rajdeo Verma, ignoring the legitimate claim of applicant no.2 for the compassionate appointment.

4. I have considered the averments made in the R.A. as well as the arguments put forth by Mr. Arif, learned counsel appearing on behalf of applicants. I have also perused the records. It is settled law that *sine qua non* for review is existence of any apparent error on the face of record, which is not there in the order under review. The grounds pleaded in the R.A. do not indicate any apparent error in the order under review. The R.A. appears to be in the nature of an appeal, for which the review applicants have to approach an appropriate forum.

5. Defining the scope of judicial review, the Hon'ble Supreme Court in **Ashif Hamid v. State of J & K**, [(1989) Supp. 2 SCC 364] and **Ekta Shakti Foundation v. Govt. of NCT of Delhi**, [(2006) 10 SCC 337] has further clarified the scope of judicial review as under:

“(i) While exercising the power of judicial review of administrative action, the Court is not the appellate authority and the Constitution does not permit the Court to direct or advise the executive in matter of policy or to sermonize any matter which under the Constitution lies within the sphere of the Legislature or the executive, provided these authorities do not transgress their constitutional limits or statutory power.

(ii) The scope of judicial enquiry is confined to the question whether the decision taken by the Government is against any statutory provisions or is violative of the fundamental rights of the citizens or is

opposed to the provisions of the Constitution. Thus, the position is that even if the decision taken by the Government does not appear to be agreeable to the Court, the same cannot be interfered with.

(iii) The correctness of the reasons which prompted the Government in decision making, taking one course of action instead of another is not a matter of concern in judicial review.”

6. Furthermore, Hon’ble Apex Court in the case of **State of Orissa & others v. Gopinath Dash & others**, [(2005) 13 SCC 495] has laid down the following parameters:-

“the court should not substitute its own judgment for that of the executive in matters of policy, and further in assessing the propriety of a decision of the executive, the court cannot interfere even if a second view is possible than that of the executive.”

7. The case of Dr. Rajdeo Verma was also raised by the applicants before the Tribunal during the adjudication of the O.A. The order has been passed by the Tribunal after taking into consideration the averments of the applicants *qua* Dr. Rajdeo Verma. The applicants have miserably failed in pointing out any apparent error on the face of record of the order under review. I have kept in mind the scope of judicial review as laid down by the Hon’ble Apex Court (*supra*).

8. For the reasons stated in the foregoing paragraphs, I do not find any merit in the R.A. Accordingly, it is dismissed.

**( K.N. Shrivastava )**  
**Member (A)**

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