

Central Administrative Tribunal  
Principal Bench: New Delhi

**OA No.3589/2015**

Reserved on: 26.10.2017  
Pronounced on: 31.10.2017

**Hon'ble Mr. Uday Kumar Varma, Member (A)**

Nandan Singh Koranga, age 31 years  
s/o late Shri Nain Singh,  
r/o House No.77, Santi Niwas,  
Vasant Kunj Road,  
New Delhi. ...Applicant

(By Advocate: Sh. Ramesh Datta)

Versus

Union of India through:

1. The CEO/Secretary,  
NITI Aayog,  
Parliament Street,  
New Delhi – 110 001.
2. The Adviser (Admn.),  
NITI Aayog,  
Parliament Street,  
New Delhi- 110 001. ...Respondents

(By Advocate: Sh. R.K. Jain)

**O R D E R**

The instant Original Application has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking the following relief(s):-

*“8.1 That this Hon'ble Trbunal may graciously be pleased to allow this OA and direct the Respondent No. 1 & 2 to re-consider the case of the applicant for appointment on compassionate grounds against the vacancy arising in the year 2012 or any other year, after calculating the year-wise vacancies in accordance with the instructions of the Respondent no.3, more specifically, the OM No.41013/1/2013-Estt(D) dated 25.03.2013 (Annexure A-19).”*

8.2 *This Hon'ble Tribunal may be pleased to direct the Respondents 1 to 3 to review its decision to abolish 259 Group "C" posts without keeping apart 5% of the vacancies for compassionate appointments vide OM No.A-44011/04/2015-Admn.I dated 14<sup>th</sup> August, 2015 and direct the Respondents 1 to 3 to calculate 5% vacancies of Group "C" including technical posts, to be set apart for appointment on compassionate grounds for appointments including the applicant, in accordance with clear instructions contained in para 3 of the DOPT OM 14014/4/2005-Estt.(D) dated 14<sup>th</sup> June, 2006 (Annexure-5) and OM No.14014/3/2005-Estt.(D) dated 19/01/2007 (Annexure-7), which has not been done by the Respondents in violation of above Office Memoranda.*

8.3 *In the alternative, this Hon'ble Tribunal may be pleased to direct the respondents No.1 & 2 set apart 5% vacancies for appointment of the applicant on compassionate ground against any of the MTS Group "C" Supernumerary posts out of 128 posts, created in the NITI Aayog vide Order No.A-44011/04/2015-Admn.I dated 14<sup>th</sup> August, 2015.*

8.4 *That any other or further relief which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case, may also be granted in favour of the applicant.*

8.5 *That the cost of the proceedings may also be awarded in favour of the applicant."*

2. Brief facts of the case are that one Nain Singh, father of the applicant, while working as Sr. Peon in the then Planning Commission (now NITI Aayog), met with a road accident and expired on 02.06.2001. It is the case of the applicant that at the time of his father's death, he was minor (17 years of age). It is also contended that as his mother was not keeping good health, therefore, she did not apply for appointment on compassionate grounds for herself but requested the respondents to consider her son's case for appointment on compassionate grounds in order to

sustain the bereaved family. On 06.06.2003, after attaining the majority, the case of the applicant for regular appointment on compassionate ground was considered by the Committee which, after considering the penurious conditions of the family, recommended the case of the applicant for appointment on compassionate ground as Group "C" employee. The Committee also recommended his case for immediate relief by employing the applicant on daily wage basis in the then Planning Commission. Following the above recommendations, the applicant was appointed on daily wages on 05.08.2013 and he is continuing on daily wages for the last 12 years but his case for regular appointment on compassionate ground has not been considered till date. The applicant contends that on 28.08.2013, his case was again considered by the Committee for appointment on compassionate ground and the Committee recommended as under:-

*"The Committee considered his case in view of the recent request from his mother for retention of Government accommodation and recommended his case for appointment against a future Group "C" vacancy subject to condition that actual offer of appointment will be issued, as per his seniority in this list, as and when a vacancy under this category becomes available. He is also working on daily wage basis."*

On 16.09.2013, the competent authority in the then Planning Commission accepted and approved the recommendations of the Committee for appointment on

compassionate ground dated 28.08.2003 with the condition that the actual offer of appointment will be issued on his turn in the list only when a vacancy as per the 5% quota prescribed by the Respondent no. 3 i.e. DOPT arises. It is further submitted that pending his appointment on regular basis, the competent authority taking into consideration the financial conditions of the family, decided to continue the applicant with the employment on daily wage basis.

3. The applicant contends that he was surprised to note that notwithstanding the recommendations of the Committee on two occasions i.e. 06.06.2003 and 28.08.2003 in his favour, his claim for compassionate appointment was again submitted before the Committee on 07.02.2010 and this time also the Committee's recommendation was no different. In view of the recommendations of the Committee, the respondents wrote to the Directorate of Estates on 16.09.2003 requesting them for retention of government accommodation allotted to the deceased employee (father of the applicant) beyond 2 years. Apart from above, instead of giving regular appointment to the applicant on compassionate ground, the respondents again on 25.10.2007 placed the case of the applicant before the above Committee and this time also, the Committee recommended the case of the applicant for

appointment against the Group "C" posts as and when vacancy becomes available but he has not been appointed on regular basis on compassionate ground.

4. Aggrieved, the applicant approached the Member Secretary vide representation dated 30.09.2011 with a request to appoint him on compassionate ground on the basis of the recommendations of the Committee on four occasions. In support of his claim, he also relied upon the decision of the Tribunal dated 09.03.2010 passed in ***Suchitra Ravindra Panchal vs. Secretary, Ministry of Personnel & Ors.*** wherein it was held that validity of three years period on compassionate appointment cannot stand due to delay in administration. Finding no response from the respondents, the applicant approached this Tribunal by filing OA No.986/2012, which was disposed of vide order dated 23.03.2012 with the following directions:-

*"5. As the submissions of the applicant will first have to be verified from the records available with the respondents after which only his pending request can be decided in terms of the rules and instructions on the subject, and in view of his above request, we dispose of this OA in the first instance, by directing the respondents to look into the pending representation dated 30.09.2011 (Annexure A1) of the applicant, treating this OA also as a supplementary representation, and take a decision in his case in accordance with the rules, and communicate the decision taken to the applicant by issue of a reasoned and speaking order on the subject. This may be done within a period of four weeks from the date of receipt of a copy of this order. Till the formal decision is taken and communicated to the applicant, the respondents will not fill up the vacancies available on compassionate grounds."*

5. It is the case of the applicant that the respondents rejected the claim of the applicant for his regular appointment vide order dated 16.04.2012 on the ground of being time barred i.e. beyond 3 years ignoring the decision of the Tribunal in **Suchitra Ravindra Panchal**'s case (supra). The applicant submits that the respondents vide order dated 14<sup>th</sup> August, 2015 abolished as many as 259 posts of MTS including technical posts without holding back the prescribed 5% vacancies for appointment on compassionate ground whereas vide order dated 25<sup>th</sup> September, 2013, they have conveyed to the applicant that his case would be considered against the vacancy arising during the year 2012. In these compelling circumstances, the applicant is before this Tribunal by way of the instant OA.

6. The respondents have filed their counter affidavit denying the submissions of the applicant and refuted his claim on the ground on delay as well as on the ground that since 259 posts have since been abolished, the case of the applicant cannot be considered for regular appointment on compassionate ground for want of vacancies under DR quota.

7. I have thoroughly gone through the pleadings of the case and carefully heard the arguments advanced by the learned counsel for both the parties.

8. The argument on part of the applicant is that his case for compassionate appointment has been considered and finally decided by the respondents. He has drawn my attention to letter no.A-12012/2/2012-Admn V dated 25<sup>th</sup> September, 2013, which mentions as under:-

*“Subject: Request for appointment on Compassionate Grounds – reg.*

*The undersigned is directed to refer to communicated dated 29.07.2013 received from Sh. Nandan Singh, Daily Wager, DBT Division, Planning Commission on the subject mentioned above and to inform that all the vacancies identified for compassionate quota upto 2011 have since been filled in Planning Commission. However, the case of Sh. Nandan Singh for appointment on compassionate grounds for the vacancy arising against the year 2012 will be taken up for consideration by the Committee on Compassionate Grounds in accordance with the rules laid down by Department of Personnel & Training from time to time for the purpose along with other eligible candidates.”*

It is the case of the applicant that there are now vacancies available in the Planning Commission and his case should be considered in accordance with letter dated 25.09.2013, contents whereof have already been reproduced above. In support of his contention that there are vacancies in the Planning Commission, the applicant has placed on record a copy of the Note dated 30.09.2015, which is placed at page

31 of the file of MA No.2201/16, and relied upon paragraph 3(a) of the Note, which reads as under:-

*"3(a) As on date, we have 43 applications for the year 2012, 2 applications for 2013 and 6 applications for 2014, to be considered for appointment on compassionate ground. Available vacancies for compassionate appointment against DR quota in various Group-C posts were also calculated to one vacancy each for 2012, 2013 and 2014. Therefore, as on date, if we have at least 3 vacancies in any Group-C posts with provision of Direct Recruitment, we may still appoint 3 persons against those vacancies on compassionate ground for the year 2012, 2013 and 2014."*

In view of the above position, the plea of the applicant that as vacancies are available, his case must be considered by the Planning Commission and decided in his favour.

9. The respondents' main objection to grant of compassionate appointment to the applicant is contained in paragraph (g)(iii) [page 138 of the paper book]. The explanation for not considering the case of the applicant on compassionate ground is that action was initiated to fill up the vacancies earmarked for compassionate appointment for the years 2012, 2013 and 2014 (one vacancy each = total three vacancies). However, the meeting could not be convened and the process was kept in abeyance in view of restructuring of NITI Aayog. Consequent of the restructuring of NITI Aayog, staff strength of NITI Aayog has been reduced to 500 from the earlier 1255, which resulted in considerable reduction in Group-C posts like

abolition of all posts of LDC, UDC and several posts of MTS, leaving no vacancy at all. In view of this, the list of applicants has been circulated in all Ministries/ Departments under Central Government for consideration for appointment on compassionate ground, if vacancies are available with them.

10. It is not denied that the staff strength of Planning Commission may have been brought down. However, the respondents have to be very specific with respect to various groups of posts where the vacancies have been brought down, to what extent they have been brought down, and whether after considering the reduced strength, a decision has been taken by the competent authority to either abolish or not to fill the posts of compassionate appointment earmarked for the years 2012, 2013 and 2014. The respondents have failed to explain clearly whether the reduction of staff has resulted in formal decision abolishing the quota for compassionate appointment or a policy decision not to fill these posts. They have also to explain that these vacancies were available before the staff strength was brought down and if the adequate action would have been taken by the respondents at appropriate time, the same could have been filled and it was possible that the applicant may have also

been appointed against one of the vacant posts earmarked against compassionate appointment. Learned counsel for the respondents was very emphatic while mentioning the fact that the applicant is already working as a daily wager. However, it is clear that his working as daily wager does not extinguish his right to be appointed on compassionate appointment under the rules and, therefore, his status of daily wager does not alter the nature of the OA.

11. Given these facts, the respondents are directed to consider and decide the case of compassionate appointment of the applicant considering all aspects, which is, in a way, fulfillment of their own commitment to the applicant as reflected by the letter dated 25.09.2013 wherein they have explicitly mentioned that the case of the applicant will be taken up for consideration by the Committee on compassionate grounds. While considering his case for compassionate appointment, the respondents are also directed to take into account the observations made in paragraph 10 above, and specifically mention whether a formal policy decision has been taken in the Aayog either to abolish the quota of compassionate appointment or not to fill these posts. This consideration and decision on the prayer of the applicant for his compassionate appointment may

be taken within a period of three months from the date of receipt of certified copy of this order.

12. In light of the above directions, the present OA stands disposed of, with no order as to costs.

**(UDAY KUMAR VARMA)**  
Member (A)

*/Ahuja/*