

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

Allahabad This the 16th day of January 2019

HON'BLE MR. RAKESH SAGAR JAIN, MEMBER – J

Original Application No.1099 of 2013

Km. Sarika Gupta, aged about 33 years, D/o Late Om Prakash, R/o B-1150, GTB Nagar, Kareli Scheme, Allahabad.

..... Applicant

By Adv: Shri M.K. Yadav

V E R S U S

1. Union of India through the Secretary, Ministry of Defence, Government of India, New Delhi.
2. The Director General, Electronics and Mechanical Engineering, DHQ, PO- New Delhi 110105, PIN 900256, C/o 56 APO.
3. The GOC-In-C, HQ Base Workshop Group, PIN 900468, C/o 56 APO.
4. The Commandant, 508 Army Base Workshop, Ordnance Depot, Fort, Allahabad.

..... Respondents

By Adv: Ms. Mamta Sharma

ORDER

1. The present O.A. has been filed by applicant Sarika Gupta under section 19 of the Administrative Tribunal Act, 1985 seeking the following reliefs:

- (i) Issue a writ, order or direction in the nature of certiorari calling for the records, pursuant to which the order impugned dated 27.11.2012 (Annexure No. A-1 to the OA) has been passed by the respondent No.4 and quash the same.
- (ii) Issue a writ, order or direction in the nature of mandamus commanding the respondents to

consider and appoint to the applicant under dying-in-harness Rules against any suitable posts.

- (iii) Issue any other and further writ, orders or directions which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.
- (iv) Award the cost of the original application to the applicant".

2. Case of applicant Sarika Gupta is that her father Om Parkash died on 15.11.2006 while in the service of the respondent and was posted under respondent No. 5 leaving behind three daughters i.e. physically handicapped applicant and two sister – one married and second unmarried. It is the case of applicant that her mother died due to cancer during the lifetime of her father and both the sisters are living in a rented accommodation. Their father was the sole bread earner of the family and they have no source of livelihood or income. Her father was a heart patient and undergone By-pass surgery on which a huge amount of money. The post retiral benefits were used to pay the loan amount taken from money lenders and relatives.
3. It is the further case of applicant that she filed an application dated 26.05.2007 for appointment on compassionate basis before respondent No. 4 on the ground of her financial difficulties, permanent physical handicapped due to which she could not get married and she has to maintain her younger sister in her studies and marriage, the fact they have no parents and they have no source of income and are in destitute condition and submitted the required documents. Her application was returned with certain queries and she re-submitted her application rectifying all the points made in the observations of the respondents.

4. Applicant has averred in the O.A. that she was informed by respondent No. 4 vide letter dated 29.05.2012 (Annexure-A9) that her appointment under dying-in-harness rules will be considered against Group 'D' post, as per, her qualification to which she gave her consent being in dire need of financial help. It is her further case that she was awarded 60 marks and candidates securing above 55 marks become entitle to be considered for compassionate appointment. Her case for appointment was rejected by respondents vide vide impugned order dated 27.11.2012. Hence the present O.A.

5. In their counter affidavit, respondents have given the reasons for rejection of the candidature of applicant as below:

"7. That the number of vacancies for compassionate quota are limited to 5% of the total wastage of vacancies per year in Group 'C' and Group 'D' to be filled by direct recruitment. Compassionate appointment is not a vested right which can be exercised at any time. The government has brought out that a committee be appointed by the department for considering request, taking into account the position regarding availability of vacancy for such appointment and it should recommend appointment on compassionate ground only to most deserving cases based on relative merit and only if vacancy meant for appointment on compassionate ground is available within a year that too within the ceiling of 5%.

8. That the case of compassionate appointment in respect of Km. Sarika Gupta D/o late Om Prakash was considered by the Board of Officers in five consecutive boards i.e. QE, June, 2011, September, 2011, December 2011, March, 2012 and June 2012 held on 20 to 23 September 2011, 9 to 12 January 2012, 13 to 16 February 2012, 14 to 17 May 2012 and 27 to 30 August 2012

respectively in accordance with the provisions contained in Government of India, DOP & T OM No.14014/6/94-Estt (D) dated 09.10.1998, 14014/23/99-Estt (D) dated 3.12.1999, Government of India, MoD ID No. 19 (4)/824-99/1998-D (Lab) dated 9th March, 2001 and 19 (3)/2009/D (Lab) dated 22.1.2010 as amended from time to time. Merit of the cases are decided by the Board of officers by allotting points to the applicants based on various attributes like family pensions, terminal benefits, movable/immovable property, monthly income, No of dependents, No of minor children, No of unmarried daughters and left over service.

9. That out of 56,55,56, 123 & 115 applicants considered in the respective Board of officers the name of the applicant were placed at Serial Nos. 21, 18, 18, 66, 66 and obtained 60, 60,60, 60 & 60 percent respectively as per 100 points scale for these parameters,, a total number of vacancies within the ceiling of 5% meant for the purpose was 4, 1, 1, 4 and 4 in the respective Board.

10. That board of officers duly approved by the competent authority for the QE June, 2012 held from 27th August to 30th August 2012 at integrated Headquarter of MoD (Army) are of the view that case of the applicant did not come up in the relative merit against the ceiling of 5% quota due to constraints of grossly inadequate vacancies, no employment assistance can be provided to you. Hence your case has been finally rejected".

6. In the rejoinder affidavit, applicant has relied upon letter dated 29.05.2012 to say that the said letter clearly implies that since post in group 'C' cannot be given to her in view of her educational qualification, she should give her willingness for appointment in Group 'D' post for which she had given her consent.

7. I have heard and considered the arguments of the learned counsels for the parties and gone through the material on record and written submission of the respondents.
8. Both the learned counsels have reiterated the pleas taken by them in their pleadings. It has been argued by LC for applicant that vide letter dated 29.05.2012, the respondents had offered the applicant the post in Group 'D' for which the applicant had given her consent and now the respondents are backing down from their promise which is impermissible under law. However, perusal of the letter dated 29.05.2012 reveals that the respondents had not offered the applicant a confirmed post in group 'D' but only informed the applicant that her name would be considered for post of labourer/MTS (Erstwhile Group 'D') in future. Therefore, there was no offer by the respondents to the applicant for appointment but only an information to her that her name would be considered for the said post in view of her educational qualification which makes her ineligible for post in group 'C'. The contention of applicant is devoid of merit and to be rejected.
9. It has been further argued by applicant that the respondents have wrongfully and arbitrarily rejected the case of the applicant in comparison to the other incumbents, whose cases were considered by the respondents. The applicant stated that the respondents have arbitrarily and illegally rejected the applicant's claim for appointment on compassionate grounds fighting for her right which was illegally denied to him by the respondents and that the impugned order passed by the respondents is a non-speaking order passed without application of mind and thus the said order passed in arbitrary manner without considering the grounds raised by the applicant, the said order deserves to be quashed and set aside and that his case may be considered for compassionate appointment

along with all consequential benefits. The applicant argues that there is no any earning family and therefore the applicant deserves compassionate appointment more so, when she is physically handicapped. Therefore, the impugned order dated 27.11.2012 deserves to be quashed and set aside.

10. On the other hand, learned counsel for respondents have rebutted the claim stating that it is clear enough that the case of the applicant was considered along with other such candidates and only the most deserving candidates were appointed on compassionate grounds. It was further argued by LC for respondents that as held by the Hon'ble Apex Court and other Courts in catena of judgments on the issue of compassionate appointment, the same cannot be claimed as a matter of right and therefore there is no violation of Article 14 and 16 of the Constitution of India as the case of the applicant has been considered by the screening committee in its meeting, keeping in view various parameters and accordingly the case of the applicant was rejected.
11. After going through the entire pleadings, it is clear that the father of the applicant expired during his service and thereafter the case of the applicant was considered by the respondents in various Board meeting as detailed in the impugned order dated 27.11.2012 and perusal of the impugned order reveal that the case of applicant did not come up in the relative merit against the ceiling of 5 % quote due to constraints of grossly inadequate vacancies and therefore, no employment could be provided to the applicant. Therefore the grounds taken by the respondents clearly reveal that there were much deserving cases other than the applicant and the respondents have rightly rejected the claim of the applicant.
12. From the perusal of the impugned order dated 27.11.2012, it is clear that it is a reasoned and speaking order passed by the

respondents and therefore there is no justification on the part of the applicant to state that the respondents have not passed a speaking order, as her entire representation was considered and after perusal of the same, the respondents had not found it feasible to accede the applicant's request for appointment on compassionate grounds.

13. The Scheme for compassionate appointment has been put in place by the Government of India to enable the family of the deceased to overcome the sudden vacuum and economic crisis which hits them when the sole bread earner of the family dies unexpectedly. It is unfortunate but true that there could be many similarly placed persons facing grave financial hardships. It is for these reasons that various parameters are provided so that situation can be assessed objectively and assistance provided by way of an appointment to the most deserving candidate. A compassionate appointment is not a vested right which can be claimed and exercised at any time.
14. The facts would reveal that the name of the applicant has been considered by the Board of Officers on compassionate appointment for Group-D post is not in dispute. It is clear that the guidelines on the subject have been duly followed by the respondents while filling up the vacancies in which the applicant case was also considered. There being other deserving candidates and a limited quota, she could not be given the appointment. In view of these facts, I find no ground for the Tribunal to intervene in this case. O.A. is dismissed. No costs.

(Rakesh Sagar Jain)
Member (J)

Manish/-