

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL**

**ALLAHABAD BENCH ALLAHABAD**

Dated: This 5<sup>th</sup> day of **April** 2019

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

**Original Application No. 1658 of 2013**

1. Smt. Raghupati Devi wife of Late Lalla Ram.
2. Ram Madan Patel aged about 35 years, S/o Late Lalla Ram.  
(Both resident of Village Kanja, Mahang Ka Puram, P.O. Athrampur, District Allahabad (U.P.).

.....Applicants

By Advocate: Shri S. Lal

Versus

1. Union of India through Defence Secretary, Ministry of Defence Govt. of India South Block, New Delhi 110011.
2. Director General Ordnance Service (OS-8C), Army Headquarters, DHQ PO New Delhi – 110011.
3. Commandant, Central Ordnance Depot, Chheoki, Allahabad.

... Respondents

By Adv: Shri P. Mathur

**ORDER**

1. The present O.A. has been filed by applicant Raghupati Devi and Ram Madan Lal under Section 19 of Administrative Tribunal Act seeking the following reliefs:

"(i) To issue a writ, order or direction in the nature of certiorari to quash the impugned order dated 31 August 2010 (Annexure A-1 to compilation No.1) passed by Respondent No.3.

(ii) To issue a writ, order or direction in the nature of mandamus directing the respondents to approve the case of applicant No.2 for appointment against a Group 'C' post with the respondents under the provisions of scheme for which his case was considered and appointment order be issued to him also.

(iii) To issue another writ, order or direction in favour of the applicants as deem fit and proper in the circumstances of the case.

(iv) Award the cost of application in favour of the applicant:.

2. Case of applicants is that on death of Lalla Ram husband and father of applicant No. 1 and 2 respectively on 21.08.2005 while working as Mazdoor in C.O.D., Chheoki applicant No. 1 filed an application for appointment of her son (Applicant No. 2) on compassionate ground which was considered for third time on 30.03.2010 and was allotted 50 points by the Board as informed by the respondents by way of impugned order dated 31.08.2010 (Annexure No. A -1). Applicants challenge the correctness of the impugned order relying on Hari Ram v/s FCI, (2009) 3 UPLBEC 2212. However, this challenge cannot be accepted since case of Hari Ram (supra) stands set aside by the Hon'ble DB vide order dated 31.05.2018 in Special Appeal No. 916 of 2009 titled FCI v/s Hari Ram.

3. It is the further case of applicants, as per paragraph No. 4.8 of O.A. that case for compassionate appoint of one Santosh Singh who secured 44 points was rejected vide order dated 31.08.2010 which also stated that the last selected candidate secured 45 points. On direction by Tribunal, case of Santosh Singh was reconsidered and was appointed vide order dated 15.02.2013 (Annexure-A-7). In these circumstances, applicants filed representation seeking parity with Santosh Singh. Hence while persons who secured 44 and 45 points on 30.03.2010 and 30.03.2010 have been appointed, applicant who secured 50 points in the Board on 30.03.2010 has been rejected. The O.A. for quashing of order dated 31.08.2010 and consider applicant No. 2 for appointment on compassionate grounds.

4. It would be pertinent to note that as per impugned order (Annexure- A1), applicant was considered on three occasions as per the details given below:

<b>Board held on</b>	<b>Vacancy/year</b>	<b>Pt of last candidate</b>	<b>Pt of App</b>
<b>17/18.01.2008</b>	<b>29/2004-05</b>	<b>69</b>	<b>50</b>
<b>30.03.2010</b>	<b>25/2005-06</b>	<b>64</b>	<b>50</b>
<b>30.03.2010</b>	<b>28/2006-07</b>	<b>59</b>	<b>50</b>

5. On basis of the aforementioned data, case of applicant was rejected for the reason given in impugned order as:

“On the basis of 5% of vacancies occurred during the period, only 29 vacancies in 1<sup>st</sup> Board, 25 vacancies in 11<sup>th</sup> Board and 28 vacancies in 111<sup>rd</sup> Board for Group ‘C’ posts, were earmarked for compassionate appointment. Your case was considered along with other candidates thrice and rejected on the basis of criteria laid down to determine relative, hardships in the face of more deserving candidates and limited number of vacancies available.

7. Therefore, after due circumspection and consideration in the light of the enclosed guidelines of DOP&T and various judgments of the Hon’ble Supreme Court and that the appointment on compassionate grounds is not a matter of right and after a balanced and objective assessment of the totality of the circumstances of the case, the competent authority has rejected the employment assistance to you (Shri Ram Madan Patel S/o late Lalla Ram) on compassionate grounds”.

6. In the counter affidavit, it has been averred that applicant No. 2 could not be selected being low in merit and his candidature was rejected vide letter dated 31.08.2010. Interestingly, respondents in paragraph No. 23 of their counter affidavit have given a table similar to that given in the impugned order dated 31.08.2010 but with a contradiction:

<b>Board held on</b>	<b>Vacancy/year</b>	<b>Pt of last candidate</b>	<b>Pt of App</b>
<b>28.04.2006</b>	<b>09/2003-04</b>	<b>76</b>	<b>55</b>
<b>17/18.01.2008</b>	<b>29/2004-05</b>	<b>69</b>	<b>55</b>
<b>30.03.2010</b>	<b>25/2005-06</b>	<b>64</b>	<b>55</b>

7. The tables given above are contradictory to each other and as well as the stand taken by the respondents and casts a suspicious of doubt on the correctness of the stand of respondents as well as the charts/tables prepared by them. Additionally, if deceased expired on 21.08.2005, how the application of applicant could be considered for the year 2003-04.

8. This apart, applicant has further averred in the Rejoinder affidavit that ". . . . Board proceedings conducted by the Respondents on 30.03.2010 have been quashed by this Hon'ble Tribunal in the case of Smt Kushum and another v/d Union of India and others by order dated 30 Apr 2014 in O.A. No. 558 of 2012 Smt Kushum and another v/s Union of India and others. Therefore order passed by respondents on the basis of Board proceedings dated 30.03.2012 by impugned order dated 31.08.2010 is automatically liable to be quashed. A copy of judgment and order dated 30 Apr 2014 is being filed as Annexure – RA-3 to this Rejoinder Affidavit."

9. Reference may be made to order dated 30.04.2014 in O.A. No. 558 of 2012 titled Smt Kushum and another v/s Union of India wherein the compassionate appointment was sought in respect of an employee who died in the year 2004 and whereby the proceedings of Board of Officers dated 30.03.2010 and consequential order were set aside by CAT, Allahabad by holding that "Accordingly, the OA is allowed. The proceedings of Board of Officers dated 30.03.2010 and the consequential impugned order dated 17.08.2010 (Annexure A-1) are quashed. The respondents are directed to consider the case of the applicant No. 2 for appointment on compassionate grounds against a suitable post strictly in terms of MOD ID note No. F. No.19 (3/2009/D(lab), Government of India, Ministry of Defence dated 22.1.2010 within a

period of three months from the date of receipt of certified copy of this order."

10. Regarding the appointment of one Santosh Singh, respondents in their counter affidavit have given the reasons for his appointment and there is no room to doubt their case in this regard.
11. In view of the aforementioned reasons and the discrepancies in the factual figures supplied by the respondents and the order 30.04.2014 of the Tribunal, Allahabad in O.A. No. 558 of 2012 titled Smt Kushum and another v/s Union of India, the O.A. is allowed. The aforementioned proceedings of Board of Officers pertaining to the applicants and the consequential impugned order dated 31.08.2010 (Annexure A-1) are quashed. The respondents are directed to consider the case of the applicant No. 2 for appointment on compassionate grounds against a suitable post strictly in terms of MOD ID note No. F. No.19 (3/2009/D(lab), Government of India, Ministry of Defence dated 22.1.2010 within a period of three months from the date of receipt of certified copy of this order by way of a reasoned and speaking order with intimation to the applicants. No order as to costs.

**(Rakesh Sagar Jain)**

Member (J)

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