

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

Allahabad This the 17th day of January 2019

PRESENT:

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

Original Application No.736 of 2010

Mithilesh Kumar Bharti S/o Late Suchit Ram, R/o Village Sabbalpur
Khurd Post Sabbalpur Kalan, District Ghazipur.

..... Applicant

By Adv: Shri B.R Singh/Shri R.P. Singh

V E R S U S

1. Union of India through its Secretary, Ministry of Finance and Revenue South Block, New Delhi.
2. Mukhya Niyantak, Shashkiya Afim and Chharod Karkhana, 27, Sarswati Bhawan, Nehru Place, New Delhi.
3. Mahaprabandhak, Shashkiya Afim and Chharod Karkhana, Ghazipur.
4. Prabandhak, Shashkiya Afim and Chharod Karkhana, Ghazipur.

..... Respondents

By Adv: Shri R.K. Srivastava

ORDER

1. The present O.A. has been filed by the applicant Mithilesh Kumar Bharti U/s 19 of the Central Administrative Tribunal's Act seeking the following relief:

- (i) Issue an order or direction for quashing the impugned order dated 21.04.2010 passed by the respondents No. 2 and also the order dated 22.04.2010 passed by the respondent No. 3 (Annexure No. 1 & 2 in the Compilation No. 1 to this application)
- (ii) Issue an order or direction commanding the respondent Nos. 2 & 3 to give the appointment to the applicant on the post

of Akushal Shramik, permanently on the compassionate ground.

(iii) Issue any other order or direction which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of this case.

2. Applicant's case is that his father Suchit Ram initially appointed as untrained labour in the office of respondent No. 4 was made permanent in the year 1987 and during the period of his service said Suchit Ram expired on 29.07.2005 leaving behind his wife, four sons and one daughter. That family of deceased was wholly dependent on the salary of deceased Suchit Ram and at present have no source of income. Therefore, Shanti Devi mother of applicant filed an application with respondent No. 4 seeking appointment of applicant on compassionate ground in the year 2006. Thereafter, Shanti Devi filed application for appointment in the year 2008 and two applications in the year 2009. On 11.09.2009 applicant received a letter from respondent No. 3 that his letter for appointment on compassionate ground has been forwarded to headquarters.
3. It is a further case of applicant that he had given all the required documents in support of his application for appointment on compassionate ground. In the inquiry, held by the Inspector, applicant had given affidavit and the Inspector had recorded the statement of his brothers and mother who had given their 'no objection' to the appointment of applicant on compassionate grounds. Since no action was taken by the respondents, he filed O.A. wherein vide order dated 22.01.2010, direction was given to the respondents to dispose of the application of applicant for appointment within three months by speaking order. It is a further case of applicant that the respondent No. 2 passed the impugned order and in this regard the applicant has taken the plea that:

"That after the service of the order of Hon'ble Central Administrative Tribunal, Allahabad Bench, Allahabad, upon the respondent no. 2 & 3, the respondent no. 2 has passed the impugned order dated 21.4.2010 communicating to the General Manager Opium and Alkaloid Works, Ghazipur, U.P. holding therein that the case of the applicant needs to be considered in the light of the instruction on the subject as per instruction the vacancy to the extent of 5% in a particular grade can be set aside for compassionate appointment and that the appointment is to be given in accordance with the seniority of the applicant seeking compassionate appointment subject to the fulfillment of other consideration. The case of the applicant has been examined at this end and it is found that the vacancy available does not cover the seniority of applicant in the circumstances, the turn of the applicant has to be awaited and he may accordingly informed. A true copy of the impugned order dated 21.4.2010 passed by the respondent no. 2 has already been annexed as Annexure No. 1 in the Compilation No. 1 to this application.

That the aforesaid order dated 21.4.2010 passed by the respondent no. 2 has been communicated by the respondent no. 3 to the applicant by the impugned order dated 22.4.2010 holding therein that the case of the applicant has been considered, it is also submitted that the order for the compassionate appointment only 5% post can be filled up accordingly in the year 2006-07 and 2008, the vacancy of untrained Shramik was one, three and 14 respectively, and also stated that in the year 2009 only 21 vacancies were found and out of them only one person who was senior then the applicant was accommodated, and in the year 2010 upto 31.03.2010,

the post of untrained Shramik was not available, and also stated that the compassionate appointment can be given within 3 years and thereafter it will not be considered, and as such the applicant representation was disposed of. A true copy of the impugned order dated 22.4.2010 passed by the respondent no. 3 has already been annexed as Annexure No. 2 in the Compilation No. I to this application."

4. It is a case of applicant that the orders passed by the respondent No. 2 and 3 are illegal and unsustainable.
5. In the counter affidavit filed by the respondents, it has been averred that on the basis of circulars issued by DOP&T, the appointment on compassionate grounds is to be made on the basis of number of grounds including the destitute condition of the family of deceased government servant and such appointments can be provided only to fill up 5% of the vacancies, as held by the Hon'ble Apex Court in 'U.K. Nagpal v. State of Haryana, JT 1994 (3) (SC) 525'. In the Counter Affidavit, number of citations has been given regarding the scope under which appointments on compassionate basis can be made. There can be no dispute with the preposition laid down by the Hon'ble Courts. It is the further case of respondents that as per O.M. No. 14014/23/99-Estt. (d) dated 03.12.1999, appointment can be made for a vacancy on the compassionate ground if the same is available within a year and that too within the ceiling of 5%. The case of applicant is above five years old and that it is a settled law that compassionate appointment can be made to tied over sudden crisis which emerged due to the death of bread earner of family.
6. In the Rejoinder Affidavit, applicant has reiterated the averments made in the O.A. and further submitted that he is

not claiming the appointment as a matter of right but because of death of his father during his employment due to which the family is on the verge of starvation and have no other source of livelihood. It is the further case of applicant that the committee has neither considered the request for appointment on compassionate ground and nor has the committee considered the pitiable financial condition of the applicant. The averment made by the respondent No. 3 in the impugned order that after three years compassionate appointment cannot be considered has forgotten the fact that applicant is not at fault for delaying the appointment under compassionate ground since applicant had applied immediately on the death of his father but his claim remained pending and, therefore, this delay is caused by the respondents. The language of impugned order would show that the appointment of applicant was not made since he was not senior enough and therefore it is clear that the respondents at the same time agreed that the financial condition of the applicant and his family is critical and they have no source of income and that the claim of applicant could not be considered due to seniority as well the limitation of 5% for compassionate appointment and therefore directed the applicant to wait. Therefore, the response of the respondents in the counter affidavit that the claim of applicant is totally devoid of merit is wrong.

7. On the other hand, learned counsel for the respondents submitted that the case of compassionate appointment is considered taking into account a host of factors such as size of family, their financial conditions etc and appointment can be provided only to fill up 5 % vacancies that arise for direct recruitment within a year. The compassionate appointment cannot be granted after a lapse of reasonable period and such appointment is given immediately to tide over the sudden

crisis which emerges due to the death of the bread earner of the family.

8. Heard and considered the argument of learned counsel for the parties and gone through the material on record.
9. However, as per the facts coming out in the pleadings of the parties, the application of applicant No.2 for appointment on compassionate basis seems to be still pending in the department which needs to be considered by the respondents at the earliest keeping in view the financial destitute condition of applicants. In the present case applicant has submitted that the OM dated 05.05.2003 specifying 3 years has been withdrawn by the concerned Ministry.
10. In circumstances of the case, impugned orders dated 21.04.2010 and 22.04.2010 are set aside. Looking to the facts mentioned above, direction is given to the respondents to consider applicant's case for compassionate appointment taking into account the poverty in which the family is living and Respondents are directed to consider the case of the applicant within a period of two months from the date of receipt of copy of this order and pass a reasoned and speaking order in this regard which would be communicated to the applicants. OA is accordingly disposed of. No order as to costs.

(Rakesh Sagar Jain)
Member (J)

Manish/-