

**Central Administrative Tribunal
Principal Bench**

OA No.2303/2018

New Delhi this the 4th day of September, 2019

Hon'ble Ms. Nita Chowdhury, Member (A)

Surender Ahlawat (Aged about 36 years)
S/o Late Sh. Dharam Pal,
R/o 563, Laxmi Bai Nagar,
New Delhi-110023
Group 'C'

- Applicant

(By Advocate: Mr. Anil Srivastava)

VERSUS

1. Ministry of Social Justice & Empowerment,
Through Secretary,
Room No.636, 'A' Wing,
Shastri Bhawan,
Dr. Rajendra Prasad Road, New Delhi.

2. Department of Personnel & Training,
Through Secretary,
North Block, Central Secretariat,
New Delhi-110011

- Respondents

(By Advocate: Mr. Vijendra Singh)

ORDER (Oral)

The applicant has filed the present OA, seeking the following reliefs:-

- "I. Direct the Respondents to take expeditious action for the appointment on compassionate appointment.
- II. Direct the Respondents to create supernumerary post as may be deemed fit to appoint him on compassionate ground due to indigent condition of the applicant on urgent

basis till regular compassionate committee decides the matter.

- III. Direct Respondent No.2 to place the applicant in any Ministry under DoPT.
- IV. To pass such other and/or further order(s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case and in the interest of justice."

2. During the arguments, when it is pointed out by the Tribunal that under Article 309 of the Constitution of India, the Tribunal cannot issue direction to the respondent to create any post as this power under the Constitution has to be exercised by the President or the Governor of a State as the case may be, the learned counsel for the respondents has requested not to press the claim with regard to Relief No.II and the same is accordingly denied.

3. The applicant in this OA is aggrieved by the order of the respondent dated 19.07.2017 whereby it was informed that at present no vacancy is available in the Ministry for compassionate appointment. He has challenged the said impugned order on the ground that in an identical case, the Hon'ble Supreme Court in Civil Appeal No.8168/2009 vide order dated 10.06.2014 dismissed the appeal preferred by UOI who had denied consideration for compassionate appointment on account

of the fact that there was no available vacancy and the Hon”ble Supreme Court had rejected stand of the respondents there was no available vacancy. The applicant has further placed reliance on the Parliamentary question answered by Minister of State in the Ministry of Personnel, Public Grievances and Pension according to which the total number of vacant posts of Group ‘C’ in various Ministries/Departments under Central Government is 321418. The applicant, in view of this factual position, has sought direction to take expeditious action for his appointment on compassionate basis and also a direction to place him in any Ministry under DoPT.

4. The respondents, while contesting the OA, has drawn our attention to Para 5 of their Reply to Grounds in which they have stated in compliance with the directions passed on 18.05.2017 in the OA No. 1742/2017 filed by this very applicant, his case was duly examined and it was informed that as per the guidelines issued by the DoPT, compassionate appointment can be made up to maximum of 5% of vacancies falling under direct recruitment quota in any Group ‘C’ post and at present there is no vacancy available in the Ministry under this category. They have contended that the

applicant had further filed CP No. 47/2018 which was dismissed vide order dated 13.04.2018. Thereafter the applicant of this OA has filed Writ Petition No.3536/2018 before the High Court challenging the said order dated 18.05.2017 which was also dismissed by this Hon'ble Court on 11.04.2018 in the following terms:-

“9. Counsel for the petitioner had stated before the Tribunal that he would be satisfied if a time bound direction is issued to the respondent No.1 to reply to his application dated 29.03.2017 and enclosed with the OA (Page 72-73). In view of the said submission vide order dated 18.05.2017, the Tribunal had disposed of the O.A. at the stage of admission itself with directions issued to the respondents to consider the petitioner's case in terms of the extant guidelines for compassionate appointment and reply to his letter dated 29.03.2017.

10. The respondents had duly complied with the aforesaid order passed by the Tribunal and had furnished a reply to the petitioner on 19.07.2017, stating inter alia that his case had been duly examined but no vacancy was available in the Ministry in Group 'C' post and as and when a vacancy arises, the Committee constituted for considering the request for appointment on compassionate grounds shall scrutinize all the applications including that of the petitioner and make its recommendations to the Competent Authority, who would take a decision in this regard. This being the position, we have enquired from the counsel for the petitioner as to how the present petition is maintainable.

11. In reply, counsel for the petitioner states that he has already filed a contempt petition against the respondents alleging non-

compliance of the order dated 18.05.2017, which is listed before the Tribunal today.

12. Ideally, we ought to dismiss the present petition with exemplary costs as the same is nothing but a gross abuse of the process of the Court. However, in the interest of justice, we are refraining from doing so.”

The respondents have thus prayed that the present OA is liable to be dismissed as the same is hit by the principle of res judicata.

7. From the above, quite clearly, the applicant of this OA had earlier filed OA No. 1742/2017 in which the issue with regard to appointment on compassionate ground had been adjudicated in the following terms:-

“2. Having regards to the submission made and without going into the merits of the case, the OA is disposed of at the admission stage itself with direction to respondent No.1 to consider the case of the applicant in term of the extant guidelines for compassionate appointment and reply to his Annexure A-6, letter dated 29.03.2017 with in a period of three months.

and the respondent have informed their compliance in the matter vide letter dated 19.07.2017 placed at Annexure A-1 which reads as under:-

“2. The case has been duly examined and it is informed that as per the guidelines issued by DoPT, compassionate appointments can be made upto a maximum of 5% of avacnies falling under direct recruitment quota in any Group ‘C’ post. At present no vacancy is available in the Ministry under this category.

3. As and when vacancy arises in the Ministry, the Committee constituted for considering request for appointment on compassionate grounds would scrutinize all such applications (including your application) and submit its recommendation for appointment on compassionate grounds taking into account deserving case(s) for consideration of competent authority of this Ministry.”

Not being satisfied with the aforesaid compliance, the applicant filed a CP No.47/2018, which had already been closed on 13.04.2018, as the order of the Tribunal has been substantially complied with. The respondents thereafter filed the WP(C) No. 3536/2018 re-agitating the same issue before the Hon’ble High Court, which too was dismissed with observations as quoted in para 4 of this order. Hence, the issue raised in the present OA with regard to appointment on compassionate basis has already been adjudicated at the level of Hon’ble High Court in WP(C) NO. 3536/2018.

8. In view of the above observations, the OA is dismissed as the same is hit by the principle of res judicata. No costs.

(Nita Chowdhury)
Member (A)

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