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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.649 OF 2003

New Delhi, this the 29th day of June, 2004

HON'BLE SHRI R.K. UPADHYAYA, ADMINISTRATIVE MEMBER

Smt. Kusum Chettri
W/o late Shri RB Chettri
R/o 26/14, CVD Line,
Delhi Cantt.
New Delhi-110010.

.....Applicant

(By Advocate : Shri V. Verma)

Versus

1. Union of India
(through its Secretary)
Ministry of Defence,
New Delhi.
2. The Commandant,
Central Vehicle Depot,
Delhi Cantt.
Delhi-110010.

.....Respondents

(Shri P.S. Bisht, UDC, departmental representative
present though their counsel is absent)

ORDER (ORAL)

This Original Application has been filed by Smt. Kusum Chettri under Section 19 of the Administrative Tribunals Act, 1985 seeking a direction to the respondents for her compassionate appointment on the death of her husband Shri R.B. Chettri. It is stated by the applicant that her husband, who was working as Labourer, died in harness on 20.1.2001. It is further stated that the applicant has three minor children and all of them including the applicant were dependent on the deceased Government servant. Therefore, immediately on the death of her husband, she had applied for appointment on compassionate grounds on 16.2.2001. The same has been rejected as per impugned order dated 3.9.2002 stating as follows:-

"1. Ref. Your application dated 16th
Feb, 2001.

C. R. Singh

2. It is intimated that your case for employment in relaxation to normal rules of recruitment has been considered three and final times by the Board of Officers held on 22.3.02, 17.6.002 and 13.8.02 at the Western Command, but could not be selected being low in merit drawn by the Board of Officers and due to more deserving cases as well as limited number of vacancies.

3. Further, it is also intimated that as per Govt. Policy on the subject, not more than three chances are to be given to the individual and five years old cases are also not to be considered.

4. Since your case is finally closed from this end, you are advised on your own interest to get your name registered with Employment Exchange for a suitable job or look for some elsewhere."

2. The learned counsel of the applicant states that the policy dated 12.7.2001 (Annexure R-4) has been relied upon by the respondents even though the death of the applicant's husband took place on 20.1.2001 that is prior to the existence of the said policy. By placing reliance on the decision of the Hon'ble Delhi High Court in the case of Jagwati Devi Vs. Union of India and Ors., 2003 (II) AD (Delhi) 189, it is stated that the relying on the policy, which came into existence subsequently, rejecting the appointment was bad in law. The learned counsel further invited attention to letter dated 26.6.2000 (Annexure R-5) wherein it is stated that there were three vacancies in Group 'C' and ten vacancies in Group 'D' categories for the purpose of employment on compassionate ground. The claim of the applicant is that her case was not properly considered. The applicant could have been given the employment immediately after the death of her husband.

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3. The respondents have opposed the prayer. At the time of hearing, no authorised counsel was available on behalf of the respondents. However, Shri P.S. Bisht, Upper Division Clerk, departmental representative appeared when the matter was being heard and stated that the case be adjourned, as the authorised counsel Ms.R.O, Bhutia was out of station. In view of the order proposed to be passed, it was considered not desirable to adjourn the hearing at the request of the departmental representative and the case was heard in his presence with the assistance of learned counsel of the applicant.

4. The respondents have stated in their counter reply that the case of the applicant was considered three times along with other similarly placed persons. It is also stated by the respondents that there were only two vacancies in Group 'C' and three vacancies in Group 'D' when the case was considered for the first time on 22.3.2002. The Board of Officers could not recommended the case of the applicant as there were more deserving candidates than the applicant and the applicant's name was lower in merit. The case of the applicant was again considered on 17.6.2002 and finally on 13.8.2002 but her case could not be found meritorious for grant of appointment on compassionate grounds in comparison to other cases. Accordingly, the applicant's case was rejected. The respondents have taken note of DOP&T OM dated 22.6.2001, which requires that the compassionate

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appointment cases should be considered within one year considering the vacancies available in that year in 5% quota of total direct recruitment vacancies. The case of the respondents is that the vacancies available in September, 2001 for compassionate appointment were only two in Group 'C' and three in Group 'D'. The applicant's case was not covered in that vacancy position. Therefore, the impugned letter has been issued. It has also been stated by the respondents that the applicant is in receipt of family pension Rs.1790/- plus admissible dearness allowances. Further terminal benefits amounting to Rs.1,66,751/- were also paid to the applicant. The respondents stated that the applicant family does not fall below the poverty line as per the Planning Commission yardstick. The respondents have accordingly justified their impugned order and prayed that this Original Application should be rejected.

5. The material available on records has been considered carefully. The contention of the learned counsel of the applicant that there were as many as three Group 'C' vacancies and ten Group 'D' vacancies as per letter dated 26.6.2000 cannot be accepted. That was the position in the year 2000. But the respondents have categorically stated that there were only two Group 'C' and three Group 'D' vacancies available in the year 2001. The plea of the applicant that there were enough vacancies available with the respondents is, therefore, rejected. However, the

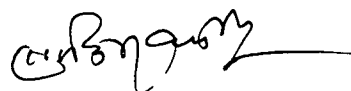
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respondents have not considered the subsequent DOP&T Circular dated 5.5.2003 which provides for consideration of case of the applicant against the vacancies of subsequent years also. This Circular has been issued particularly to reduce the hardship faced on account of consideration of only year vacancies intimated as per DOP&T OM dated 22.6.2001. Therefore, the respondents are directed to consider the case of the applicant in the light of revised guide-lines of DOP&T dated 5.5.2003. The impugned order dated 3.9.2002 is accordingly quashed and set aside.

6. In view of the direction given hereinbefore, this Original Application is disposed of without any order as to costs.



(R.K. UPADHYAYA)
ADMINISTRATIVE MEMBER

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