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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1081/2003

New Delhi this, the 24th day of May, 2004

Hon'ble Shri S.K.Naik, Member (A)

Ms. Jitender Kaur
H-120, Nanakpura
Moti Bagh, New Delhi

.. Applicant

(Shri Rajeev Sharma, Advocate)

VERSUS

Union of India, through

1. Secretary
Ministry of Works & Housing
Nirman Bhavan, New Delhi
2. Director General(Works)
CPWD, New Delhi
3. Estate Officer
Dte. of Estate, New Delhi
4. Superintending Engineer
CPWD, New Delhi

.. Respondents

(S/Shri B.K.Barera and R.N.Singh, Advocates)

ORDER

The applicant Ms. Jitender Kaur, on the death of her father Shri Darshan Singh who died while working as UDC in CPWD on 5.2.2001, applied for grant of compassionate appointment against a suitable post. According to her, she has completed all the formalities as directed by the respondents but her request has been rejected by the impugned order dated 5.3.2003 for the reasons that the family of the deceased received Rs.3,70,913/- as terminal benefits. Additionally, the mother of the applicant is in receipt of family pension of Rs.3100 per month plus DA at the rate of 52% thereon. It has also been taken as a ground that there were only two members (wife and daughter) dependent on the deceased. Aggrieved against the rejection of her request the applicant has filed this OA seeking quashing of the impugned order and a direction

100%

to the respondents to grant her compassionate appointment.

2. Applicant has also prayed for an interim relief that she may not be evicted from the Govt. accommodation allotted to her father while in service.

3. Applicant's counsel has contended that the OM dated 22.6.2001 on which the respondents are relying is not applicable in applicant's case and that even though the Head of Department of the applicant has recommended her case, the impugned order has been passed without application of mind.

4. Learned counsel for the respondents drawing my attention to the broad aspects of DoPT instructions dated 9.10.98 and 22.6.2001 stated that the Scheme is to grant appointment on compassionate ground to a dependent family member of a Govt. servant dying in harness thereby leaving his family in penury and without means of livelihood to relieve the family of the Govt. servant concerned from financial destitution and to help it get over the emergency. Besides the competent authority has to take into account the position regarding availability of vacancy for such appointment and recommend for such an appointment only in really deserving cases if vacancy is available within a year that too within the ceiling of 5% of vacancies falling under direct recruitment quota in any Group C or D post. In the present case, the

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competent authority has rejected the request of the applicant only after considering all the facts and after examining the case in the light of the extant instructions on the subject.

5. In so far as retention of the quarter is concerned, counsel for respondent No.3 has contended that since action under PPE Act, 1971 has already been initiated after allowing the applicant one year concession period to retain the quarter upto 5.2.2003, this Tribunal has no jurisdiction to entertain the request of the applicant in view of the judgement of Hon'ble Supreme in the case of UOI vs. Rasila Ram & Ors. in Civil Appeal Nos.1301-04/1990 decided on 6.9.2000, in which it has been held as under:

"Once a government servant is held to be in occupation of a public premises as an unauthorised occupant within the meaning of Eviction Act, and appropriate orders are passed thereunder, the remedy to such occupants lies, as provided under the said Act. By no stretch of imagination the expression any other matter in section 13 (q)(v) of the Administrative Tribunal Act would confer jurisdiction on the Tribunal to go into the legality of the order passed by the competent authority under the provisions of the PPE Act, 1971. In this view of the matter, the impugned assumption of jurisdiction by the Tribunal over an order passed by the competent authority under the Eviction Act must be held to be invalid and without jurisdiction. This order of the Tribunal accordingly stands set aside...."

Contention of the learned counsel for the respondents has to be accepted and therefore I reject the prayer in respect of retention of quarter in view of the decision (supra) of the Supreme Court which is binding on the Tribunal.

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5. In so far as the main relief is concerned, it may be reiterated here that law by now has been settled that the Tribunal cannot pass any order directing any authority to appoint an applicant to a post on compassionate ground. At the most the applicant can claim consideration as per the Scheme for such appointment. In the case under adjudication, I note that the number of compassionate appointments being restricted to only 5% of direct recruitment quota for a particular year, respondent-department has duly considered the request of the applicant keeping in view the instructions issued by DoPT pursuant to the judgement of the Supreme Court on the subject of compassionate appointment as also the terminal benefits granted to the family of the deceased including the size of the family, and found that her case is not the most deserving than others. Therefore the action of the respondents by way of the impugned order cannot be faulted.

6. In the result, I find no merit in the present OA and the same is accordingly dismissed. No costs.

S.K. Naik
(S.K. Naik)
Member(A)

/gtv/