

CENTRAL ADMINISTRATIVE TRIBUNAL : PRINCIPAL BENCH

OA 1810/2003

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New Delhi, this the 22nd day of January, 2004

Hon'ble Sh. Sarweshwar Jha, Member (A)

1. Smt. Nara Devi, Group 'D'
Widow of Late Bhola Singh Dhanai,
R/o D-69, Gamma-I,
Greater NOIDA
Distt. Gautam Budh Nagar (U.P.)
2. Shri Shishpal Singh, Group 'D'
S/o Late Bhola Singh Dhanai,
R/o D-69, Gamma-I,
Greater NOIDA,
Distt. Gautam Budh Nagar (U.P.)

...Applicants

(By Advocate Sh. K.N.Bahuguna)

V E R S U S

Union of India through

1. The Scientific Adviser to
Raksha Mantri,
Defence Research Development Organisation,
Ministry of Defence, (Room No.137),
South Block,
D.H.Q. P.O.
New Delhi-110 011.
2. Director of Personnel (9-10),
Defence Research & Development Organisation,
Ministry of Defence,
'B' Wing, 'SENA BHAWAN'
New Delhi-110 011.
3. Director
Institute of Technology Management,
Ministry of Defence,
Research & Development Organisation,
Landour Cantt.
MUSSORIE-248179,
Distt. Dehra Dun (Uttaranchal)

...Respondents

(By Advocate Sh. V.S.R.Krishna)

O R D E R (ORAL)

Shri Sarweshwar Jha,

Heard.

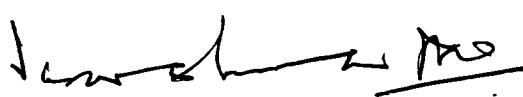
2. This OA has been filed by the applicants seeking directions being given to the respondents to consider applicant No.2 for appointment on compassionate grounds in terms of Govt. of India's Scheme on the subject, as brought

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out in 1998. Reference has also been made to the cases of one Ms. Gurvinder Kaur and another one relating to Falu Kumar's son, having been appointed on compassionate grounds.

3. The facts of the matter, briefly, are that the husband of the applicant No.1, namely, Sh. Bhol Singh Dhanai, who was an employee of the respondents, died in harness on 12-3-2000 while he was working as Driver. An application was submitted by applicant No.1 on 18-3-2000 to respondent No.3 for appointment of her son - applicant No.2 on compassionate grounds vide annexure A-1. It appears that the respondents did agree to consider the case of the applicant No.1 herself if she desired to be appointed on compassionate grounds (Annexure A-3), but the applicant No.1 was not in a position to be considered for her own appointment. The respondents also appear to have informed the applicants that vacancies were not available for such appointments within 5 % vacancies against direct recruitment quota for the period 2001 and accordingly they were not in a position to appoint applicant No.2 on compassionate grounds (Annexure A-5). The grievance of the applicant is that the respondents have not followed the Scheme for appointment on compassionate grounds as brought out in the year 1998, according to which, the respondents should have considered taking up the matter relating to appointment of applicant No.2 on compassionate grounds in other Ministries/Departments/Offices of the Govt. of India. It is in this regard that the applicants have referred to the two cases of appointment on compassionate grounds which have been considered by the respondents recently. The applicants have submitted that the case of applicant No.2 was not kept by the respondents in the waiting list and as such they have discriminated against him.



4. It is observed that the applicants had approached the Tribunal earlier also vide OA 2458/2002 which was disposed of by the Tribunal with the following orders :-

"Respondents to consider the application submitted by applicant No.1 earlier for compassionate appointment of her son i.e. applicant No.2 in terms of the relevant rules and instructions, including the provisions contained in paragraph 7 (f) of the DOP&T OM dated 9-10-98 with reference to their letter dated 6-9-2001. They may take further necessary action by taking up the matter with other Ministries/Department/Offices of the Govt. of India to provide compassionate appointment to applicant No.2 at an early date, in terms of the provisions of the aforesaid Scheme. This shall be done within two months from the date of receipt of a copy of this order with intimation to the applicants. No order as to costs.

It appears that the respondents have complied with the orders of this Tribunal by circulating the names of the applicant to other Ministries to find out whether there was any vacancy with them to which the applicant could be appointed. The grievance of the applicants is that the respondents should have taken up the matter with the other Ministries as per the orders of this Tribunal by sending representatives to various Ministries/Deptts./Offices including their Ministry, i.e., Ministry of Defence and its various Departments/Offices. With this, the respondents have taken the position that they have complied with the orders of this Tribunal and that is, as if, the end of their responsibilities.

5. The respondents in their counter reply has also taken the position that the same matter has been agitated by the applicants before the Tribunal again and again and they have as such abused the process of law. They have also asserted that the Scheme relating to compassionate appointment as issued vide DoPT OM dated 9-10-98 has been further amended by the Government from time to time. According to them, every case of compassionate appointment



has to be adjudged on merit and circumstances of the case. They have also brought in the aspects of availability of vacancies within 5 % of such vacancies in the direct recruitment quota in a recruitment year and has in this connection referred to the decisions of the Hon'ble Supreme Court in the case of **Himachal Road Transport Corporation v. Dinesh Kumar** (JT 1996 (5) SC 319) and **Hindustan Aeronautics Ltd. v. Smt. A.Radhika Thirumalai** (JT 1996 (9) SC 197) in which it has been held that appointment on compassionate grounds can be made only if vacancy is available for the purpose. They have also referred to the amount of Rs. 3,30,232/- paid to the wife of the deceased employee and also the family pension of Rs.3205/- plus 55 % DA thereon. While stating that the family of the deceased employee consists of the widow, two sons and daughter, they have confirmed having considered the application of the applicants ; but the same could not be acceded to for want of a vacancy. The fact that the applicants had approached the Tribunal earlier and further that they have complied with the orders of the Tribunal as given in OA 2458/2002 by re-considering the matter and taking up the same with other Ministries, have also been confirmed by the respondents. As, with this, the orders of the Tribunal were deemed to have been complied with by the respondents, CP filed by the applicants in this regard was also dismissed on 8-4-2003 as submitted by the respondents in para 3 of their counter reply. They have finally relied on the decisions of the Hon'ble Apex Court in **UOI v. Asha Ramchandra Ambedkar and Ors.** (JT 1994 (2) SC 183), in which, it has been held that the 'Courts cannot give directions for appointment of a person on compassionate grounds, but can merely direct consideration of the claim for such appointment'.

6. In the rejoinder, which the applicants have filed

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to the counter reply filed by the respondents, they have highlighted the fact that while the respondents were prepared to consider appointment of applicant No.1 on compassionate grounds, they refused to consider the case of applicant No.2 on account of non-availability of vacancy. They have, therefore, surmised that the vacancy was available with the respondents and they could have considered the case of the applicant No.2 for appointment against the said vacancy. They have also argued that the respondents have merely completed the formality of circulating the matter to the other Ministries, but have not made any serious effort to get the applicant No.2 appointed in one of these Ministries, whereas they considered the case of the son of Sh. Faltu Kumar, namely, Sh. Arun Kumar and also that of Ms. Gurvinder Kaur. They have also pleaded that applicant No.1, being illiterate lady could have recommended the case of her son only and could not have sought appointment for herself.

7. Having heard the 1d. counsel for the parties and having perused the facts of the case carefully, I have come to realize that the respondents have actually displayed considerable inconsistency in their positions in regard to the merit of the case of the applicants. While on the one hand, they were prepared to consider the case of applicant No.1 and unfortunately for reasons of illiteracy or any other reason, best known to her, she could not give her willingness for such consideration, in the case of applicant No.2 they did not have a vacancy. This position is not tenable. Also it is not clear why the respondents could not keep the case of the applicant No.2 in the waiting list, which is provided for under the orders of DoPT. It would have been proper on the part of the respondents to have kept the name of applicant No.2 in the waiting list for the period which is permissible under the instructions of the DoPT. However, it

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is also not clear as to why the respondents, after having circulated the name of the applicant among other Ministries as per the directions of the Tribunal, did not follow up the matter with them. They were required to give a serious consideration to the case of the applicants and not to merely complete the formality.

8. Under these circumstances, I am compelled to take a view that the respondents have not given adequate consideration to the case of applicant No.2. They have also not thrown light on the circumstances under which the cases of the two persons as named by the applicants in their OA were considered by them and in the process why they could not avoid causing discrimination to the applicants.

9. Having regard to the facts and circumstances of the case, I therefore, allow this OA only partly with directions to the respondents to re-consider the case of the applicant in the right earnest with reference to the instructions on the subject as issued by the concerned authorities from time to time. They are also directed to see the cases of the two persons as indicated by the applicants in their OA and keep the same in mind while dealing with the request of the applicants. They are directed to dispose of the matter within a period of three months from the date of receipt of a copy of this order by issuing a reasoned and speaking order as per law.

10. With this, this OA stands disposed of.



(Sarweshwar Jha)
Member (A)

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