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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

OA 2416/2003

New Delhi this the 18 th May, 2004

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

In the matter of

Phoolwati Kumari,  
(Legal Hair and D/O Shri Sampat,  
Sr. Mali) employed with Service  
No.415902, Mahavir Vanasthali,  
C.P.W.D.Horticulture IV/Sub-Divn.  
H.D.I., C.P.W.E.D. New Delhi  
R/O Sector-5/1515, R.K.Puram,  
New Delhi.

..Applicant

(By Advocate Shri R.P.Luthra )

VERSUS

1. Central Public Works Department,  
( C.P.W.D. ), Nirman Bhawan,  
New Delhi.

2. Deputy Director  
(Horticulture Division No.IV),  
C.P.W.D., New Delhi.

..Respondents

(By Advocate Ms.R.O.Bhutia )

O R D E R

The applicant in this O.A., Phoolwati Kumari, is the daughter of late Shri Sampat, who while working as Senior Mali with the Horticulture Sub-Division of C.P.W.D., New Delhi died on 24.5.2001. The applicant being the only daughter of the deceased employee had thereafter on 4.9.2001 applied for appointment on compassionate ground. When her representation did not result in her appointment, she had earlier filed OA 3018/2002 which had been disposed of by the Tribunal vide its order dated 10.12.2002 directing the respondents to take a final decision on the request of the applicant regarding her compassionate appointment within a period of two months. Even a Contempt Petition 175/2003 had to

Order

be filed since the respondents had not conveyed their decision to her representation which later they stated, had been taken vide their Office Memorandum dated 2.4.2003. Aggrieved by their decision vide which her request for compassionate appointment has been rejected, the present OA has been filed seeking once again the intervention of the Tribunal for a direction to the respondents to consider her case for appointment on compassionate grounds.

2. Counsel for the applicant has assailed the order dated 2.4.2003 vide which the request of the applicant has been rejected on the ground that the same has been passed without proper consideration in an arbitrary and unjust manner. Counsel contends that the reason stated in the Office Memo was that appointment of the applicant within the period of one year was not possible and as such the same had been rejected. They have relied on the Office Memo dated 17.12.2002 issued by the Directorate of Works. This, the counsel contends, is not in keeping with the policy of respondents themselves. Referring to Office Memo. dated 17.5.2002 in which it has been stated "that the existing waiting list should not be scrapped and that they have to be exhausted and the backlog cleared", the counsel contends that respondents should have appointed the applicant against any other vacancies as are available as per the DOP&T instructions, which they have failed to do. Contending further, he states that being the only unmarried daughter

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of the deceased, the respondents ought to have considered her case and appointed her.

3. Counsel for the respondents at the outset has raised a preliminary objection. She has contended that the applicant is forbidden to raise this question under law once again as it had already been raised earlier and the same relief had been prayed for in her previous OA 3018/2002. Referring to the order passed by the Tribunal in the Contempt Petition 175/2003 in OA 3018/2002, the counsel states that the Tribunal while dismissing the Contempt Petition had stated as under:-

" It is noted that the Contempt Petition has been filed by the petitioner on 6.5.2003 with a prayer to initiate contempt proceedings against the respondent and to direct him to comply with the aforesaid directions of the Tribunal's order dated 10.12.2002. As these directions have already been complied with by the respondents, we find no good grounds to continue with Contempt Petition noting the submissions made in the reply affidavit that the applicant has been informed by the respondents letter dated 2.4.2003.

In the above circumstances, the Contempt Petition No.175/2003 is dismissed. Notice issued to the alleged contemnor is discharged. File to be consigned to the record room".

4. Counsel for the respondents, therefore, contends that the Tribunal had fully and finally settled the issues involved and, therefore, the same cannot be reagitated and the principle of res judicata will be applicable in this case. This contention of the learned counsel has to be rejected as dismissal of a contempt petition cannot be treated to be dismissal of the main OA on merits. 3

5. On the merits of the case, she has contended that the respondents have duly considered the request of

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decide

the applicant as per the Scheme of compassionate appointment adopted by the Government keeping in view the guidelines of the DOP&T. The counsel contends that the Committee for compassionate appointment should limit its recommendation to really deserving cases and the number of vacancies should be restricted to the posts available for a particular year. Further it has also been stipulated that the total number of vacancies should not exceed more than 5 % of the direct recruitment vacancies arising in that particular year. Since the applicant had sought appointment to the post of LDC and there was no vacancy in the limited quota meant for compassionate appointment and further there was a long list of persons more deserving than the applicant, the case of the applicant could not be favourably considered. She has further stated that the father of the applicant at the time of his death was already 59 years of age and had only one year left to retire in the normal course. Stating that a prudent Govt. servant at the fag end of his service ought to have catered for the security of his family, the counsel contends that this factor has also to be taken into consideration while considering the applicant for appointment on compassionate ground. Referring to some parameters with regard to assessing the financial destitution as stipulated by the DOP&T, the learned counsel contended that the retiral benefits available to her mother have to be taken into account. It has also been stated that the applicant is the only daughter left behind by the deceased; whereas a large number of other applicants in the pending list have more innumbrances.

J. J. J.

She has, therefore, submitted that the case of the applicant having been duly considered calls for no interference by the Tribunal.

6. I have considered the contentions raised by the learned counsel for the parties and have also perused the records.

7. Office Memorandum dated 17.5.2002 on the subject of appointment on compassionate grounds issued by the respondents themselves states as under :-

" Subject: Appointment of compassionate grounds-Guidelines to be followed regarding.

The undersigned is directed to say that as desired by Secretary (UD) in the Weekly Review Meeting on 6th December, 2001, the matter of compassionate appointment and long waiting list of cases pertaining to CPWD and Directorate of Printing were taken up with Department of Personnel and Training seeking specific reference whether the Ministry could adopt the system being followed in the Ministry of Defence.

The Department of Personnel and Training have issued the following instructions in response to our reference:-

(i) The DOPTs instructions that the Committee for compassionate appointment should limit its recommendations to really deserving cases and restrict it to the number of vacancies available for that year in the concerned Ministry be followed.

(ii) DoPT have no objection if the procedure being followed in the Ministry of Defence is also adopted by this Ministry.

It has been decided with the approval of Secretary (UD) to adopt the formula by all Attached/Subordinate Offices of this Ministry, devised by Ministry of Defence, pertaining to compassionate appointments for the future.

So far as the existing waiting lists are concerned, it may not be possible to scrap them and they will have to be exhausted and the backlog cleared.

Done

A copy of formula adopted by Ministry of Defence is enclosed. It is requested that the above instructions apart from instructions received from Department of Personnel and Training on the subject may be followed by various Attached/Subordinate Offices".

8. As is clear from the Office Memo referred to above, the respondents ought to have placed the request of the applicant for appointment on compassionate ground for consideration before the Committee, which I presume, they must have constituted as per the guidelines of the DOP&T. However, from the records, I find that the entire case of the applicant has been dealt with by the dealing hand and the dealing officials. In the entire record there is no mention that the case of the applicant has been considered by the Committee vis-a-vis the other requests that may have been received by the department. The record does not contain any detail with regard to the total number of vacancies in group 'C' and group 'D' categories arising year wise ; the percentage of such vacancies falling to DR quota as per RR and 5 % thereof which could be reserved for compassionate appointment. There is no reference to all the requests received being submitted before a Committee to consider and recommended the inter-se merit of such applicants in order of the most deserving. I do not find any Committee having gone into the relevant merits of each of the cases. The conclusion that the case of the applicant is less meritorious than others can be arrived at only if such an exercise had been conducted. In the absence of this, it can only be said that the guidelines prescribed by the DOP&T in the matter are not being followed. The action of the respondents, therefore, suggests that they have rejected the applicant's case

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without proper consideration as per the guidelines prescribed by the DOP&T. To that extent, learned counsel for the applicant has rightly said that the request of the applicant has been rejected arbitrarily. Under the circumstances, I quash the impugned order, direct the respondents to place the representation of the applicant before a duly constituted Committee for proper consideration in accordance with the Rules/instructions and DOP&T guidelines on the subject and only thereafter arrive at a decision which should be communicated to the applicant. This exercise should be completed within a period of four months

9. The OA accordingly is disposed of with the above directions. No order as to costs.

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

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