

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.16/2003

New Delhi this the 16th day of September, 2003.

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

1. Lalita Devi, W/o late Sh. Satbir Singh,
VIII & P.O. Bharthal,
New Delhi.

2. Sunil Kumar,
S/o late Sh. Satbir Singh,
VIII. & P.O. Bharthal,
New Delhi.

-Applicants

(By Advocate Shri M.K. Bhardwaj)

-Versus-

1. Union of India through
the Secretary
Ministry of Urban Development
Nirman Bhawan,
New Delhi.

2. The Director General
Central Public Works Department,
Nirman Bhawan,
New Delhi.

3. Suptd. Engineer (Admn.)
Central Electric Division-4
C.P.W.D., Inderprasth Bhawan,
New Delhi.

4. Executive Engineer (Elect.)
Dr. Ram Manohar Lohiya Hospital,
Vidyut Mandal, CPWD,
New Delhi.

(By Advocate Mrs. AVINASH KAUR)

ORDER (ORAL)

By Mr. Shanker Raju, Member (J):

Applicant impugns respondents' order dated 26.8.2002, rejecting his request for compassionate appointment. As the father of applicant died in harness on 20.7.1977, leaving behind handicapped brother, two sisters and old mother. Claim of applicant, though considered was not acceded to by an order dated 21.1.1999 as he has not attained majority. However, by an order dated 26.8.2002,

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claim of applicant was rejected in the light of the DOPT OM which provides consideration on compassionate basis within 5% quota for waiting period of one year. The said consideration was made on a group 'C' post of Clerk.

2. Learned counsel for applicant Sh. M.K. Bhardwaj relying upon DOPT OM dated 5.5.2003, which has been issued in supersession to earlier OM dated 3.12.1999 compassionate appointment in so far as waiting list is concerned, is now not restricted to one year but the case can be considered on review for one year more and after three years the same would be finally closed. As the aforesaid guidelines nowhere stipulate their prospective application as an addition and modify, the same relates back to the earlier OM and is applicable in the case of applicant.

3. Learned counsel for respondents Mrs. Avnish ~~KAUR~~^k contended that the DOPT OM restricts availability of vacancies and consideration within one year. As such, in absence of any vacancies available in the 5% quota claim of applicant cannot be considered and placed in the waiting list.

4. I have carefully considered the rival contentions of the parties and perused the material on record. In the light of the decision of the Apex Court in **Director of Education v. Puspender Kumar**, (1998) 5 SCC 192, compassionate appointment cannot be insisted upon a particular post if no Group 'C' post is available the consideration can be made against a Group 'D' post.

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5. In so far as rejection of the request of applicant having regard to the DOPT OM dated 3.12.1999 is concerned, as the same is now modified and the effect relates back to the date of issuance the claim of applicant is liable to be considered as per the procedure laid down in DOPT OM dated 5.5.2003.

6. In the result, OA is partly allowed. Impugned order is quashed and set aside. Respondents are directed to reconsider applicant's case for compassionate appointment in the light of DOPT OM dated 5.5.2003. No costs.

S.Raju

(Shanker Raju)
Member (J)

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