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HIGH COURT OF DELHI : NEW DELHI

Judgment reserved on : September 04, 2009

Judgment delivered on : September 15, 2009

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W.P. (C) No.5219/2008

% Geeta Devi ... Petitioner

Through: Mr. Neeraj Jain and Ms. Sonia
Aggarwal, Advocates

versus

Union of India & Ors. ... Respondents

Through: Ms. Raman Oberoi, Sr. Panel Counsel
for Union of India
Mr. R. Nanavaty, Advocate for
Respondent No. 3.

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

SUNIL GAUR, J.

1. Petitioner's husband was a Chowkidar with the Respondent – Board on regular basis and he had died in harness on 17th May, 2004. On 10th June, 2004, Petitioner sought appointment on compassionate basis on the available vacancy in the Group-D employees of the Respondent - Board vide application (Annexure-F).

2. It is the case of the Petitioner that despite the Representation/ several reminders by the Petitioner, there is no response from the Respondents.

3. In this petition, direction is sought to the Respondents to consider sympathetically the application of the Petitioner for appointment on compassionate basis on any available vacancy. In response to this petition, Respondent – Cantonment Board, Delhi Cantt., in its counter affidavit, has taken a stand that the Ministry of Defence has intimated that the ceiling of 5% prescribed for compassionate appointment in the Scheme is based upon ruling of the Apex Court and it cannot be relaxed in any case.

4. Respondent No. 1 and 2, in their counter affidavit, have relied upon Office Memorandum No.14014/19/2002-Estt.(D) dated the 5th May 2003, which prescribes the ceiling of 5% quota in the direct recruitment and the time limit of three years for making appointment on compassionate ground. In the additional affidavit of 1st May, 2009, filed by the Respondent – Board, the details of the compassionate appointments made from 1st January, 2004 have been given. Another additional affidavit of 29th July, 2009, has been filed by Respondent - Board wherein it has been stated that the quota of 5% in direct recruitment on the Class IV posts stands already exhausted, as four appointments on compassionate basis, as per the seniority, has been

made in the year 2004 and thereafter, till date, no appointment on compassionate ground has been made by the Respondent - Board.

5. After filing of the aforesaid additional affidavits, by the Respondent - Board, a rejoinder has been filed by the Petitioner, wherein there is no challenge to the Office Memorandum No.14014/19/2002-Estt.(D) dated the 5th May 2003, filed alongwith the additional affidavit by Respondent - Board.

6. The plea put forth on behalf of the Petitioner, in substance, is that explanation given by the Respondents to deny appointment on compassionate ground to the Petitioner is untenable as the same is contrary as Respondent No. 3 had recommended Petitioner's case, whereas its rejection by Respondent No. 1 and 2 is the usual bureaucratic manner, which is unjustified. However, Respondents negate the aforesaid plea by asserting that Petitioner's case was not recommended but was merely forwarded to the contesting Respondents.

7. After having heard counsel for the parties and upon perusal of the material on record and the decision of the Apex Court in "*Union of India vs. Joginder Sharma*", **2002 (7) SCALE 141**, referred to in Communication (Annexure R-3/3), this Court finds that there is no challenge to the Office Memorandum No.14014/19/2002-Estt.(D) dated the 5th May 2003 by the Petitioner, and therefore, the relief prayed for in this petition cannot be granted.

8. In view of the aforesaid, this petition is dismissed with the observation that it will be open to the Petitioner to raise a challenge the aforesaid Office Memorandum No.14014/19/2002-Estt.(D) dated the 5th May 2003 and then to seek the relief as prayed for herein.

9. No costs.

Sunil Gaur, J.

September 15, 2009
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