

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) No.165/2009**

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Date of Decision: 19.05.2010

Union of India & Others Petitioners
Through Mr.R.V.Sinha, Advocate.

Versus

Smt.Rajni Arora & Another Respondents
Through Mr.V.P.S.Tyagi, Advocate.

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE MOOL CHAND GARG

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

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The petitioners, Union of India through Secretary, Ministry of Defence & others have challenged the order dated 28th April, 2008 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A.No.334 of 2008, titled as 'Smt.Rajni Arora and another v. Union of India & others', allowing original application of the respondents for compassionate appointment consequent upon compliance of the Tribunal's direction in O.A.No.2512 of 2006 dated 11th May, 2007 and directing the petitioner to reconsider the claim of the respondents in the light of the observations made by the Tribunal

for relaxation and to process the case of the respondents for compassionate appointment.

This is not disputed by the learned counsel for the petitioner that late Narender Kumar Ex LDC, husband of respondent No.1 had died in harness and her request for compassionate appointment was considered by Board duly constituted by MES. After considering all the relevant parameters for compassionate appointment, the Board had recommended for compassionate appointment for the post of Store Keeper Grade-II, however, the request for compassionate appointment for Group C post of LDC was declined. After the compassionate appointment to the post of Store Keeper, Grade-II was recommended, a vacancy has been sanctioned by Central Command at Lucknow, however, age relaxation was not granted leading to filing of petition being O.A.No.2512 of 2006 where an order dated 11th May, 2007 was passed directing the petitioners to finalize the matter relating to the age relaxation and to appoint respondent No.2 on compassionate ground in terms of approval for the job of Store Keeper.

The order dated 11th May, 2007 passed by the Tribunal in O.A. No.2512 of 2006 was not challenged by the petitioners and it had become final. Consequent to decision of the Tribunal dated 11th May, 2007, the petitioners were required to consider the case of the petitioner for compassionate appointment to the post of Store Keeper Grade-II as

was recommended earlier after granting the age relaxation. However, the petitioners did not consider the case of the respondents of age relaxation rather declined the age relaxation on the ground that all the cases prior to December 2000 are to be closed and disposed of and since the cases of the respondents belonged to pre December, 2000 and such cases were closed and disposed of, therefore, without considering the case of the respondents in terms of the directions of the Tribunal dated 11th May, 2007 passed an order dated 18th October, 2007 declining to consider the case of the respondents for age relaxation. The order passed by the petitioners is as under:-

**“SPEAKING ORDER IN COMPLIANCE OF ORDER
DATED 11TH MAY, 2007 PASSED BY HON’BLE CAT (PB)
NEW DELHI IN O.A. No.2512 of 2006: SMT. RAJNI &
ANOTHER VERSUS UNION OF INDIA & OTHERS”**

1. Reference Hon’ble CAT (PB) New Delhi Order dated 11th May, 2007 passed in O.A.No.2512, Smt. Rajni & Another and your representation dated 12th September, 2007.
2. Your case has been considered as per order of Hon’ble CAT dated 11th May, 2007 passed in O.A.No.2512 of 2006 filed by you. The Hon’ble CAT vide Para 4 of their order has directed as under;-

“The respondents are, therefore, directed to finalize the matter relating to age relaxation and take further action with regard to the request of Applicant No.2 for appointment on compassionate grounds in terms of the approval for the job of Store Keeper as mentioned in the reply filed by them. The decision taken be informed to the applicants within a period of three months from the date of receipt of a copy of this order. No costs.”

3. Your case for age relaxation was considered by the appropriate authority and was not approved.

4. It is stated that the case for obtaining age relaxation had earlier been taken up with E-in-C Branch by CE Central Command in Feb 05. The E-in-C Branch, however, returned the case stating that all cases prior to December 2000 are to be closed and disposed of. **Since your case belongs to Pre December, 2000 period, the same accordingly, is closed and disposed of.**

5. In this connections, it is further pointed out that your father died on 18th January, 1976 but you submitted documents for your compassionate appointment only on 01st January, 1998, i.e. after 22 years from the death of your father, which shows that there was no immediate crisis or financial destitution which are valid grounds for compassionate appoint as highlighted by the Hon'ble Supreme Court in various judgments. Also as per the Hon'ble Supreme Court, compassionate appointment is not a vested right to be exercised any time in future.

6. In view of the above, you cannot be issued the appointment on compassionate grounds in accordance with the approval contained in this HQ letter No.813041/386/EIC(1) dated 12th September, 2003.

7. This letter is issued in compliance of Hon'ble CAT (PB)New Delhi order dated 16th May, 2007 in O.A.No.2512 of 2006 filed by your.

(R.K.Sharma, IDSE)
SE
Dir (Pres & Legal)
For Chief Engineer"

Aggrieved by the order dated 18th October, 2007, the respondents had filed an Original Application No.334 of 2008, which has been allowed by the Tribunal. While allowing the original application, the Tribunal also relied on the decision of the

Apex Court in Bhiku Bai Patel v. State of Gujarat, 2008 (4) SCALE 278; Abhishek Kumar v. State of Haryana & others, (2007) 2 SCC (L & S) 308 & Mukesh Kumar v. Union of India & others, 2007 (10) SCALE 543. The Tribunal also noticed that the Board of Officers who is a specialist body had considered the claim for compassionate appointment of the respondents and had recommended after considering all the relevant factors for compassionate appointment to the post of Store Keeper Grade-II. However, age relaxation had to be granted to the respondents. It was also noticed that after due consideration of the pleas and contentions of the petitioner in the earlier petition filed by the respondents being O.A.No.2512 of 2006 by order dated 11th May, 2007, the petitioners were directed to consider the age relaxation before granting compassionate appointment. The Tribunal also noted that a vacancy had been sanctioned by the Central Command Lucknow and in the circumstances, merely on the ground that all cases prior to December 2000 are to be closed, the order passed by the Tribunal dated 11th May, 2007 could not be negated. Since the expert body of the petitioners recommended compassionate appointment, the petitioners could not contend all other reasons stipulated in the order dated 18th October,, 2007.

It cannot be disputed by the petitioners that if all the cases prior to December 2000 were to be closed and not to be considered

for age relaxation, the pleas should have been taken in O.A.No.2512 of 2006. Such plea was not taken and therefore, the Tribunal had given specific direction to consider the age relaxation of the respondents by the petitioners which has not been done and the order dated 18th October, 2007 has been passed mechanically. The order passed by the Tribunal in the earlier original application which was not challenged could not be set aside by the petitioners by a subsequent order nor the recommendation of their expert body could be countered later on, on the grounds taken in the order dated 18th October, 2007.

In the circumstances, there is no illegality in the order of the Tribunal setting aside the order dated 18th October, 2007 declining to consider the question of age relaxation of the respondents pursuant to order dated 11th May, 2007 in O.A.No.2512 of 2006 solely on the ground that the case prior to December 2000 is not to be considered. In any case, the petitioners have been directed to reconsider the case of the respondent for the age relaxation in view of the observations made by the Tribunal.

In the totality of the facts and circumstances, therefore, learned counsel for the petitioners, Union of India & others, have failed to make out any such illegality, irregularity and perversity in the order of the Tribunal dated 28th April, 2008 which would require any interference by

this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. The writ petition in the facts and circumstances of the case, is without any merit, and it is therefore, dismissed.

ANIL KUMAR, J.

MAY 19, 2010
'VK'

MOOL CHAND GARG, J.