

Reserved**Court No.2****ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****ORIGINAL APPLICATION No. 168 of 2021**Thursday, this the 02nd day of March, 2023**“Hon’ble Mr Justice Ravindra Nath Kakkar, Member (J)”**
“Hon’ble Maj Gen Sanjay Singh, Member (A)”

Jyoti, daughter of Late Ram Ashish Ram (No. 13960090 Naik (Wife of Prashant Kumar), Resident of : Village : Betabar Khurd, Post Office: Betabar Khurd, Tehsil : Zamania, District : Ghazipur (U.P.).

..... Applicant**Ld. Counsel for the : Shri Yashpal Singh, Advocate**
Applicant**Versus**

1. Union of India through Secretary, Ministry of Defence, Central Secretariat, South Block, New Delhi - 110001.
2. Director General Medical Services (Army), Adjutant General’s Branch, Integrated Headquarters of Ministry of Defence (Army), ‘L’ Block, New Delhi - 110001.
3. Officer-in-Charge, Army Medical Corps Records, Lucknow
4. Commanding Officer, 52 Rasthriya Rifles, PIN - 934552, C/O 56 APO

.....Respondents**Ld. Counsel for the : Shri GS Sikarwar,**
Respondents. Central Government Counsel.

ORDER**“Per Hon’ble Mr Justice Ravindra Nath Kakkar, Member (J)”**

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs :-

- (a) *Issuing / passing of an order directing the respondents to consider the case of the applicant for appointment on compassionate ground pending since Jun 2006, and provide appointment within a specified time along with consequential service benefits.*
- (b) *Issuing / passing of any other order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case.*
- (c) *Allowing this application with cost.*

2. Brief facts of the case giving rise to this application are that father of the applicant Late Ram Ashish Ram was enrolled in Army on 28.09.1983 and he died on 28.09.2003 due to sudden cardiac arrest while in service. After death of Late Ram Ashish Ram, mother of the applicant was granted special family pension vide PPO No F/000159/2004. Applicant submitted an application for compassionate appointment on any suitable post as per her qualification and rules but the same has not yet been provided to the applicant. Being aggrieved, the applicant has

filed the present Original Application for compassionate appointment.

3. Learned counsel for the applicant submitted that applicant and her two brothers were minor at the time of death of their father. Applicant on attaining the age of major being dependent on her father submitted application for compassionate appointment on dying in harness scheme to Respondents No 3 for any suitable post as per his qualification and rules. In the month of June 2006 on attaining the age of majority the applicant submitted application along with requisite documents on prescribed format to the respondents/competent authorities for grant of service on compassionate grounds. The respondent No 3 asked certain original documents and certificates for employment vide letter dated 07.11.2003. The formalities relating to employment were to be completed within five years. Respondents vide letter dated 23.04.2008 asked the applicant to rectify certain observations. Applicant rectified observations but no response was received from the respondents. On 24.07.2017 respondents issued a letter stating that none of the dependents of the deceased Late Ram Ashish Ram had applied for compassionate appointment within five years from the date of death, therefore, a statement of case justifying delay is required. Applicant vide letter dated 19.08.2017 replied the

respondents apprising of her pending application submitted along with requisite documents in the month of June 2006 i.e. within 5 years from the date of death of her father and requested him to take necessary action but till date the applicant has not been apprised of any decision taken by the respondents. While considering a request for appointment on compassionate ground a balanced and objective assessment of financial condition of the family has to be made taking into account its assets and liabilities and other relevant factors. Request for compassionate appointment consequent on death of a serving person should be considered by applying relaxed standards depending upon the facts and circumstances of the case. Learned counsel for the applicant further submitted that the applicant was eligible for compassionate appointment under the provisions of the relevant recruitment rules but her case was not considered by the respondents. He pleaded that respondents be directed to provide compassionate appointment to the applicant under the Dying in Harness scheme framed by the Government according to her qualification.

4. On the other hand, learned counsel for the respondents submitted after the death of Late Ram Ashish Ram, his next of kin Smt Santosh Devi vide letter dated 07.11.2003 applied for compassionate appointment for the eligible dependents of

deceased soldier within a period of five years from the date of death. Application for compassionate appointment in respect of applicant was received by 52 Rashtriya Rifles from Zila Sainik Welfare Office, Ghazipur (UP) and forwarded to Integrated Headquarters of Min of Def through staff channel on 20.08.2007 and returned to Zila Sainik Welfare Office, Ghazipur and NOK vide letter dated 26.09.2007 with observations. Thereafter applicant forwarded fresh application for employment on compassionate grounds vide letter dated 16.04.2008 which was returned to Zila Sainik Welfare Office Ghazipur vide letter dated 23.04.2008 due to non rectification of observation. Vide letter dated 25.07.2008 applicant was asked to forward requisite documents which were not forwarded by the applicant. Thereafter, NOK of deceased soldier written a letter in March 2012 for appointment of her elder son Deepak Sharma in Indian Army. She was directed to process the case through last unit of her husband vide letter dated 24.07.2017. Appointment on compassionate ground cannot be claimed as a matter of right which can be exercised at any time in future. Since the death of Ram Ashish Ram occurred in Sep 2003 and deceased's children were school going, Smt Santosh Devi, wife of the deceased could have preferred application for compassionate appointment for herself for consideration at that

point of time. Shri Deepak Sharma cannot be given compassionate appointment at this belated stage in terms of OMF No 14014/02/2012-Estt (D) dated 16 Jan 2013. The matter was communicated to Smt Santosh Devi, NOK of deceased soldier vide letter dated 13.11.2018. Learned counsel for the respondents pleaded that instant O.A. has no substance and is liable to be dismissed.

5. We have heard learned counsel for the parties and perused the documents available on record.

6. It is well settled law that appointments on compassionate ground are granted with a view to provide economic relief on account of sudden death of the bread earner. As per para 4 (d) of Standard Operating Procedure issued by Integrated Headquarters of MoD (Army), letter dated 14.02.2003, ***“Application for compassionate appointment will be entertained within a period of 5 years only from the date of death/retirement on medical grounds of the Govt servant. In exceptional deserving cases where death has occurred more than 5 years back, a statement of case justifying delay in applying for consideration of appointment on compassionate grounds may be forwarded. Such cases will require approval from the Defence Secretary.”***

7. In this case, the deceased soldier Late Ram Ashish Ram had left behind his wife and 3 minor children as legal heirs. Since the family was completely dependent upon salary of deceased soldier, death of deceased soldier caused great financial hardship to dependents. Smt. Santosh Devi Next of Kin (NOK) of the deceased soldier is an illiterate house wife, hence she did not apply for compassionate appointment. After death of Late Ram Ashish Ram, applicant, Ms. Jyoti applied for compassionate appointment on the advice of respondent No 3 on attaining the age of majority in June 2006. She got married on 11.02.2010 and gave birth of a child in the year 2011. By that time Shri Deepak Sharma attained majority. Under such circumstances, on the advice of the unit representative visiting home, the mother of the applicant submitted an application in Mar 2012 requesting the Commanding Officer to consider case of her son for compassionate appointment. She was asked to submit certain documents which she submitted to Army Medical Corps Centre (AMC) and College for further necessary action but she was informed by Record Office AMC Records that none of the dependents of the deceased soldier had applied for compassionate appointment within five years from the date of death, therefore, a statement of case justifying delay was required. Applicant vide representation dated 19.08.2017 apprised the respondents that her case for granting compassionate appointment is pending before them. As far as compassionate appointment to dependent family member is

concerned, it is given to three categories of a dependent family member of the Armed Forces who (i) dies during service (ii) is killed in action (iii) is medically boarded out and is unfit for civil employment. We observe that respondents have denied compassionate appointment to the applicant on the ground that compassionate appointment cannot be claimed as a matter of right which can be exercised at any time. Respondents have nowhere stated that case of the applicant was considered for compassionate appoint but applicant was not found suitable. Smt Santosh Devi (NOK) of deceased soldier applied for compassionate appointment of her daughter Ms. Jyoti within time period. Later on, she became unsuitable due to her marriage. Then Smt Santosh Devi applied for compassionate appointment of her son Shri Deepak Sharma which was also not considered. Now Shri Deepak Sharma has also crossed the age of 26 years. Since Smt Santosh Devi is trying for compassionate appointment since beginning, hence case of Shri Deepak Sharma for compassionate appointment is required to be reconsidered.

8. In view of above, we disposed off the Original Application finally with direction to the respondents to re-consider case of Shri Deepak Sharma son of deceased soldier for compassionate appointment in terms of rule position and intimate the outcome of the case to Smt Santosh Devi, NOK of the deceased soldier within a period of four months from the date of communication of present order. Smt Santosh Devi (NOK) is also directed to provide required documents to the respondents, if

asked, for completion of formalities and processing the case for compassionate appointment. With the aforesaid direction, the O.A. is **disposed off** finally.

9. No order as to costs.

10. Pending Misc. Application(s), if any, shall be treated to have been disposed off.

(Maj Gen Sanjay Singh)
Member (A)

Dated : 02 March, 2023
Ukt/-

(Justice Ravindra Nath Kakkar)
Member (J)