

**Form No.4**

**ORDER SHEET**

**T.A. No.47 of 2012**

APPLICANT (S)

N. KAMESWARI

RESPONDENT (S)

Union of India & 5 Ors

Legal Practitioner of applicant

Legal Practitioner for Respondent (s)

Mr Kapur Chand Garg

Mr Anup Kumar Biswas

NOTES OF THE REGISTRY	<b><u>ORDERS OF THE TRIBUNAL</u></b>	
	<u>Order Serial Number :</u> 15	<u>Dated :</u> 10-06-2015
	<p>Heard Mr. Kapur Chand Garg, the learned counsel for the applicant and Mr. Anup Kr. Biswas, the learned counsel for the respondents. Maj Narender Singh, OIC, Legal Cell and Lt Col A.K. Maharana are present to assist the Court. The applicant's husband Naik Narsingh Mohan Rao while serving with 3 Corps Op Sig Regiment died due to a landmine blast on 26-2-1996. Admittedly, after his death all the death benefit including family pension was granted to her. It is further admitted that the applicant has been granted a job in a Unit run Canteen at AD College, Gapalpur. However, being not satisfied with the assistance provided by the respondents, the applicant filed a WP (C ) No.16727 of 2006 in the High Court of Orissa. After promulgation of Armed Forces Tribunal Act, 2007 (in short 'Act') the Memo of Petition has been transferred to the Tribunal. It is however, brought before the Tribunal by the learned counsel for the applicant that earlier there was no vacancy, but now there are nine vacancies against which the dependents of deceased Army Personnel may be adjusted. Mr. Anup Kumar Biswas, the learned counsel for the respondents submits that on 16<sup>th</sup> January, 2013 the Government of India has issued an Office Memorandum relating to Consolidated Instructions on compassionate appointment. He further states that the applicant has also approached the High Court of Orissa after about 10 years and filed the Writ Petition in the year 2006 which has been transferred to the Tribunal. Mr. Biswas invited our attention to the consolidated instruction on compassionate appointment. The relevant portion of the instruction is as under:</p>	

“ SCHEME FOR COMPASSIONATE APPOINTMENT

1. OBJECT

The object of the Scheme is to grant appointment on compassionate grounds to a dependent family member of a Government Servant dying in harness or who is retired on medical grounds, thereby leaving his family in penury and without any means of livelihood, to relieve the family of the Government Servant concerned from financial destitution and to help it get over the emergency.

2. TO WHOM APPLICABLE

To a dependent family member –

(A) Of a Government Servant who –

- (a) Dies while in service (including death by suicide); or
- (b) Is retired on medical grounds under Rule 2 of the CCS (Medical Examination) Rules, 1957 or the corresponding provision in the Central Civil Service Regulations before attaining the age of 55 years (57 years for erstwhile Group ‘D’ Government Servants); or
- (c) Is retired on medical grounds under Rule 38 of the CCS (Pension) Rules, 1972 or the corresponding provision in the Central Civil Service Regulations before attaining the age of 55 years (57 years for erstwhile Group ‘D’ Government servants); or

(B) Of a member of the Armed Forces who –

- (a) Dies during service; or
- (b) Is killed in action; or
- (c) Is medically boarded out and is unfit for civil employment

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5. ELIGIBILITY

- (a) The family is indigent and deserves immediate assistance for relief from financial destitution; and
- (b) Applicant for compassionate appointment should be eligible and suitable for the post in all respects under the provisions of relevant Recruitment Rules”

2.A plain reading of the instructions issued would reveal that the instruction has been issued to help the family of the deceased Army Personnel to provide some sort of livelihood. It further provides that the Compassionate Appointment shall be made where the family is indigent and deserves immediate assistance from financial destitution and the applicant for compassionate appointment should be eligible and suitable for the post in all respects under the provisions of the relevant Recruitment Rules. It is needless to say that it is provided under Rules as well as in view of the Judgement of Hon'ble Supreme Court the purpose of Compassionate Appointment is to provide immediate assistance as a measure of relief from financial destitution.

3.The applicant has preferred the instant application after almost 10 years. Admittedly, the applicant's case was considered by the competent authority thrice, but her case had not come within 5% of the direct recruitment quota occurring in a year. Further, it has been stated that the Signal Dte considered her claim on three different occasions but once she figured much below in the order of merit drawn by the Screening Committee and as such her case was rejected. The learned counsel for the union of India submits that her case was considered on sympathetic ground to help the applicant and she has been appointed as Billing Clerk in a Unit run Canteen.

4.Keeping the fact that the applicant's case was considered against 5% of the direct recruitment quota, there is no material on record, which may indicate that while considering the applicant's case against 5% quota by the respective Board three times, the applicant was discriminated or since there is no question mark against the respective Board while considering the selection on compassionate ground, then the Court/Tribunal has ordinarily no authority to interfere in the matter of selection. It is also not open for the Tribunal to usurp the power and direct the authority concerned to appoint the applicant on compassionate ground in the absence of any arbitrariness.

5. As submitted by learned counsel for the applicant that nine vacancies are available, it does not make any difference so far as the applicant's case is concerned, which may be filled up by other eligible candidates of deceased Army Personnel in due course of time in accordance with rule. The applicant's case

cannot be kept open for an indefinite period and it has reached its finality. It is trite law that provision of compassionate appointment has been made to provide immediate assistance from financial destitution to the family of the deceased employee and in this case already 19 years have elapsed. At this stage it is not open for the Tribunal to pass an order for compassionate appointment.

6. So far as applicant's prayer is concerned, that she may be made permanent in the Army Canteen, that aspect may be looked into in accordance with the rules by the authority concerned. It shall be open to the applicant to represent her cause.

7. With the above observation, the application is disposed of. No order as to costs.

8. A plain copy of the order be given to both the parties observing all the usual formalities.

9. Records may be returned observing all the formalities.

LT GEN GAUTAM MOORTHY)  
MEMBER(ADMINISTRATIVE)

(JUSTICE DEVI PRASAD SINGH)  
MEMBER (JUDICIAL)