

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.773/2002

New Delhi, this the 30th April, 2003

Hon'ble Shri Shanker Raju, Member(J)

1. Smt. Mahadevi Pandey w/o late Sh. Moti Ram Pandey
2. Mohan Chand Pandey s/o Sh. Moti Ram Pandey
3. Sunil Dutt S/o Sh. Moti Ram Pandey

All r/o 319, Ram Nagar Nangla
Tashi Road, Gali No.5
Kanker Khara, Meerut Cantt

Applicants

(Shri V.P.S.Tyagi, Advocate)

versus

Union of India, through

1. Secretary
Ministry of Defence, New Delhi

2. DG, (EME Civ-2)
Army Hqrs. DHQ PO, New Delhi

3. Commandant
510, Army Base Workshop, Meerut
- Respondents

(Shri K.R.Sachdeva, Advocate)

ORDER(oral)

Applicants, legal heirs of deceased government servant impugn respondents' order dated 21.12.2001 where the case for compassionate appointment of applicant No.3 which was rejected by an order dated 9.12.98 has been re-iterated. They have sought quashment of the same with direction to respondents to appoint either applicant No.2 or applicant No.3 on compassionate grounds.

2. The deceased employee who was working as a civilian cook in defence died in harness on 31.10.96 leaving behind the widow, three sons and a daughter. Terminal benefits, including family pension of Rs.2328/- per month is being paid since 29.11.2001.

17

3. Applicant No.1, i.e., the widow sponsored name of applicant No.3 for appointment on compassionate grounds. The Committee after following the relevant criteria rejected the request of applicant for compassionate appointment by their letter dated 9.10.98, which was communicated to her. Another representation dated 5.10.2001 seeking grounds for rejecting the case for compassionate appointment was made and the same was rejected by order dated 21.10.2001, wherein earlier decision has been intimated but no fresh consideration was made, giving rise to the present OA.

4. Learned counsel for applicants Sh. V.P.S. Tyagi placing reliance on a decision of the Division Bench of Madhya Pradesh High Court in I. Swamy Das v. Union of India, 2003 (1) ATJ 367 contended that as the deceased government servant died in 1996 his claim could have been considered as per the Scheme for compassionate appointment in vogue since 1997 which prescribed 20% quota for direct recruitment for compassionate appointment. As the case of applicants has been turned down by taking into consideration the scheme of 1998 the matter requires re-consideration as per the old Scheme. Moreover, it is stated that though the family was in dire need of financial assistance, yet arbitrarily by a mechanical order without application of mind claim of applicant has been rejected which violates decision of the Apex Court in Balbir Kaur v. Steel Authority of India, 2000 (6) SCC 493.

18

5. On the other hand, respondents counsel Sh. K.R. Sachdeva took a preliminary objection of limitation by contending that the claim of applicant No.3 for compassionate appointment was rejected on 9.12.88 and what has been communicated to applicants on 21.12.2001 is the decision already taken by respondents which does not amount to re-consideration of the issue and the same would not extend the period of limitation and as OA has been filed on 21.8.2002 the same suffers from delay and laches and is not within the period of limitation as envisaged under Section 21 of the Administrative Tribunals Act, 1985. By referring to the decision in OA-764/2001 - Dharmender Patel v. Union of India decided on 20.3.2002 by the Jabalpur Bench of this Tribunal a similar relief has been rejected as being time barred. In this view of the matter it is contended that the case of applicants in all fours is covered by the aforesaid ratio.

6. However, Sh. Sachdeva produced the record and contended that there has been a policy laid down for compassionate appointment by the Defence and the criteria. The aforesaid criteria was examined by the Calcutta Bench of this Tribunal in OA-323/99 Smt. Sakuntala Devi v Union of India decided on 27.4.2001 where the criteria has been upheld and the claim was rejected by observing that the method adopted by the respondents is transparent, objective and fair. In this view of the matter it is stated that as per the criteria out of 308 cases for compassionate appointments, 121 have

19

been put in final list and as the criteria for compassionate appointment was to secure 60% marks, applicant concerned could secure only 45% marks, keeping in view the number of vacancies his case was rejected.

7. I have carefully considered the rival contentions of the parties and perused the material on record. In so far as limitation is concerned, although a decision has been taken and communicated to applicants in 1998 by the respondents, rejecting the request of applicant No.3 for compassionate appointment. They have not come to file the OA within one year, as stipulated under Section 21 of the Administrative Tribunals Act, 1985. An order passed on 21.12.2001, impugned herein, shall not give a new lease of limitation to applicant or extend the same, as what has been communicated is only the earlier decision taken by them and no re-consideration has been made as to the request of applicants for compassionate appointment. Following the decision of the Jabalpur Bench (supra) I am of the considered view that the OA is barred by limitation and is liable to be rejected on that ground alone.

8. However, having regard to the relief prayed, in the interest of justice merits have also been gone into. As case of applicants has been considered as per the criteria laid down which has been upheld by the Division Bench at Calcutta of this Tribunal in Sakuntala Devi's case (supra), having failed to secure the requisite percentage and as the criteria has been found

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fair and transparent the contention that case of applicant No.3 was not considered under 1987 OM cannot be countenanced and the decision cited of Madhya Pradesh High Court would not apply to the facts and circumstances of the present case where as per the criteria in vogue case of applicants was considered, but having failed to attain the requisite criteria it does not matter whether the quota was restricted to 20% or 5%. Applicants' family was not found to be indigent or deserving to come within the ambit of the guidelines.

9. Moreover, compassionate appointment cannot be claimed as a matter of right and the very object of immediate financial assistance loses its significance by passage of time. As the case of applicants was considered, I do not find any legal infirmity in the orders passed by the respondents.

10. In the result, for the foregoing reasons OA is found bereft of merit and is accordingly dismissed. No costs.

S. Raju
(Shanker Raju)
Member(J)

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