

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH**

**Original Application No.607/2016
Dated this the 17th day of December, 2019**

CORAM:

Hon'ble SH.M.C.Verma, Member (J)

Dhaval V. Gaikwad,
Male, Aged 33 years, K-455,
Ayodhya Township, Opp. Somnath Nagar,
Tarsali, Baroda – 390 009.

...Applicant

[By Advocate : Shri R.N.Singh]

Versus

- 1- Union of India,
Notice to be served through
The Secretary, Ministry of Defence,
Raksha Mantralaya, New Delhi 110 001.
2. Chief Army Staff, Army Headquarters (MES) Kasmiri House,
New Delhi – 110 011.
3. Chief Engineer (MES), Headquarters,
CE South West Command, Jaipur,
Power House Road,
Near Railway Station, Jaipur – 302 006.
4. Garrison Engineer (MES), Army,
Makarpura Road, PO ONGC,
Baroda–390009. **...Respondents**

[By Advocate : Ms.R.R.Patel]

**O R D E R (Oral)
M.C.Verma, Member (J)**

1. Applicant has impugned and has prayed to quash order dated 2.12.2015, Annexure A/1, whereby his claim for compassionate ground has been rejected and also by way of this OA has prayed to direct the respondents to consider his case on compassionate ground.

2. The brief facts, as has been set out in this OA by the applicant are that his father was an employee of Military Engineering Service (MES) and he, while in service and had completed 27 years of service, died in harness on 15.01.2004. That in January 2004 itself applicant applied for appointment on compassionate ground. That vide letter dated 15.12.2004 (Annexure A/6) he was informed that due to more deserving candidates and non availability of vacancy, his case was not considered and it would be placed before next Board and thereafter vide communication dated 31.12.2004, (Annexure A/7), he was informed that due to low merit and non availability of vacancy his case was not recommended. That on 9.2.2005 he was informed that his case was considered by the Board in November 2004 but in absence of vacancy, his case was not considered. That vide further communication, dated 30.06.2005 it was informed that his case was considered for the first quarter and there were 22 applicants against one vacancy and applicant's claim was not considered due to less marks. Thereafter vide letters dated 22.09.2005, 31.01.2006, 12.04.2006 24.06.2006 he was informed by the department that due to lack of vacancy, his case could not be considered. That thereafter he, on 31.3.2015 sent a representation to reconsider his claim in the light of policy decision of the Ministry of Defence dated 8.8.2012 and 7.12.2012 and this time his claim, vide communication dated 26.5.2015 was referred to the higher authority and ultimately order dated 2.12.2015 was passed denying appointment on compassionate ground for the reason that the case once settled cannot be reopened as per DOP&T order dated 25.2.2015.
3. Respondents have filed their reply stating that applicant's case was considered on number of occasions and speaking orders were passed and communicated to him but due to low in merit or due to lack of vacancy, the same could not be considered and secondly, appointment on compassionate ground is not a matter of right. That after closure of the case of applicant on 22.3.2007, once again the issue, along with documents was forwarded to the Commander Works Engineer (Army),

Baroda on 6.8.2015 but after scrutiny, nothing favourable could be done because the order dated 2.12.2015 is based on the instructions received from the competent higher authority. It is submitted further that in view of Hon'ble Supreme Court judgment in the case of Chief Commissioner, ***Central Excise and Customs Vs. Prabhat Singh [(2012) 13 SCC 412]***, claim of appointment on compassionate ground is permissible within three months from the date of death of the employee concerned. Respondents have specifically submitted that although married son can be considered compassionate appointment if he otherwise fulfils all requirements according to OM dated 16.01.2013 but the cases of compassionate appointment already settled cannot be reopened in view of FAQ dated 25.2.2015 (Annex.A/24), hence, the impugned order is justified and is not contrary to the provisions of the policy.

4. Applicant did file rejoinder and stated that the instructions dated 30/5/13 of the DOPT even if provides that the married son cannot be considered for compassionate appointment as he cannot be said dependent, is not relevant for the case of the applicant as the instructions were of year 2013 whereas the death of father of applicant took place in year 2004 therefore the policy which was in force at that time could only have relevance and further by FAQ dated 25.2.2015 (Annex.A/24) it has been clarified that married son if he fulfils all the other requirement of the scheme may be appointed on compassionate ground. Above all the applicant was unmarried at the time of death of his father and he was married only in year 2007.
5. Learned counsel Shri R. N. Singh pressing the O.A. submits that the impugned order is not legally sustainable as it is based on wrong propositions that married son is not considered as a dependant of Government servant. He contended that there is no such policy in force. He pointed-out that the policy, viz., "Standing Operating Procedure on Scheme for Compassionate Appointment on Group C and D Posts which has been placed on records by respondents, as Annexure R/4 with the reply, makes no difference between married and un-

married son. He referred Note 1 attached to Para 4.2.1 (B) & Para 4.2.2 of said policy. Learned counsel also urged that applicant was unmarried at the time of death of his father and he was married after more than three years thereafter hence also the impugned order is bad in law. He invited attention of undersigned to Annexure A/27, Certificate of Registration of Marriage of applicant which shows that marriage took place on 10.05.2007 as well death certificate of applicant's father which is of 15.01.2004 and relied decision dated 12.08.2015 passed by the **High Court of Punjab and Haryana at Chandigarh** in **CWP No.16510 of 2015** especially its para 10 "*Before parting with this judgment, it will be pertinent to mention that even as per the admitted case of the petitioners as per para No.2 of the petition, Hakam Singh, the father of respondent No.2 had died on 17.9.2012 and respondent No.2 was married on 5.10.2012 which means that he has married after death of his father.*

6. Learned counsel Ms.R.R.Patel Advocate, appearing for respondents has urged that previously case of the applicant was rejected in the year 2007 and he in OA has not disclosed the said material fact. Repeatedly it was enquired from learned counsel for respondents as how impugned order, in view of policy Annexure A/4, can be said to be legally sustainable but reiterating that applicant is guilty of withholding the material fact that his case was considered in the 2007 she tried to justify the order. Learned counsel also submitted that previously nine times applicant's claim was considered but for low merit or for no vacancy he could not be recommended.
7. Considered the submission. Standing Operating Procedure on Scheme for Compassionate Appointment on Group C and D Posts (Annexure R-4), placed on record by respondents stipulates in detail for Compassionate Appointment. Para 4.2.1 of this policy provides that it is applicable to a dependent family member of a government servant who dies during service; or is killed in action; or is medically boarded out and is unfit for civil employment .Note I attached to Para 4.2.1 (B) have details of

dependant Family Member and it spouse; or Son (including adopted son); or daughter (including adopted daughter); or Brother or sister in the case of unmarried Government servant or member of the Armed Forces referred to in (A) or (B) of this para, wholly dependent on the Government servant/member of the Armed Forces at the time of his death in harness or retirement on medical grounds, as the case may be.

8. Standing Operating Procedure on Scheme for Compassionate Appointment on Group C and D Posts, Annexure R-4 does not speak about marital status. Note 1 attached to Para 4.2.1 (B) of said policy is showing the son as dependent family member, without any mention of marital status and Para 4.2.2 speaks that marital status of son/daughter not relevant by it is whether they were wholly dependent on Government servant at the time of death or retirement on medical ground. Respondent Department could not be able to show any Scheme or OM whereby it can be established that a married son is debarred to be considered for compassionate appointment and contrary to this FAQ dated 25.2.2015 (Annex.A/24) did clarify that married son if he fulfils all the other requirement of the scheme may be considered for appointment on compassionate ground.
9. Further it is evident from pleading as well by Annexure A/27, Certificate of Registration of Marriage that the applicant was unmarried at the time of death of his father and he was married after more than three years thereafter. This factum of unmarried status of applicant at the time of death of his father has not been disputed by the respondents. It is true that previously case of the applicant has been considered many a time but simultaneously it cannot be lost sight of that most of the time there was no vacancy. The consideration of case cannot be called a consideration in true manner when there exists no vacancy. It is enquired at this stage whether at present there are vacancies under the compassionate ground quota and learned counsel Mr. R.N. Singh submits that vacancies under the compassionate ground quota are very much available and counsel for respondent express her ignorance.

10. Thus, in view of aforesaid legal & factual scenario the impugned order cannot be said to be legally sustainable and keeping in view the fact that the Government employee was died in 2004 and applicant's claim was rejected on absolutely wrong premises in year 2015 hence, the impugned Order dated 2nd December, 2015 (Annex.-A), passed by the Garrison Engineer (Army), Baroda, is quashed and set aside and respondents are directed to reconsider the case of applicant afresh in view of the discussions as aforesaid, as and when vacancy is/are available under compassionate appointment quota and to communicate the decision to the applicant herein immediately thereafter. No costs.

[M.C.Verma]
Member (J)

Mehta/SKV