

Central Administrative Tribunal, Principal Bench

Original Application No.241 of 2000

New Delhi, this the 25th day of October, 2000

Hon'ble Mr.V.K.Majotra, Member (Admnv)

Narain Prasad, S/o late Sh.Chani Ram, C/o of
Sh.Jaman Ram, Daya Nand Ghat, Jungpura, Link
Road, New Delhi. - Applicant

(By Advocate Shri G.D.Bhandari)

Versus

Union of India through

1. The Secretary, Ministry of Defence/ South Block, New Delhi.
2. The D.G. EME (EME CW-2), Army Headquarters, P.O. New Delhi-110011.
3. The Commandant, 510-Army Base Workshop, Post Box 30, Meerut Cantt. - Respondents

(By Advocate Shri V.S.R.Krishna)

O R D E R

The applicant has assailed Annexure-A-1 dated 4.12.1998 issued by respondent no.3 rejecting applicant's case for compassionate appointment. Further, though the respondents asked the applicant vide Annexure-A-3 dated 3.6.1999 to submit his application for the post of Messenger, the respondents have not formally conveyed their decision on his application in response to Annexure-A-3 but he has been given to understand that the same has been rejected. The applicant claims that similarly situated persons have been engaged as Messengers.

2. The applicant's father Shri Chani Ram held a Group 'D' post with the respondents. He died in harness on 7.5.1996. The applicant is an Intermediate. His father left behind his widow and three sons including the applicant who was 26 years of age at the time of death of his father. The applicant has submitted that the family has no source of income and no other property



except a 100 sq.yard of plot in the village. It has also been stated that the applicant's younger brother suffered a compound fracture at 3 places on one of his feet and became disabled. The applicant has sought setting aside of Annexure-A-1 being an unreasoned and non-speaking order and because the family of the deceased Government servant is facing acute financial hardship. The applicant has also sought a direction to the respondents to consider his case for appointment in a suitable Group 'C' or Group 'D' category in terms of Annexure-A-3.

3. In their counter the respondents have stated that the cases of compassionate appointments in a defence establishment are considered at the Army Headquarters by a Board of Officers which keeps various aspects like ^hfinancial condition, liabilities, terminal benefits paid to the family of the deceased, size of the family, earning members in the family, and other relevant factors while considering the applications for compassionate employment. The respondents have stated that the widow of the deceased was paid Rs.1,51,470 as gratuity beside a monthly pension of Rs.2295/- excluding dearness allowance. The widow had also received a sum of Rs.1,30,638 on account of GPF balance, CGE Insurance and leave encashment. These terminal benefits were considered by the respondents as moderate for the livelihood of the family of the deceased Government servant. They have further stated that the quota meant for compassionate appointment is 5% of the total vacancies falling in a year. The Board of Officers examined the cases of compassionate appointment

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considering aspects described above as well as the availability of the vacancies to be filled on compassionate appointment on the basis of 5% of the total vacancies in a year. The case of the applicant was considered by the Board but was not found to have any merit within the prescribed quota and was rejected. The respondents have also stated that eligible dependents of all deceased-employees, whose cases of compassionate appointment were not found deserving and were rejected, were called to provide them employment assistance against limited vacancies on direct recruitment. However, the applicant did not qualify the test so conducted by the respondents. The applicant has filed a rejoinder as well.

4. We have heard the learned counsel of both sides and considered the material available on record. The learned counsel of the applicant stated that through Annexure-A-7 dated 10.8.1996 the particulars of the family of the deceased Government servant were sought from the widow of the deceased Government servant. Vide Annexure-A-10 dated 22.1.1998 details of property of the deceased Government servant were also sought by the respondents. The widow submitted an affidavit giving details of properties of the deceased Government servant. Beside these, the respondents asked the widow of the deceased Government servant vide Annexure-A-3 dated 3.6.1999 that the dependents of the deceased Government servant should apply for the post of Messenger for which a test would be held on specific date i.e. on 11/12.7.1999.

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5. The learned counsel of the applicant relying on Balbir Kaur and another Vs. Steel Authority of India Ltd. and others, (2000)6 SCC 493 contended that the gratuity and other retiral benefits should not be taken into consideration while considering the case for compassionate appointment. He further contended that no trade test was held by the respondents and that the respondents have wrongly stated that the applicant had not achieved the qualified status for compassionate appointment while rejecting his application for compassionate appointment.

6. The learned counsel of the respondents contended that the Board of officers had considered the case of the applicant at the Headquarters but since the terminal benefits received by the family of the deceased Government servant were considered moderate for the livelihood of the family of the deceased Government servant and keeping in view the other deserving cases falling in a year within 5% of the total vacancies for compassionate appointment, the application of the applicant could not be accommodated. However, the respondents considered all eligible dependents of the deceased employees, whose cases for compassionate appointment were not found to be deserving and were rejected, for direct recruitment as Messenger but the applicant did not qualify the trade test conducted by the respondents. The learned counsel of the respondents referred to the case of Umesh Kumar Nagpal Vs. State of Haryana & others, JT 1994 (3) SC 525 stating that offering compassionate appointment as a matter of course irrespective of the financial condition of the family of the deceased or medically retired Government servant is

legally impermissible. He has also relied on the case of Life Insurance Corporation of India Vs. Mrs.Asha Ramchandra Ambekar and another, JT 1994 (2) SC 183 in this regard.

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7. The fact that the respondents sought particulars of the family and the properties held by them and also provided an additional opportunity to the dependents of the deceased Government employees who were not provided employment on compassionate grounds, is not something which can be held against the respondents. As a matter of fact, the respondents had made efforts to consider the claim of the applicant for compassionate appointment as well as additional employment assistance against direct recruitment for the post of Messenger. The plea of the learned counsel of the applicant that no test can be held for the post of Messenger is not acceptable as the applicant had been called along with necessary documents for consideration on a specific date for considering his candidature for the post of Messenger along with several others but according to the respondents the applicant did not qualify in the test.

8. The respondents have a Board of Officers for considering cases of compassionate appointment which considers these cases keeping various aspects including the financial condition of the family of the deceased employee. The employment on compassionate grounds cannot be offered to more than 5% of the total vacancies falling in a year also. The respondents after considering the case of the applicant vis-a-vis the comparative cases of other applicants seeking employment on compassionate grounds and the constraint of 5% of the total

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vacancies falling in a year did not find the merit in the case of the applicant within the prescribed quota. (3)

9. The scheme for providing compassionate appointment is not like the beneficial scheme contemplated in the case of **Balbir Kaur** (supra). As per the scheme for compassionate appointment it is obligatory to consider whether the family of the deceased Government servant suffers from acute financial hardship. In the present case the respondents tried to accommodate the applicant by considering his case for direct recruitment to the post of Messenger also. It was unfortunate that he could not succeed in the test.

10. Having regard to what has been stated above, I do not find any merit in the OA, which is accordingly dismissed, however, without any order as to costs.

V.K.Majotra
(V.K.Majotra)
Member (Admnv)

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