

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH**

**ORIGINAL APPLICATION NO.508/2016
DATED THE 3rd DAY OF JUNE, 2020**

Date of Reserve: 04.03.2020.
Date of Pronouncement: 03.06.2020

Coram: Hon'ble Shri M C Verma, Member(J)

Dipak S/o Bipinkumar Labhshankarbhai Thakkar,

Aged about 27 years (Birth date 24.10.1988)

Unemployed

Address: "Dipak", 9, Gandhigram,

Opp: Gopal Tailor, Raiya Road,

Rajkot – 360 005. ... Applicant

By Advocate Ms K L Kalwani

V/s

1 Comptroller & Auditor General of India,
Pocket – 9, Deen Dayal Upadhyay Marg,
New Delhi – 110 124.

2 Accountant General (A&E),
Gujarat, Race Course Road,
Rajkot – 360 001. ... Respondents

By Advocate Ms R R Patel

O R D E R

1 Instant application has been filed by applicant, seeking quashing and setting aside of orders dated 02.06.2016, 24.07.2015, 10.09.2015, 13.08.2012 & 24.07.2012 (Annexures A/1, A/2, A/3, A/4 and A/11 of the OA) whereby his request for compassionate appointment has been rejected.

2 Facts as has been set out by the applicant in his OA, briefly are that his father, Shri Bipinkumar Labhshankarbhai Thakkar, who was working as senior accountant in the office of respondent No. 2, while in service died on 17.10.2011. That applicant on 23.04.2012, seeking appointment on compassionate ground made representation but it was rejected by the competent authority and rejection was communicated to him vide letter dated 13.08.2012 (Annexure A/4). That thereafter applicant, explaining the circumstances made another representation on 26.10.2012 (Annexure A/6) and when no reply was received, one another representation dated 13/5/15 (Annexure A/7) was sent by him and it was replied by respondents, vide their letter dated 24/05/2015 (Annexure A/2). *{In fact Annexure A/7 is the representation dated 13/5/15 of mother of the applicant and its reply, Annexure A/2 is also addressed to her informing that case of her son taking note of all aspects has already been considered and her son has duly been informed vide letter dated 13/08/2012}*. Applicant pleaded further that he made further representation dated 13.08.2015 and similarly vide letter dated 10.09.2015 (Annexure A/3) it was replied and again he sent 5th representation dated 25.04.2016 and this time also similar reply was given by respondent on 03.06.2016 (Annexure A/1).

2.1 It is the further case of applicant that his mother sought information under RTI Act and applicant came to know that respondent No. 2, vide his letter, Annexure-9 has furnished relevant and full justification for his appointment but for erroneous and irrelevant reasons respondent No. 1 did not agree. That the reason assigned for non giving of appointment, reflected by letter of respondent (Annexure A/11) are that (i) Applicant is an earning member & (ii) Application for appointment should be considered by the DSC consisting of three officer of the rank of DAG. That the first reason assigned is irrelevant and as far second reason relates on recommendation of same DSC some appointments, including of Yashodhan Jadav has been made. Applicant contending that his case for appointment on compassionate ground has wrongly been rejected has preferred instant OA.

3 The respondents, on receipt of notice did file detailed reply stating that application, dated 23.04.2012 of applicant was processed as per provisions of the Scheme for compassionate appointment (Annexure R/1).That Welfare Officer, as per provisions did verification of facts stated in application and during process of verification met applicant as well as his family members and submitted his report, Annexure R/2. That

the Accountant General, the Head of Department is competent authority to nominate Departmental Screening Committee (hereinafter called "DSC" in short) and the DSC of three officers was nominated by him. As there was no officers of the rank of Sr. Deputy Accountant General at Rajkot and at Ahmedabad stations hence the DSC formed were of the rank of Dy Accountant General and the matter was explained to competent higher authority on 01.11.2012, vide Annexure R/4 and R./5 and therefore, the composition of DSC is valid. That report of DSC was submitted to competent authority for taking appropriate decision, that applicant was already employed and was an earning member of the family of the deceased. That being earning member his case, as per Para 10 of the scheme was required to be considered for relaxation by competent authority higher in office and hence recommendation was sent by Head of Department, to seek relaxation, to higher competent authority. As applicant was already employed, he was not eligible for compassionate appointment and hence his case was rejected and the decision of the competent authority rejecting the request for compassionate appointment was intimated to him vide order dated 13.08.2012 (Annexure R/11). The representation submitted by his mother, Ms Veena B Thakar for reconsideration of decision taken in the case of compassionate appointment of her son was also rejected as the competent authority did not find sufficient reason to change its earlier

decision which was taken after due process and the same was intimated to him. That it is incorrect that his claim was rejected on the ground that composition of DSC was not proper. That there is no illegality and claim of applicant for appointment on compensatory ground has rightly been rejected.

4 Ms K L Kalwani, learned counsel, appearing for applicant submits that after death of his father, which occurred in year 2011, applicant seeking appointment on compassionate ground made representation on 23.04.2012 and vide letter dated 13.08.2012 (Annexure A/4) applicant was informed about rejection of his case. She referred Annexure A/4 of the OA and added that no ground for rejection was given in said order. That applicant and her mother thereafter made four representations but every time they merely were informed that case of applicant has already been considered and has been rejected. That ultimately through documents received under RTI in November 2015, applicant, came to know that his case has been rejected on untenable grounds, he did file the OA so delay cannot be attributed to the applicant because he was not assigned the details for which his case was rejected.

5 Ms Kalwani argued further that letter Annexure A/10 & A/11 shows that reasons for rejection are that applicant is an earning member and that application for appointment had to be considered by the Departmental

Screening Committee consisting of three officers of the rank of Sr. DAG and DSC which considered the case of applicant was not in order. She referred Annexure A/10 & A/11 which were supplied to applicant under RTI. She also submits that the persons to whom appointments were given were also screened by the DSC, Members of which were below the rank of Sr. DAG and in some other cases the committee constituted was of the Members who were lower in rank than the officers of the DSC who considered the case of applicant.

6 Learned counsel also argued that the discretion lies with the respondent no.1 to give relaxation regarding earning member and that in case of Ms Priscilla Peter Antao relaxation was given. She added that the DSC did take note that applicant is earning a meagre amount and approved his case but respondent authority did not consider entire aspect rationally. She urged that it is true that applicant was earning at the time but he was simply matriculate, was doing job in a private firm and was earning only Rs.6166/- per month so taking note of entirety he ought to have been given appointment by the respondents, that refusal of appointment by respondents is illegal. She requested to direct the respondents to give compassionate appointment to the applicant.

7 Learned counsel Ms R R Patel, appearing for respondents refuted the submission that while considering the case of appointment on

compassionate grounds, the financial conditions & composition of family of the deceased employee was not taken into consideration and she referred Annexure R/2, the Report of Welfare Officer . She argued that the case of applicant for compassionate appointment was rejected in year 2012 but he continued to give representation one after another till the year 2016 and thus the delay in this case is material one. She contended that delay in pursuing the case/approaching court militates against claim for compassionate appointment and hence the OA may be dismissed on this ground alone. She to fortify her said plea placed reliance on decision dated 6th May, 2019 of Hon'ble Supreme Court passed in CA No.4660 of 2019 (Punjab State Power Corporation Limited and Ors v/s Nirval Singh) as well decision dated 11.02.2019 of Hon'ble High Court of Gujarat passed in SCA No.2927 of 2012 (Maulik Bharatbhai Mandir v/s State of Gujarat).

8 Regarding discrimination qua relaxation relating to earning member in family of deceased she admitted that relaxation was given in case of Ms Priscilla Peter Antao but there was no such special situation in the case of applicant and applicant himself was earning member and further in the case of Ms Priscilla Peter Antao, there was two physically and mentally challenged persons in her family, the retiral benefit paid to her family was Rs.10,86,511/- and terminal benefits liabilities shown

were Rs.8,86,800/-, whereas the family condition of applicant was not so indigent. Report of Welfare Officer qua applicant, which is at page-79 (R/2) of the OA and report qua Ms Priscilla (page 141) placed on record were referred to by Ms. Patel.

9 Ms Patel vehemently refuted that case of applicant for compassionate appointment was rejected on the ground that departmental committee was not competent or its constitution was not in order. She referred to reply of respondents and stated that the reply does not show the ground of rejection as non competency of the committee. She urged that more deserving cases having indigent conditions as per available vacancies had to be accommodated and from the facts and figures it was found that case of applicant was not a deserving case, so he was not given appointment.

10 Learned counsel Ms K L Kalwani in rebuttal, to fortify her submission that the case of applicant was rejected on finding fault with the constitution of the Committee referred to page 45 of the OA and submitted that even if fault was there it could not be attributed to the applicant and it was the duty of the respondents to form proper committee. She also referred the noting relating to formation of the Departmental Screening Committee, which is at page 86 but unfortunately noting is handwritten and is not legible.

11 Have considered the submissions made at Bar. One of the contentions of the respondent is that the case of applicant for compassionate appointment was rejected in year 2012 but he continued to give representation one after another till the year 2016 and thus the delay in this case is material one and OA deserve dismissal on this score but I do not find that said submission hold water. It is true that first order whereby case for compassionate appointment of applicant was rejected was passed in year 2012 and it was communicated to applicant but this fact cannot be lost sight of that said letter dated 13.08.2012 (Annexure A/4) about rejection of his case discloses no ground for rejection and reply of subsequent representations merely is that case of applicant has already been considered and has been rejected. Applicant, through documents received in November 2015, under RTI, came to know about the reasons and grounds of rejection of his case and then he filed the OA on 01/07/2016. The delay cannot, at least exclusively be attributed to the applicant as earlier he was not assigned the detailed reasons for which his case was rejected. Set of facts of cases, decisions of whom have been relied upon by respondent for delay were quite in contrast with the case in hand and therefore render no help.

12 Letter dated 25.06.2012 of respondents (Annexure A/10) obviously reveals that applicant's case was found fit for appointment by DSC. The DSC has taken note of the fact that applicant is an earning member and is earning Rs.6166/- per month by serving in a private firm. The scheme of appointment on compassionate ground as shown by respondents provides that relaxation of monetary limits may be given by higher competent authority in terms of provisions contained in clause (a) & (b) of its Para 10, which for ready reference are reproduced herein below:-

"10 WHERE THERE IS AN EARNING MEMBER

- (a) *In deserving cases even where there is already an earning member in the family, a dependent family member may be considered for compassionate appointment with prior approval of the Secretary of Department/Ministry concerned who before approving such appointment, will satisfy himself that grant of compassionate appointment is justified having regard to number of dependents, assets and liabilities left by the Government servant, income of the earning member as also his liabilities including the fact that the earning member is residing with the family of the Government servant and whether he should not be a source of support to other members of the family.*
- (b) *In cases where any member of the family of the deceased or medically retired Government servant is already in employment and is not supporting the other members of the family of the Government servant, extreme caution has to be observed in ascertaining the economic distress of the members of the family of Government servant so that the facility of appointment on compassionate ground is not circumvented and misused by putting forward the ground that the member of the family already employed is not supporting the family."*

13 It is not disputed and is evident also from above quoted Para 10 of the Scheme that discretion lies with the respondent no.1 to give relaxation regarding earning member and therefore letter dated

25.06.2012 was addressed to give approval for relaxation regarding earning member, however without touching the aspect of relaxation and rather to consider about said relaxation, it was held vide letter dated 24.07.2012 (Annexure A/11) that being earning hand applicant is not eligible and that the committee, the DSC, which did consider his case had to be of the three officer of rank of officer of Sr DAG and any deviation therefrom could only be by prior approval of competent authority. It is not denied by respondent that In case of Ms Priscilla Peter Antao, relaxation was given.

14 Though observation in letter dated 24.07.2012 (Annexure A/11) indicates deviation from prescribed norms of forming of DSC without prior approval of competent authority as one of the reason. Applicant has asserted that on recommendation of DSC forming of same rank of officers some appointment were given and this fact has not been denied by the respondent and rather respondent has taken stand in reply and also at the time of final hearing that case of applicant for compassionate appointment was not rejected on the ground that departmental committee was not competent or its constitution was not in order.

15 A decision of public authority should not only be fair & rational but should also appear to be as fair and rational, however the act of respondent is lacking this aspect. Respondent authority might have not

considered the entire aspect in letter & spirit of scheme of compassionate appointment.

16 In view of legal and factual scenario discussed above, it would be appropriate to direct the respondent to reconsider the recommendation of DSC afresh and to take decision about compassionate appointment of applicant by passing a reasoned and speaking order. Accordingly impugned order/ orders of this OA, namely Annexure A/1 to A/5 are quashed & are set aside. Authority of respondents competent to take decision on recommendation of Departmental Screening Committee (DSC) is directed to reconsider the recommendation of DSC afresh and to take decision about compassionate appointment of applicant by passing a reasoned and speaking order within ten weeks from date of receipt of copy of this order.

17 With aforesaid observation and direction OA stand disposed of. Pending MA/ MAs, if any also stand disposed of.

(M C Verma)
Member(J)

abp

