

Central Administrative Tribunal
Principal Bench, New Delhi

O.A.No.2873/2004

Tuesday, this the 30th day of May 2006

Hon'ble Shri Shanker Raju, Member (J)
Hon'ble Smt. Chitra Chopra, Member (A)

Shri Malkhan Singh
S/o Late Shri Narsi Ram, Labourer
Village Kalupura
Post Office Jhajjar
Distt. Gautam Budh Nagar
Ghaziabad

..Applicant

(By Advocate: Shri MK Bhardwaj)

Versus

Union of India & others through

1. The Secretary
Ministry of Defence
South Block, New Delhi
2. The Director General Quality Assurance
DGQA, Admn.7, G-Block
Ministry of Defence
3. The Sr. Quality Assurance Officer
Sr. Quality Assurance Establishment
Ministry of Defence, North India
Anand Parbat, New Delhi

..Respondents

(By Advocate: Shri Sanjeev Kumar)

O R D E R (ORAL)

Hon'ble Shri Shanker Raju, Member (J) :

Heard the learned counsel for the parties.

2. Compassion would not play any role in dispensation of justice but it plays a great role while offering financial assistance to the family whose only earning member died in harness. Accordingly, the Government has promulgated a scheme of compassionate appointment to redress the indigent family of the financial crisis. It cannot be resorted to as indirect mode of entry in

government service, which is otherwise regulated as per the statutory rules.

3. It is trite law that a delayed claim or where the family is in a position, which makes its status rather a non-indigent family or is less deserving as compared to other family, compassionate appointment, though may be considered, could not be offered.

4. In the light of above, the applicant, who had applied for compassionate appointment, his case was considered twice and as was found less deserving as per the evaluation system and the marks allotted to the family on various factors and criteria, he could not be appointed on group 'D' post. The grievance of the applicant is that by adopting the scheme of compassionate appointment promulgated in 1998, they should also have considered the provisions of DOPT's OM of 5.5.2003, which as a modification of the earlier OM of 1999 removes an impediment of availability of vacancies for one year and extends to a deserving case on review by the concerned Committee, a right to carry forward the case for another year to await availability of vacancies under 5% direct recruitment quota for appointment on compassionate grounds.

5. We have asked the respondents as to the clarification to applicability of DOPT's OM of 5.5.2003 as per the decision now produced before us dated 30.3.2006. It has been admitted that DOPT's OM of 5.5.2003 has been adopted and meticulously followed. What has been reflected from the order that in the list

of candidates seeking compassionate appointment, whose cases had already been considered for three years in two consecutive years, as per the said OM, the case would be carried forward only in cases, which are most deserving. Accordingly, a criteria has been culled out as 80% marks, which is the minimum criteria for a candidate to be considered for third time as a final opportunity for consideration of compassionate appointment. The applicant, who as per the parameters laid down by the respondents, had been allotted 51% marks, could not fall within the category and could not be appointed as per the criteria, though his name was at Sl.No.29 in the waiting list, which is the prerogative of the respondents. We have not found any deviation from the parameters laid down by the respondents in awarding marks to the applicant. Therefore, his non-consideration for another year as per DOPT's OM of 5.5.2003 does not suffer from any legal infirmity. In fact, there are no deserving cases than the applicant should have been considered.

6. It is very unfortunate that a candidate in whose family the only earning member dies in harness is left without a job. But as right to employment is not being a fundamental right guaranteed to the citizens of this country, one has to be contented with the implication of the rules and the number of vacancies. This is because the vacancies are less and the cases for compassionate appointment are more in number. In a judicial forum, we redress the grievances as per the rule of law, the procedure envisaged and the statutory instructions framed on the subject. Sheer compassion or equitable

principles would not come in the way of rendering the justice. If it is so, then there would be a chaotic situation where running of administration would be very difficult.

7. In the circumstances, being satisfied with the justification and reasoning tendered by the respondents, we do not find any merit in the OA, which is accordingly dismissed without any order as to costs

Chitra Chopra
(Chitra Chopra)
Member (A)

S. Raju
(Shanker Raju)
Member (J)

/sunil/