

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No. 248/2004

New Delhi this the 12th day of January, 2005

Hon'ble Mrs. Meera Chhibber, Member (J)

Shri Dalip Singh Shekhawat,
S/O Late Kalyan Singh,
R/O Qr.No.836, Gulabi Bagh,
Delhi-110007

..Applicant

(By Advocate Shri A.K.Bhat)

VERSUS

1. Govt. of National Capital Territory of Delhi,
Through the Chief Secretary,
5, Sham Nath Marg, Delhi.
2. Secretary to the Govt. of NCT of Delhi,
Department of Services -II,
Delhi Secretariat 'A' Wing,
5th level, Indraprastha Estate, New Delhi.
3. Addl. Director General Cum Inspector General
(Prison HQ), Near Lajwanti Garden Chowk,
Janakpuri, New Delhi.

..Respondents

(By Advocate Shri Vijay Pandita)

ORDER (ORAL)

(Hon'ble Mrs. Meera Chhibber, Member (J))

By this OA, the applicant has sought quashing of order dated 28.3.2001 whereby appointment given to him to the post of Warder was cancelled with retrospective effect with a further direction to the respondents to give appointment (to the applicant) on compassionate grounds immediately with retrospective effect and to revive the order dated 14.3.2001 whereby he had been offered the post of Warder in the Department of



Prisons/Jail and pass any further order which the Hon'ble Tribunal deems fit and reasonable in the facts and circumstances of the case.

2. The brief facts, which are not disputed by the respondents, are as under:

Applicant's father while working as Bailiff in the Sales Tax Department of the Government of NCT of Delhi died on 1.4.1997 in harness leaving behind his wife and four children including the applicant, who was 17 years of age at that time. Applicant's mother approached the respondents with a request for appointment of her son on compassionate ground. Applicant's case was recommended by the Screening Committee for compassionate appointment to the post of Warder subject to the condition that he fulfilled the requirement of the Recruitment Rules for the said post including physical standards, which is evident from the letter dated 31.1.2001 written by the Deputy Secretary (Services) to the Additional Inspector General, Prisons Head Quarters, Govt. of NCT of Delhi, Tihar Jail, New Delhi (page 15). Jail Authorities were satisfied with his eligibility condition and as such vide their letter dated 27.2.2001 applicant was sent for medical examination to the RMO, Central Jail Hospital (page 16). After the applicant was found medically fit, he was given offer of appointment as Warder in the pay scale of Rs. 3050-4590 vide Memorandum dated 14.3.2001 (page 18) and the applicant had given his joining report (page 22) but a few days thereafter another Memorandum dated 28.3.2001 was issued whereby the offer of appointment issued in favour of the applicant was cancelled with retrospective effect for want of approval of the Competent Authority of Govt. of NCT of Delhi. (page 24). Being aggrieved, applicant gave a detailed representation but since no reply was given to him, he filed OA 3350/2002 which was disposed of at the admission stage itself vide order dated 13.1.2003 by giving following directions:-

"Taking stock of these facts, it is directed that applicant who has not mentioned these facts in a representation may represent to the respondents giving the names of those persons who may have been empanelled after the applicant



and the said representation shall be considered and decided by the Secretary to the Government of NCT of Delhi. (Respondent No.2), Delhi Secretariat, I.P.Estate, New Delhi, preferably within four months of the receipt of the same. A speaking order in this regard should be passed. With these directions, the OA is disposed of".

Applicant thereafter gave a detailed representation to the Secretary to the Govt. of NCT of Delhi, Department of Services-II, Delhi Secretariat, New Delhi wherein all the facts were mentioned along with the name of persons, who were in the panel after him and were ultimately given compassionate appointment (page 28). Pursuant to the directions of this Tribunal, Services Department issued order dated 18.2.2003 rejecting the claim of the applicant by stating that since the appointment offered to him was not in conformity to the existing norms, as this offer did not have the approval of the Competent Authority. Therefore, his case was considered afresh by the Screening Committee meeting dated 12.7.2002 but he was not recommended for appointment on compassionate grounds. It was also mentioned in the said order that his case shall again be placed before the Screening Committee for consideration.

3. It is against these circumstances, the applicant has now filed this OA seeking the reliefs as mentioned above.

4. During the pendency of this OA, respondents have issued compassionate appointment to one Shri Atul Juneja also to the post of Warder even though his father had died in the year 1999-2000 i.e. after the death of applicant's father. Respondents have also issued compassionate appointment in favour of one Smt. Sumita even though she had also been empanelled, much after the empanelment of the applicant. Therefore, the applicant by filing MA 2293/2004 brought these facts on record to show that the respondents have given compassionate appointment to other persons by ignoring the claims of the applicant altogether. Counsel for the respondents on the other hand has submitted that as per the observations made in order dated 18.8.2003 applicant's case was



again considered by the Screening Committee in the meetings held on 19.12.2003 and 12.1.2004 but the Screening Committee after taking into account the various aspects of the matter concluded that the family of the deceased Government servant does not seem to be living in indigent circumstances and as such the case of the applicant has not been recommended for compassionate appointment. The order dated 13.9.2004 to this effect has been placed on record by the respondents by way of filing reply to MA 2293/2004.

5. I have heard both the learned counsel and perused the pleadings as well. Admittedly, the applicant's case was recommended by the Screening Committee as back as in the year 2001 itself and thereafter the case was sent to Jail Authorities to see the suitability of the eligibility requirement of the recruitment rules and physical standards. Admittedly, the Jail Authorities found the applicant up to the mark in physical standards and as per the eligibility of the recruitment rules, therefore, he was sent for medical examination vide their letter dated 27.2.2001. After the applicant was cleared from the medical examination, he was offered the appointment as Warder. Applicant had given his joining also on 15.3.2001. Once the offer of appointment was given and applicant had joined the post, a right had accrued in favour of the applicant, which could not be taken away without giving show cause notice to him. In this case, it is seen that without giving any show cause notice to the applicant his appointment was cancelled vide order dated 28.3.2001 with retrospective effect, which was not permissible under law. It is interesting to note that the appointment was cancelled on the specific ground that approval of the Competent Authority had not been taken by the Jail Authorities. If that was the case, they could easily have sent the file to the competent authority for seeking ex post facto approval from the competent authority. From the counter affidavit it emerges no such procedure was adopted by them. On the contrary, they referred the case of the applicant to another Screening Committee all over again even though that was not the requirement at the time when his appointment was cancelled because all the



respondents had stated was that approval of competent authority had not been taken. If respondents had committed a mistake applicant could not be made to suffer for it. In all fairness that short coming should have been cured by doing the needful. It is not clear why his case was again sent to the Screening Committee. It is not the case of respondents that the recommendations made by the Ist Screening Committee were based on wrong information. Therefore, once the Screening Committee had recommended the case of the applicant and the only short coming as pointed out by the respondents themselves was, that the approval of the Competent Authority had not been obtained, I see no justification as to why his case should have been referred to the Screening Committee all over again.

6. This is not the only infirmity in the action of the respondents but strangely enough in the subsequent order dated 13.9.2004 they have taken a total somersault and have stated that the case of applicant has been considered again by the Screening Committee who have come to the conclusion that the family of the applicant is not in indigent circumstances. It is not understood when first Screening Committee had already recommended the case of the applicant how could another Screening Committee take a different view all together specially when it has no relevance with the reasons given by the respondents at the time of cancellation of offer of appointment to the applicant. It is further seen that wards of the persons, who had died after the applicant's father, have been considered by the respondents and they have been given compassionate appointment after taking approval of the competent authority. This aspect was specifically observed by the Tribunal in its order dated 13.11.2003 when this Tribunal had disposed off the OA 335/2002. However, these directions have completely been lost sight of by the respondents.

7. In these circumstances, I am satisfied that the orders passed by the respondents cannot be sustained in law. Accordingly, the orders dated 28.3.2001, 18.8.2003 and 13.9.2004 are quashed and set aside. Respondents are directed to send the case of the



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applicant to the competent authority as per the recommendations made by the first Screening Committee along with his medical certificate and the offer of appointment itself to the competent authority for seeking ex-post facto approval. The competent authority shall take a decision in the matter after looking into all these facts and pass necessary orders in accordance with law within a period of three months from the date of receipt of a copy of this order, under intimation to the applicant.

3. With the above directions, the OA is disposed of. No order as to costs.


(Mrs. Meera Chhibber)
Member (J)

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