

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad, this the *2nd* day of *April*, 2004.

QUORUM : HON. MR. D. R. TIWARI, A.M.

O.A. No. 845 of 2001

Ajay Kumar Singh S/O Late Sri Rajeshwar Singh R/O 108-B/1,
Abu Baqarpur, Dhoomanganj, Allahabad.....Applicant.
Counsel for applicant : Sri S.C. Mandhyan.

Versus

1. Director General, E.M.E., Army Headquarters, New Delhi.
2. Commandant 508 Army Base Workshop, Allahabad.
3. Union of India through Secretary, Ministry of Defence,
New Delhi.

.....

.....Respondents.

Counsel for respondents : Sri R.K. Tiwari.

O R D E R

BY HON. MR. D. R. TIWARI, A.M.

By the instant O.A. instituted under section 19 of the A.T. Act, 1985, the applicant has prayed for quashing the order dated 2.6.2001 (Annexure A-1) by which his request for appointment on compassionate ground has been rejected. He has prayed also for issue of direction to the respondents for issuing appointment letter.

2. The factual matrix is very simple. The father of the applicant Late Rajeshwar Singh, working as Store-keeper in 508, Army Base Workshop, Fort, Allahabad died on 25.6.96 while in service. He left behind him his widow, two sons and one unmarried daughter. The family was paid a meagre amount of Rs.64,011/- and a monthly pension of Rs.1275/- was sanctioned to his widow. The applicant had submitted that his father was the only bread earner and even during the employment, he suffered heart attack. In order to saving his life, the money was borrowed from different persons but as ill luck would have it, he could not survive and died. Since entire burden of the family fell on the

D.R. Tiwari

eldest son, aged about 28 years i.e. the applicant, who was also unemployed, he applied for his appointment on compassionate ground on 12.9.96 (Annexure A-2). The applicant was medically examined by the respondents and was found medically fit. He also furnished the declaration required by the respondents (Annexure A-3 & A-4).

3. Applicant was informed by the respondents by a letter dated 18.8.97 that his name has been placed on the waiting list for the post of LDC/Store-keeper at Sl.No.98 and he would be offered employment against future vacancies at his turn (Annexure A-5). He waited for almost two years and finding no response, he made an application dated 28.8.2000 before Respondent No.1 for issuing appointment letter to the applicant at the earliest as the family was surviving under the abject poverty and the marriage of his sister was to be performed (Annexure A-6).

4. Unfortunately for the applicant, he received a letter dated 16.12.2000 from Establishment Officer (Annexure A-7) informing him that his claim did not stand merit and he has been found unfit for appointment on compassionate ground and his claim has been rejected. This came as a bolt from the blue as it was against all the hopes and expectations raised in his mind earlier that he was placed in wait list.

5. Finding himself in trouble, the applicant approached the Hon'ble High Court and the High Court by means of the order dated 12.3.2001 disposed of the writ petition with the direction to the respondents to consider and dispose of the application of the applicant for compassionate appointment within a period of two months (Annexure A-8). In pursuance of the Hon'ble High Court direction, the respondents passed the order dated 2.6.2001 which has been impugned herein. The applicant has assailed the order dated 2.6.2001 on various grounds like (i) non-application

Defin

of mind (ii) no opportunity of hearing was provided to the applicant before passing the order dated 2.6.2001 (iii) the respondent No.2 has tried to pick up facts from here and there and without ascertaining actual position of the family necessitating for employment to save it from starvation and indignity has rejected his claim, (iv) the respondents have given a go by to the dying in harness rules. He was kept on tenterhooks by raising a hope that he was at Sl.No.98 and he waited for two years and by that time he became over age for any government job.

6. The respondents, on the other hand, have opposed the O.A. by filing counter affidavit. They have submitted that the impugned order has been passed by the competent authority after considering all aspects of the matter. In fact, since the petitioner has studied up to intermediate he was considered for appointment as LDC on compassionate ground and his case was forwarded to the Director General, E.M.E., Army Hqrs. for approval and sanction of the appointment and he was registered in the waiting list. The respondents have mentioned in paras 10 and 11 that the following aspects to assess the economic distress of the deceased family and suitability of the case for compassionate appointment of the family of the deceased Govt. servants were examined by the Board of Officers according to the Government of India orders on the subject, on the basis of the documents submitted by the candidate duly verified by Civil Authority : (a) Size of the family including ages of children of the deceased Government servant. (b) Amount of family pension. (c) Amount of terminal benefits received under various schemes. (d) Liabilities in terms of unmarried daughters etc. (e) Earning members supporting/non-supporting the family. (f) Moveable/immoveable property and income therefrom. and (g) Also only 5% of the ~~wastage~~ vacancies accruing in a given year for Group C and D posts can be

Defin

filled up by making compassionate appointment. Hence, compassionate appointment are offered to most deserving cases, whose economic condition are assessed as extremely acute on the basis of assets and liabilities of the family of the deceased employee at the time of death.

That in view of the circumstances stated above and due to constraints of 5% vacancies reserved for compassionate appointment the Board did not find the instant case deserving and hence rejected which was conveyed to the applicant by speaking order vide letter dated 16.12.2000.

7. They have also contested that by way of retiral benefits, the widow of the deceased received Rs.89,664/- in addition to family pension of Rs.1275/- per month.

8. I have heard the rival contentions of both the parties and perused the documents.

9. Sri S. Mandhyan, learned counsel appearing on behalf of the applicant has relied on the following cases :-

- i) O.A. No.962 of 1999 Smt. Autari Devi Vs. Union of India & others decided on 11.3.2003 of this Tribunal.
- ii) Special Appeal No.134 of 2001 State Bank of India Vs. Ram Piyare decided on 17.4.2001 by Hon'ble High Court, Allahabad.
- iii) Civil Misc. Writ Petition No.23899 of 2000 Dhiraj Kumar Dixit Vs. G.M. UCO Bank, Calcutta decided on 31.7.2002 by Hon'ble High Court, Allahabad.

10. The crucial question which is for consideration whether the applicant deserves to be appointed on compassionate ground or not. The basic thing which the respondents are required to see is the financial condition of the family, liabilities of the children left behind, the number of unmarried daughters and sons and finally whether they have any other source of income. I am very much conscious of the decisions given by the Apex court that the compassionate appointment is to mitigate the hardships caused by the death

D. H. S.

of the bread earner of the family. It has also been laid down that the appointment is to be restricted to 5% of the total vacancies in an year. The Government has also issued instructions to give effect to the judgment of Hon'ble Supreme Court and compassionate appointments are ofcourse made as per Govt. of India, Ministry of Public Grievances and Pension (DOP&T letter No.14012-23-1999-ESTT(D) dated 3.12.1999.

11. In the present case, I find that the respondents, while considering the financial condition of the family, have also taken into account, the G.P.F. balance and A.G.I.S. The Hon'ble High Court of Allahabad in Dhiraj Kumar Dixit (supra) has laid down that retiral benefits like P.F., gratuity, group insurance, life insurance policy, compulsory insurance, leave encashment etc. are not the income either under statutory provisions or in general law. The Hon'ble High Court for the above conclusion relied on JT 1994(3) SC 525 and JT 1994(2) SC 183. The Hon'ble High Court of Allahabad in the case of Ram Piyare (supra) has held that receipt of family pension by the widow cannot be taken to be a good ground for rejecting the case for appointment on compassionate ground particularly when the husband dies in harness.

12. In addition to the facts mentioned above, the applicant has clearly stated that the respondents have taken almost two years to say that his case for compassionate appointment has been rejected. This is more harsh in view of the fact that he was considered for appointment as clerk for which he was medically examined, which is evident from paras 7 & 8 of the C.A. The applicant has clearly stated that he has become over age by the time he was told that he was not entitled for compassionate appointment.

Hein

13. Before parting, I would like to mention that the plea of 'more deserving cases' has not been explained in the impugned order. In pursuance of the order passed by the Hon'ble High Court for deciding the representation of the applicant by a reasoned order, the order which has been passed by the respondents is neither a speaking order nor a reasoned one. In the order they have simply stated the criterion to decide the cases of compassionate appointment but the respondents have failed to apply specifically any of the criterion in the case of applicant. They have stated that in view of the Apex Court order, department of Personnel & Training has issued the O.M. which restricts the appointment only upto 5%. It is admitted fact that the applicant was wait listed and the respondents have not explained clearly as to who were more deserving than him. Merely mentioning the criterion and the O.M. of DOP&T without its application in the present case is not justified and the respondents are required to specifically mention as to how and why applicant could not be given compassionate appointment.

14. In view of the facts and circumstances mentioned in the preceding paras, the O.A. is allowed and the impugned order dated 2.5.2001 is quashed and the matter is remitted back to the authorities with a direction to pass a reasoned and speaking order to the claim made by the applicant within a period of three months from the date of communication of this order.

No order as to costs.

Deewan
A.M.

Asthana/