

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 28TH DAY OF JULY, 2004

Original Application No. 1357 of 2002

CORAM:

HON.MR.JUSTICE S.R.SINGH,V.C.

Ahmed Hussain, son of
Late Absar Hussain, resident of
Village & Post Asrawalkala, district
Allahabad.

.. Applicant

(By Adv: Shri C.P.Srivastava)

Versus

1. Union of India through
Engineer-in-Chief, Army
Headquarter, Kashmir House,
DHQ, PO New Delhi.
2. Chief Engineer(Air Force)
Bamrauli, Allahabad.
3. Commander Works Engineer(Air Force)
Bamrauli, Allahabad.
4. Garrison Engineer, Air Force,
Bamrauli, Allahabad.

.. Respondents

(By Adv: Shri N.C.Tripathi)

O R D E R(Oral)

JUSTICE S.R.SINGH,V.C.

Heard Shri Anubhav Chandra, holding brief of Shri
C.P.Srivastava counsel for applicant and Shri
N.C.Tripathi counsel for respondents. I have also
perused the pleadings.

The applicant's father who was employed under the
respondents died in harness on 13.6.1994. The applicant
being son of the deceased government servant stake his
claim for compassionate appointment by means of an

application filed on 18.7.1994. Since no decision was taken by the respondents in respect of the applicant's claim for compassionate appointment he was forced to file OA No.1900/94 which was disposed of by order dated 16.5.1996 with a direction to the respondents to consider the applicant's case for compassionate appointment in accordance with law. Now by means of impugned order dated 15.4.02 the respondents have rejected the applicant's claim for compassionate appointment. The relevant portion of the order impugned herein is quoted below:

"According to the information available on record, the following is the position of the family of the deceased government servant:-

- a) The death of Govt. servant occurred on 13th June 1994. His wife, two sons and two daughters survived him. The deceased govt.servant's family received Rs 1,89,280/- as terminal benefits. At present they are in receipt of pension(family) Rs2097/- per month plus dearness allowances.
- b) Family owns property worth Rs 38,000/-

The Board of Officers at this HQ after taking into account each aspect referred to above has considered your case alongwith other candidates. However, due to more deserving cases and few vacancies available, your case was not recommended by the Board of officers for appointment on compassionate ground. In view of this the competent authority is of the view that your case does not deserve employment assistance on compassionate grounds. More over, the need for immediate assistance by way of compassionate employment to tide over the emergency and crisis is lacking in your case as the death of the government servant was on 13 June 1994 i.e. 8 years ago.

Therefore, after due circumspection and consideration, in the light of the enclosed guidelines of DOP&T and various judgments of the Hon'ble Supreme court and that the appointment on compassionate grounds is not a matter of right and after a balanced and objective assessment of the

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totality of the circumstances of the case including the decision of the Board of Officers at this HQ, the competent authority has rejected the employment assistance to Sh.Ahmed Hussain,S/o Late Absar Hussain, Ex Ch/Elect on compassionate grounds due to non availability of sufficient vacancy within 5% quota "

It has been submitted by the learned counsel appearing for the applicant that the Competent Authority was not justified in taking into consideration the terminal benefits received by the family on the death of applicant's father nor was it justified in rejecting the applicant's claim on the ground of delay. Learned counsel for the applicant has further submitted that it was not enough for the respondents to say that the case of the applicant was not recommended "due to more deserving cases and few vacancies available". The competent authority submits ~~that~~ the learned counsel ought to have disclosed a comparative merits of such candidates vis-a-vis the applicant so as to enable the Tribunal to arrive at a conclusion as to whether the decision taken by the respondents in respect of the applicant's claim for compassionate appointment is in confirmative with law.

The learned counsel for the respondents, on the other hand, submits that the order impugned herein has been passed "after due circumspection and consideration" and therefore, it warrants no interference by the Tribunal.

Having heard counsel for the parties, I am of the considered view that the order impugned herein suffers from arbitrariness and ~~it~~ vitiated also on the ground of taking into consideration irrelevant factors, ~~of~~ terminal benefits received by the family in my opinion, ought not

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have been taken into consideration, while the claim of an individual for compassionate appointment except to the extent it is permissible. In any case, the order without disclosing comparative merits of the candidates considered alongwith the applicant for compassionate appointment suffers from arbitrariness in that the validity of the same cannot be listed by the Tribunal on the touch stone of any objective material. It was not enough to say that applicant could not be recommended "due to more deserving cases and few vacancies available". It is no doubt true that compassionate appointment is offered only against 5% vacancies but the crucial question that requires consideration is that rejection of the claim of a candidate for compassionate appointment merely by making an observation that there were more deserving cases without disclosing basic facts in support of the conclusion arrived at would be violative of Article 14 of the Constitution. That is why marks are allotted on different count as per scheme of compassionate appointment.

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Further, / the application for compassionate appointment is moved within five years ^{of} ~~after~~ the death of the deceased government servant the claim of an individual cannot be abnegated because of the delay on the part of the department to take a decision in the matter. It is well settled that no one can take advantage of his own default and latches. The application in the instant case for compassionate appointment was moved in July 1994 and the department has taken 8 years in taking a decision in the matter. It was not open to them to say that the need for immediate assistance by way of compassionate employment to tide over the emergency and crisis is lacking in this case.

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Accordingly, the original application succeeds. The impugned order dated 15.4.02 is quashed. The Competent authority is directed to pass a fresh order in accordance with law within a period of one month from the date of receipt of copy of this order. No order as to costs.

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VICE CHAIRMAN

Dated: 28.7.04

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