

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO. 1198 OF 2002

ALLAHABAD THIS THE 8TH DAY OF JULY, 2004

HON'BLE MRS. MEERA CHHIBBER, MEMBER-J

Babloo Yadav,
son of Late Panna Lal Yadav,
182, Kachchi Sarak, Daraganj,
Allahabad.

.....Applicant

(By Advocate Sri A.K. Srivastava)

Versus

1. Union of India
through Secretary (Ministry of Defence)
Thal Sena, New Delhi.

2. The Commandant & M.D.
508 Thal Sena Base Workshop,
Allahabad Fort.

3. The Establishment Officer,
508 Thal Sena Base Workshop,
Allahabad Fort.

.....Respondents

(By Advocate Sri P.D. Tripathi)

ORDER

By this O.A. applicant has sought the following
reliefs:-

"an order be passed commanding the respondents
to consider the application of applicant for
employment against the existing vacancies suited
to his qualification, under the dying in harness
Rules, after quashing the impugned order dated
17.6.2002."



This is second round of litigation by the applicant.

2. The brief facts as narrated by the applicant are that applicant's father died in harness on 11.11.1994 leaving behind his widow, four sons and one daughter. Applicant's mother initially gave an application for compassionate appointment in her favour which were later on changed for her son. By order dated 03.12.1998 applicant was informed that ~~his~~ case has not been recommended by the Board of Officers for compassionate appointment as not found fit (page 40). This was challenged by the applicant by filing O.A. No.154/02 which was decided on 13.5.2002 by observing that the impugned order is not a speaking order, therefore, respondents were directed to pass a speaking and detailed order after considering the application of applicant and treating the O.A. itself as representation (Page 53). Thereafter respondents issued letter dated 18.6.2002 by annexing the so called speaking order along with it (Page 58) stating therein that applicant has secured only 47% marks while only such of the persons were ~~had~~ recommended who ~~even~~ got 60% marks. This order was once again challenged by the applicant in the present O.A. on the ground that inspite of directions given by the Tribunal to pass a speaking order respondents have still not taken into consideration the various aspects which were to be taken into consideration while considering the case for compassionate appointment. Perusal of the order ^{shows it} though resp B increased the paragraphs but in substance nothing was divulged by the respondents with regard to the ^{financial} status of the family of the deceased employee, therefore, while issuing notice to the respondents I had directed the respondents to produce the proceedings to satisfy myself that the case of applicant has been considered properly.

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3. Learned counsel for the respondents has produced the Board proceedings for court's perusal. Perusal of proceedings show that applicant has been given three marks under the column Family size, five marks for Terminal benefits, 10 marks for Pension and ten marks for Earning Members which totals to 28 marks. interestingly no marks have been given under the column liability or Movable/immovable property/Annual Income/ ^{column,} In the impugned order respondents have stated in para 6 that the Board allotted marks to each case based on the following parameters:-

- (a) Family Size.
- (b) Terminal benefits.
- (c) Liability
- (d) Family members in the family
- (e) Movable/ Immovable property/Annual Income.
- (f) Amount of pension received by the family

4. Now perusal of the application given by the applicant's mother on 09.03.1995 shows that applicants mother had categorically stated in her representation that the deceased employee had left a family consisting of widow, four sons and one daughter who were all dependant on the deceased employee. They have no other immovable property or land nor any other source of income. She had also stated that children are yet to be educated and the marriage of daughter is to be performed, meaning thereby that applicant's husband did leave family liability on the date of his death, therefore, some marks ought to have been given under the column liability and since applicant's mother had stated categorically that she did not own any ^{had B} movable/immovable property nor any other source of



income, some marks ought to have been given in this column also but as observed above both these column ^{left} are blank by putting a dash. In the O.A. applicant has made a specific averment in para 4.2 that the deceased widow had no other source of earning nor had any immovable property and she was finding it difficult to maintain the family of deceased who had left behind four sons and one daughter.

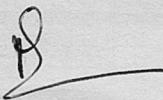
5. In reply respondents have not controverted this specifically in para 17. On the contrary they have simply stated that initially mother had applied and after her request for considering the son, they were asked to give the required information vide letter dated 23.12.1996 which were considered by the Board of Officers and applicant was not found fit. These proceedings had taken place on 30.10.1998 as is seen from the Board proceedings. It is stated by the applicant that in the year 1998 the daughter of deceased was not yet married, therefore, it was not understood as to how these two columns ^{were} ~~have been~~ left blank by the respondents while allotting marks to the applicant. Accordingly counsel for the respondents was directed to make available some responsible officer who could explain the position as mentioned above.

6. Shri Shankar Diyari, EME Officer (Civ), EST Officer, 508 Army Base Workshop, Allahabad Fort, appeared and brought the records alongwith him. According to the departmental representative no marks under the column liability was given to the applicant because in the form which was filled by Shri Babloo Yadav, there was no mention of his sister or the daughter of deceased employee. He was, however, not able to



explain as to why a dash was put under the column of movable/immovable property/annual income from other sources. On perusal of the original records it was seen that even though in the proforma for compassionate appointment Shri Babloo Yadav did not mention the name of his sister as dependant of deceased employee but in the affidavit given by Shri Babloo Yadav he had categorically stated that he has four brothers and one sister and he is the eldest being 19 years of age. He has further stated in the affidavit that the whole responsibility of entire family has come on his shoulders and he does not have any other movable or immovable property. Moreover, records also show that when Smt. Nirmala Devi had initially given ^{appointment} his application for compassionate, she did mention about the daughter Km. Meena Yadav in the proforma given by her. It is, therefore, not justified on the part of respondents to deny the marks to applicant under the column of liability and movable/immovable property. I am fully aware about the judgments given by Hon'ble Supreme Court on the question of compassionate appointment wherein it has been held that nobody can claim compassionate appointment as a matter of right and a person only has right of consideration.

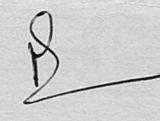
7. In the instant case, if date of birth of the dependants is seen, it is clear that on the date of death of the deceased employee, all the other children were minor except Shri Babloo Yadav, therefore, in my considered view, applicant was entitled to get the marks in accordance with the policy under the column of liability as well as movable and immovable property. Since the records show that no such marks were given to the applicant it cannot be said that the case of applicant was considered properly by



the respondents. Since the order of rejection dated 18.6.2002 is based on the recommendation of Board of Officers, proceedings, as produced before me, the order gets vitiated. The same is accordingly quashed and set aside.

8. It goes without saying, that consideration means proper consideration in accordance with law, rules and instructions on the subject. Since I have come to the conclusion that applicant's case was not considered ^{properly} by the Board of Officers, in as much as, two columns were left blank whereas he was entitled to get marks under those columns as well, therefore, this case is remitted back to the authorities with a direction to re-consider the case of applicant in view of the observations ~~as~~ made above and to give the marks which applicant is entitled to as per the policy and then pass a reasoned and speaking order explaining everything. In case applicant gets 60% marks then appropriate orders should be passed by the respondents to accommodate the applicant because admittedly 60% was the cut of marks for recommendation by Board of Officers, as per respondent's own order. This exercise shall be completed within a period of three months from the date of receipt of a copy of this order.

9. With the above direction, this O.A. is disposed off with no order as to costs.



Member-J

/ Neelam/