

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH: ALLAHABAD.

TUESDAY, THIS THE 15TH DAY OF MAY, 2007.

QUORUM : HON. MR. JUSTICE KHEM KARAN, V.C.

ORIGINAL APPLICATION NO. 1199 OF 2002.

Atul Kishore Pandey, Son of, Shyam Kumar Pandey, R/O,
Village and Post Shringhi Rampur, District
Farrukhabad. Applicant.

Counsel for applicant: Shri K.K. Mishra.

Versus

1. Union of India through its Secretary, Ministry of Defence, New Delhi.
2. The Chief Engineer (M.E.S.) Central Command, Lucknow.
3. The Assistant Garrison Engineer-I, M.E.S. Fatehgarh District Farrukhabad.
4. The Administrative Officer, Central Works Engineer, M.E.S. Kanpur.

..... Respondents.

Counsel for Respondents: Sri S. Srivastava.

O R D E R

The applicant, Atul Kumar Pandey, has filed this O.A. praying that order dated 4.6.2002 (Annexure-15) and order dated 29.6.2002 (Annexure-16) be quashed and the Respondents be commanded to give him appointment on compassionate ground under dying-in-harness rules. It has also been prayed that the Respondent No.2 be asked to consider the case of the applicant afresh taking into account the family conditions of the applicant, as mentioned in the O.A.

2. There appears to be no dispute that applicant's father Late Shyam Kumar Pandey was in employment of the respondents and he died in harness on 13.5.1996, leaving behind the applicant and others, as mentioned in Para 4(11) of the O.A. There is further no dispute that the applicant's mother made a request to the Respondents for appointment of the applicant on compassionate ground under dying-in-harness rules



saying that economic condition of the family was poor enough and not in a position to sustain itself without help by way of compassionate appointment. The applicant and his mother both continued representing to the authorities for this appointment for sometime and ultimately, the applicant was informed vide letter dated 4.6.2002 (Annexure-15) that his case was considered in accordance with the relevant guidelines but was not found fit one for such appointment.

3. The applicant is challenging this rejection on the grounds inter alia that the case of the applicant for compassionate appointment has not properly been considered in accordance with the relevant guidelines and the terminal benefits have wrongly been made the basis for rejecting the claim of the applicant. It has also been said that Kaushal Kishore, elder brother of the applicant is living separately and so the factum of his employment could not have been considered for rejecting the claim of the applicant. It is also said that order of rejection does not contain the reasons for not finding the case of the applicant as fit one for compassionate appointment so it deserves to be quashed on this ground.

4. The Respondents have filed reply contesting the claim of the applicant. According to them, the case of the applicant was duly considered by the Board of Officers in accordance with the relevant guidelines, as referred to in the impugned order itself and the relevant judicial pronouncement rendered by the Apex Court, along with such other cases but owing to the limited number of vacancies, the case of the applicant was not found fit in comparison to the cases of other deserving candidates.

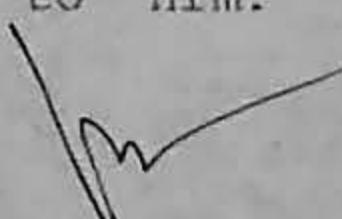
5. Shri Tiwari has argued that the order of rejection is bad for want of reasons. According to him, this order ought to have disclosed as to how the cases of other persons were found more genuine to the

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case of the applicant and as to how and why the case of the applicant was not found fit one. Shri Tiwari says that proper course for the authority concern was to give the list of the persons, who were found fit for such appointment and it was also proper for the authority concerned to give some more reasons so as to satisfy the applicant that his rejection was well-considered.

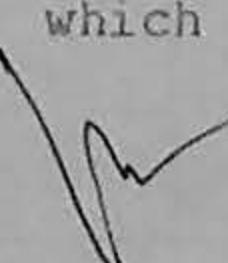
6. After having gone through the impugned order dated 4.6.2002, I am not in a position to accept the argument of Shri Tiwari that the order can be said to be bad for want of reasons. This order is speaking one in the sense that it not only details the relevant guidelines, parameters for considering such cases but also the fact that family of the deceased received terminal benefits to the tune of Rs.1,52,966/- and is getting family pension at the rate of Rs.2,650/- a month plus dearness relief. Whether taking these terminal benefits and family pension into account for deciding the case of compassionate appointment is legally justified or not is a different question but it is difficult to say that the order is bad for want of reasons. Shri Tiwari has not been able to place before me any rule or guideline which cast duty on the authority concerned to give the list of the persons, who were found fit for such appointment or to give some more reasons than those given in this order. I am of the view that the order cannot be termed as non-reasoned or non-speaking and can be interfered with on that ground.

7. The next submission of Shri Tiwari is that a perusal of the minutes of the meeting in which the case of the applicant and the other cases were considered, would reveal that the applicant was not awarded proper marks under different heads as referred to in the relevant guidelines of 2001. Shri Tiwari has tried to say that applicant should have been given more marks than those awarded to him. Firstly,



whether the applicant was given or awarded proper marks under these items is a matter, which cannot be examined in exercise of powers of judicial review unless a firm foundation of malafide etc. is laid in the petition itself and secondly, after perusal of the relevant papers so produced today by Shri Saurabh Srivastava, I don't think that the complaint is well founded. After all no reasons have been disclosed in the O.A. or during the course of arguments as to why the Board of Officer would have awarded lesser marks to the applicant and how those Officers were disposed against the applicant. In other words, there is no averment in the O.A. that the officers, who considered the candidature of the applicant along with the candidatures of other such persons, were pre-occupied or they were biased against the applicant. So it will not be fair on the part of this Tribunal to say that applicant was awarded lesser marks, than to which he was entitled. Nothing like this has been demonstrated in the O.A. So this argument also does not appeal to me and is rejected.

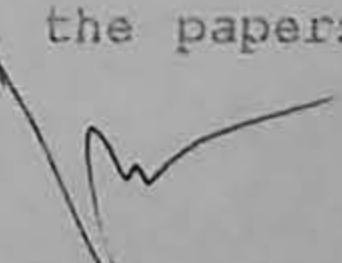
8. Shri Tiwari has also attempted to say that terminal benefits could not have been made the basis for rejecting the claim of the applicant. He may be right in saying that terminal benefits received by the family or the family pension being received by the family may not be the sole ground for rejecting the case of compassionate appointment. A perusal of the order dated 4.6.2002 does not disclose that case of the applicant for compassionate appointment has been rejected solely on that ground. The factum of terminal benefits and receipt of family pension has also been taken into consideration along with other factors deciding the case of the applicant. Whether in a particular case, the amount so received by the family in the shape of terminal benefits or whether in a given cases the amount being received in the form of family pension would be sufficient to sustain the family is a question of fact, which has to be



determined in each and every cases according to the facts and circumstances of the particular case and no hard and fast rule can be laid down. There may be cases where the amount of the family pension may be sufficient enough to give sustenance to the family and on that ground the case of compassionate appointment may not be justified and in other cases, the position may be different.

9. I do not know the circumstances in which the families of the rest of the applicants were placed. The Board of Officers, on examination of the different cases, came to the conclusion that cases of some of the persons were more deserving than the case of the applicant. Keeping in view the limited number of vacancies available for such appointment, I do not think the Board of Officer was unjustified in taking such view. The scope for judicial interference in such administrative decisions is limited one and interference is possible only if it is well established that the decision was not as per rule or was rather, in breach of the rule or it is vitiated by any extraneous consideration or irrelevant matters have been taken into consideration and relevant material has been excluded from consideration. The Courts and Tribunal will not sit in appeal over such administrative decision, so as to decide whether the decision so taken was right or wrong on merits.

10. I have not been able to find any such infirmity in the rejection of the candidature of the applicant for compassionate appointment. It stands well settled after recent judicial pronouncement of the Apex Court that the compassionate appointment is not the source of regular recruitment but is by way of exception which is to prevent the family from going to destitution. There are number of such claims and according to the existing guidelines, the vacancies are limited for this purpose. All cannot be accommodated. Shri Tiwari says that the papers filed



today shall disclose that some waiting list has also been drawn and the name of the applicant has not been shown even in that waiting list. He says that the respondents may be asked to reconsider the case of the applicant. I don't think the Tribunal will be justified in asking the respondents to consider the case of the applicant again. That could have been possible only if the consideration in question would have been found vitiated, or guidelines, regulating such consideration or appointment, would have expressly provided for reconsideration. Shri Tiwari has submitted that the claim of the respondents that there is no vacancy is not well founded as the applicant is working there as a daily wager. I think Shri Tiwari is not correct on the point that there is a vacancy. Applicant's engagement on daily wages, is no proof of vacancy. Moreover, nothing like this has been said in the O.A. So the O.A. is devoid of merits and is dismissed as such.

11. The papers produced today by Shri S. Srivastava be given back to him.

No order as to costs.

V.C.

15.5.07

Asthana/