

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD

Dated: this the 4th day of April 2012

Original Application No. 794 of 2006

Hon'ble Ms. Jayati Chandra, Member – A

Izhar Hussain Jafri, S/o late Laddan, R/o House No. 283 Sahkar Nagar, P.O. Masuranpur, District Kanpur City.

... Applicant

By Adv : Sri M.S. Khan and Sri Sarwan Khan

V E R S U S

1. Union of India through the Secretary to the Govt. Of India, Ministry of Defence, New Delhi.
2. General Manager, Small Arms Factory, Kanpur.
3. Deputy General Manager/Administration Kanpur.

... Respondents

By Adv: Sri D.S. Shukla

(Reserved on 30.03.2012)

ORDER

The applicants have filed this OA filed under Section 19 of the A.T. Act, 1985 seeking cancellation of impugned order dated 12.11.2005 passed by respondent No. 2 by which the applicant has been denied compassionate appointment in place of his father.

2. The brief facts of the case are that the father of the applicant late Shri Laddan was employed on the post of Machine Mechanic in Small Arms Factory, Kanpur. He expired on 18.01.2000 leaving behind his widow Smt. Razia Begam, daughters namely Shama Parveen Shabana, Shabana and Seems Rubi and one son i.e. the applicant Izhar Hussain Jafri. The widow sought appointment for a member of family i.e. the applicant on

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05.11.2000 (Annexure No. 2). However, respondent No. 2 rejected her claim by order dated 07.06.2002 (Annexure No. 5). At which the applicant filed Writ Petition No. 33178 of 2002 before Hon'ble Allahabad High Court. The said Writ Petition was allowed vide order dated 16.09.2005 with the direction to the respondents to decide the matter afresh. The respondent No. 2 again denied appointment by impugned order dated 12.11.2005. The applicant filed another Writ Petition No. 12765 of 2006 which was dismissed on alternative remedy by order dated 01.03.2006. Hence this OA.

3. The applicant has stated in para 4.14 of the OA that respondents has not shown any criteria or scheme which governed the eligibility of a person to be appointed on compassionate grounds. Further, he has stated in para 4.16, 4.17 and 4.18 that the actual financial condition of the family has not been evaluated properly in denying the claim for compassionate appointment.

4. The respondents have denied the claim of the applicant by filing counter affidavit laying stress on para Nos. 8, 9, 13, 18, 22 and 24 of the counter affidavit. Basically they have stated that compassionate appointment is not a matter of right, but is to be considered as a measure of immediate relief to a family in need of such relief. Placing reliance on the judgment of Hon'ble Supreme Court in the case of *Punjab National Bank vs. Ashwini Kumar Taneja* – (2004) 7 SCC 265, (1994) @ SCC 718 – *Life Insurance Corporation of India Vs. Asha Ramchandra Ambekar (MRS)* & (1994) 4 SCC 138 – *Umesh Kumar Nagpal Vs. State of Haryana & Ors.* They have also said that as per directive of Ministry of

Defence the consideration for appointment on compassionate ground has to be within 5% of direct recruitment quota arising during the year in Group 'C' and 'D' posts. They have also stated that as per departmental norms various conditions for assessing the level of financial status of the family has been laid down by the respondents. These criteria include various aspects of movable and immovable property, pension, terminal payments, family members etc. These criteria are assessed numerically. As per such numerical assessment, the case of the applicant come up below the cut off assessment of 52 out of 100. The applicant has secured 41 marks out of 100. This fact has also been disclosed to the applicant in the impugned order dated 12.11.2005. The respondents have further filed Suppl. Counter Affidavit enclosing list of all persons who have been given appointment on compassionate ground (Annexure CA-1).

5. Learned counsel for the applicant has vehemently stated that such marking system is totally illegal. Moreover, even if this criteria is to be accepted, fact disclosed in para 4.6 of the OA such as the loan of ₹ 6 lacs taken by the deceased and funds taken from his department and number of shopkeepers a few months before his death as well as loan of 2 lacs taken from him. ₹ 20,000/- spent on funeral ceremony have not been taken into account.

6. He has further argued that in the marking system the service period of the applicant was wrongly marked as his service period was given 02 marks, whereas, having served for nearly 30 years, marking should have been 10 in which case total marking would have been increased to 49. Further he has

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also alleged that the respondents did not adhere to their own criteria of 52 marks out of 100 as is evident from the details provided by the respondents. Whereas, the persons having as low score as 42, 46 and 48 out of 100 have also been given appointment in the year 2000. Therefore, he has also alleged discrimination.

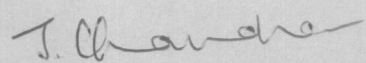
7. I have heard learned counsel for the parties and perused the entire facts of the case. It is a fact that appointment on compassionate ground is not a matter of right but it is exactly what it claim to be i.e. a mechanism for granting immediate relief to a family rendered suddenly distressful on account of loss of the bread winner. It is not a mechanism to provide financial relief in a state of continued financial liabilities incurred over a long period of time such as outstanding loans. The distress of the family is to be viewed in the context of loss of only that amount of income which is unavailable to the family on account of the death of the earning member.

8. However, it is just and proper that an employer frames guidelines for itself to weigh the comparative merits of various situations in order to arrive at the genuineness of claim by various parties as also to determine their interse deservedness. To that extent the condition of the respondents that they have laid down criteria as disclosed by them in their counter affidavit in paragraphs No. 8, 9, 13, 18, 22 and 24 is a welcome step.

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9. I have seen calculation sheet at Annexure -7 and the marking that has been given to the applicant. The applicant has challenged the marking on the ground of number of service

period and they have said that as the applicant has put in more than 30 years of service the point should have been 10 and not 02. In this learned counsel for the applicant has erred that as the service period is counted in reverse order i.e. left over service which is available or the balance service which was left before normal retirement. In so far as the learned counsel stated that appointment if Sri Ajai Kumar on getting 42 out of 100, Shri Raghuvendra Gaur i.e. 46 out of 100 and Shri Amit Kumar getting 48 out of 100 being below the respondents claim of 52 out of 100 is concerned, it is not a matter which was agitated in the OA nor have these persons being made party. Therefore, no direction can be given against them in this OA.

10. In view of the above discussions I do not find any merit in the OA. Accordingly the same is dismissed. No cost.



Member (A)

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