

OPEN COURT
CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD

(THIS THE 16th DAY OF SEPTEMBER, 2010)

PRESENT:

HON'BLE MR. S. N. SHUKLA, MEMBER-A

ORIGINAL APPLICATION NO.1124 OF 2005
(U/s, 19 Administrative Tribunal Act 1985)

Nishant Kaushik, S/o late Sri B. D. Sharma, Resident of B-223/23, Sanjay Nagar, District - Ghaziabad Applicant

By Advocate .Sri R. R. Tripathi

Versus

1. Union of India through Defence Secretary, New Delhi.
2. Director General, Ordnance Factory Board, 10-A, S.K. Bose Road, Kolkatta.
3. Senior General Manager, Ordnance Muradnagar, District - Ghazibad.
4. Deputy General Manager, Ordnance Factory Murad Nagar, District - Ghaziabad.

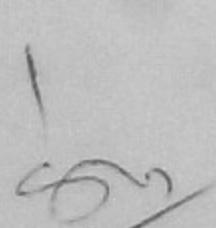
. Respondents

By Advocate: Sri S. N. Chatterji.

ORDER

Heard Sri V. K. Ojha, Advocate holding brief of Sri R. R. Tripathi, learned counsel for the applicant and Sri S. N. Chatterji, learned counsel for the Respondents.

2. This O.A. is filed challenging the order dated 29.05.2002 (Annexure-A-1 of the O.A.) denying the appointment to the applicant under compassionate grounds for the reasons stated therein.



3. Earlier the applicant had applied for appointment on compassionate ground and his application was rejected. He approached the Hon'ble High Court of Allahabad in Writ Petition and the order of the authorities were set aside with direction to pass a fresh reasoned and speaking order which was also challenged in Writ Petition before the Hon'ble High Court of Allahabad, but it was dismissed on the ground of alternative remedy. Against the order of single Judge of Hon'ble High Court of Allahabad a Civil Appeal was filed which was also rejected on the same ground of alternative remedy.

4. Learned counsel for the applicant referred to instruction No.3005 dated 28.05.2004 (Annexure-RA-1 of the Rejoinder Affidavit) particularly para 5 of the said instruction which reads as under:-

"Please note that in all case(s) with score of 40 (forty) marks and above but where employment assistance could not be extended for want of vacancy, should be considered for 3(three) years as per instruction No. 2082/A/A and circulated vide this office letter of even No. dated 04th August, 2003"

5. Learned counsel for the applicant also pointed out that while grading the applicant the particulars placed at Annexure -RA-2 were considered. The first box being the details of

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"Family Pension" which resulted into allocation of only six marks to the applicant as against the 20 marks which would have been awarded to him on the facts of the case. He submitted that the "Family Pension" was given to one of the sons of the deceased employee (his wife having pre-deceased) only upto 21.08.2001. Thereafter, it was stopped because the recipients of the "Family Pension" became 25 years of age as against that impugned order is dated 29.05.2004 and, therefore, the case of the applicant has been rejected on consideration of incorrect facts on the date of impugned order.

6. Learned counsel for the Respondents invited my attention to para 5 of Supplementary Counter Affidavit wherein, it has been stated as under:-

"5. That since the case had merited only 37 points less than 50 decided as bench mark, due to which the case was not recommended for appointment to the prospective candidate on compassionate grounds. The then Competent Authority has regretted the case and the prospective candidate was intimated suitably vide this factory speaking letter No.E-8/CA/Estt./Nishant dated 05.03.2001."

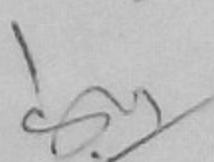
7. When Sri S. N. Chatterji learned counsel for the respondent was asked to reconcile the two conflicting stands taken by the Respondents regarding the bench mark he had no answer. He relied on the counter affidavit. The fact of "Family Pension" being paid to one of the survivor till attaining age of

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majority has been accepted in para 5 of Supplementary Counter Affidavit. Therefore, denial of appointment on compassionate grounds when the eligible member of the family ceased to be eligible for receiving "Family Pension" w.e.f. 5.3.2001 is based on incorrect facts as also application of incorrect benchmark on the point rating system.

8. If the Respondents are to be believed on para 11 of Supplementary Counter Affidavit the weightage on the point rating system can either to be 40 or 50 as stated in the Supplementary Counter Affidavit and it cannot both. In any event the basic facts remains that prima facie for the allotment of weightage point is based on incorrect position of family pension on the date of passing of the impugned order has not been denied by the Respondents.

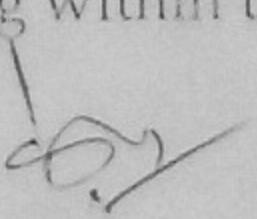
9. The impugned order dated 29th May, 2004 is quashed and set aside. Learned counsel for the parties jointly stated that the competent authority for this purpose is Respondents No.3. Accordingly, Respondents No.3 is directed to pass a reasoned and speaking order dealing with the application on merits by indicating the points obtained by the applicants as per the point rating system by considering the accurate status of family pension. Needless to say that it will be a help if the speaking



order speaks more on objective factors and less on general and subjective factors.

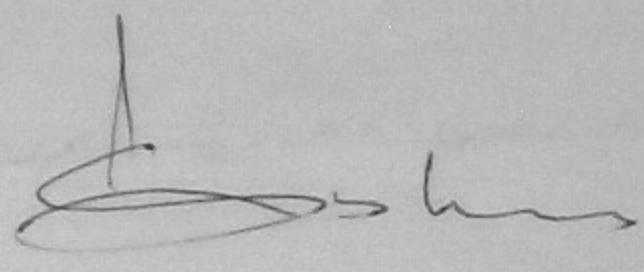
10. The reference may also be made to para 5 of instruction No.3005 dated 28.05.2004 wherein, it is stated that the applicant could not be accommodated for want of vacancy, will be considered for 3(three) years as per instruction No. 2082/A/A and circulated vide this office letter of even No. dated 04th August, 2003. Apparently, these instructions are in line with similar instructions and office Memorandum 14014/2002/Estt/D dated 5.5.2003 of the Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pension Government of India was held as ultra virus to the constitution by Hon'ble High Court of Allahabad vide judgment (SB) reported in [2009(6)ADJ 90] passed in Civil Misc. Writ petition No.2412 of 2008 decided on 8th April 2009 and, therefore, this plea of expiry of three years from the date of application will not available to the Respondent.

11. While considering his claim it is to be noted that in the event applicant is found eligible for appointment on the basis of point rating system the appointments of existing appointees will not be disturbed and the applicant will be considered for future vacancies arising within the ceiling of 5% as laid down.



12. The order of the Respondents be passed at the earliest and in any event not later than 12 weeks of receipt of certified copy of this order. The decision of the Respondents will be communicated to the applicant forthwith.

13. O.A. is allowed. No Costs.



Member-A

/ns/