

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH,
ALLAHABAD

Original Application No. 107 of 2007

Allahabad this the, 28 TG day of July, 2011

Hon'ble Mr. Justice S.C. Sharma, Member (J)

Amit Jaiswal, son of late R.N. Jaiswal R/o 149-A, Sadar Bazar, Bareilly Cantt., Bareilly.

Applicant

By Advocate: Mr. Siddhartha Srivastava

Vs.

1. Union of India through Secretary, Ministry of Defence, South Block, New Delhi.
2. The Chief Workshop Engineer, Military Engineering Services, Bareilly.
3. The Garrison Engineer (East), Military Engineering Services, Near J.R.C. Main Gate, Shahjahanpur Road, Bareilly Cantt., Bareilly.

Respondents

By Advocate: Mr. Tej Prakash

O R D E R

By Hon'ble Mr. Justice S.C. Sharma, J.M.

Under challenge in this O.A. are the orders dated 23.08.2006 and 09.10.2006 (annexure-3 and 5 respectively) passed by respondent No. 3. Further prayer has also been made for giving direction to the respondents to give compassionate appointment to the applicant.

W.D.Q.S./

2. The facts of the case in brief are as follows: -

That the father of the applicant was working as F.G.M. (S.K.) under the office of respondents' No. 2 and 3, and he died in harness on 29.04.1999. After the death of father, through mother applicant submitted an application for compassionate appointment to respondent No. 3 on 13.07.1999, received by the office of respondents on 13.07.1999 (annexure-3). No action was taken by the respondents on the application of the mother, then again an application was moved on 28.08.2001 for compassionate appointment but nothing was done on this application except giving frivolous assurance of deciding the matter expeditiously. The applicant was required subsequently to submit the documents. An order was sent by respondent No. 3 on 23.08.2006 that case of the applicant for compassionate appointment cannot be processed further, Annexure-3 is the copy of the order. It is alleged by the applicant that the same is non-speaking order, no reason has been mentioned in the order of rejection of case of the applicant. The respondents clearly changed their stand from the earlier order.

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The respondents rejected the case of the applicant on the ground of delay. It has also been stated that case of the applicant is not deserving one in order to give compassionate appointment. It is due to the fault of the respondents that the applicant's family is suffering financially. As the respondents have done nothing hence the O.A.

3. The respondents contested the case, and filed the Counter Affidavit, and denied from the allegations made in the O.A. It has further been alleged that the concept for granting compassionate appointment is to give financial assistance to the family, and the family can be relieved from the financial destitution. It is stated that father of the applicant died about 6 years earlier, and the case of the applicant has been considered, and it was rejected as barred by limitation, and the order was passed perfectly in accordance with the rules. The Hon'ble Apex Court in catena of the Judgments held that application of a person is to be considered vis-à-vis other of the same category, and in the present O.A., case of the applicant was considered and his

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case was not found deserving. The Hon'ble Supreme Court held that the compassionate appointment is not a matter of right. Moreover, it has also been laid down by the Hon'ble Supreme Court as well as in the O.M. of DOP&T that compassionate appointment is to be given only against 5% quota vacancies, and the case of the applicant was considered having into account the number of family members, and the terminal benefits paid to the widow, and it was found that case was not deserving one. The Hon'ble Supreme Court also held that compassionate appointment cannot be granted after a lapse of reasonable period as it is not a vested right, which can be exercised at any time in future. It has also been held by the Hon'ble Supreme Court that there can be no reservation of vacancy till a minor attains the age of majority for compassionate appointment. It is claimed that the O.A. lacks merit and is liable to be dismissed.

4. I have heard Mr. Siddhartha Srivastava, Advocate for the applicant and Mr. Tej Prakash, Advocate for the respondents, and perused the entire facts of the case.

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5. It has been argued by learned counsel for the applicant that father of the applicant died in the year 1999, and immediately after death, application was submitted for compassionate appointment through the mother and this application was not considered and hence again an application was submitted. In the year 2006, the order was communicated that the application cannot be processed further. On behalf of the respondents, it has been argued that appointment is to be given under certain guidelines and parameters set by the Hon'ble Supreme Court. In the case of the applicant, his case was considered and the same was not found fit for compassionate appointment. Annexure-3 and annexure-5 are the orders passed by the respondents in connection with application of the applicant for compassionate appointment. On 23.08.2006, the respondents ordered as under: -

" Your case for compassionate appointment for the post of Mazdoor was forwarded to higher HQ for consideration but your case has been returned to this office with the remarks that as per instant policy all cases are to be finalized within 03 years prior to December 2000 as well as cases of 2002 will not be entertained.

Hence, your case for compassionate appointment is not pressed further."

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Subsequently, again an order was passed by the respondents on dated 09.10.2006 in response to the notice of Advocate of the applicant. The details have been about the O.M. issued by the DOP&T in this connection, and it has also been mentioned in the order that case of the applicant was forwarded to the higher authority vide the office letter dated 06.02.2006 but the case was returned to the office by the Headquarters on dated 10.05.2006 for want of certain documents. It has further been ordered: -

.. The applicant has submitted the above documents after lapse 04 months, and his case was further submitted to HQ CWE Bareilly vide this office letter No. 1033/1186/E1A dated 10 Jul 2006. The case of applicant has been included by the board for consideration of compassionate appointment as Mazdoor but rejected not being as case deserving case. The same has been intimated to the applicant vide this office letter dated 23 Aug 2006."

Hence it is evident from perusal of these letters of the respondents that case of the applicant was forwarded to the HQ for consideration but the same was returned for want of certain documents, and when the applicant submitted the documents then again case of the applicant was submitted and his case was considered as per DOP&T instructions.

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The case of the applicant was turned down as the same was not considered deserving.

6. It is a fact that father of the applicant died in the year 1999, and the order was passed in the year 2006. It has been ordered in the earlier order that all the cases are to be finalized within 3 years prior to December 2000 as well as the case of 2000 will not be entertained. The case of the applicant was of the year 1999 and after more than 6 years, case of the applicant was not found satisfactory.

The Hon'ble Apex Court has also held that matter of compassionate appointment is not a vested right, and it cannot be exercised at any point of time. The Hon'ble Supreme Court held in the case of 'Umesh Kumar Nagpal vs. State of Haryana and others reported in (1994) 4 Supreme Court Cases 138' held that compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of

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the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over." Now, father of the applicant died about more than 11 years earlier and it can be said that as it is not vested right hence after a lapse of so many ~~time~~ ^{years &} it will not be proper to give direction to the respondents to consider the case of the applicant for compassionate appointment because it is expected that after a lapse of so many years, the crisis is over. The Hon'ble Supreme Court in this ruling further held that "the whole object of the compassionate appointment is to enable the family to tide over the sudden crisis." Hence the main object of the compassionate appointment is to tide over the family of the financial crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. When the respondents had decided that case of the applicant was not found deserving hence there appears nothing abnormal because after so many years of the death it may be presumed that the family has get rid of the financial crisis.

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7. Learned counsel for the respondents also argued that the compassionate appointment is to be granted against 5% vacancy in a year. It will not be possible now in view of the Judgment of the Hon'ble Supreme Court as well as the instructions issued by the DOP&T that employment is to be given to one family member of every deceased employee, died in harness. It is restricted up to 5% of the vacancy accrued in a particular year. When the applicant is to be given against 5%, then case of the applicant with the deserving person is to be considered comparatively and the employment shall be offered only to a few person, and not to family member of every deceased employee. Under these circumstances, case of the applicant was considered by the respondents but it was found that more deserving persons are available for giving employment and hence case of the applicant was rejected. Learned counsel for the respondents also argued that compassionate appointment cannot be given superseding the entire rules. He further argued that the Court cannot give a direction for appointment to an applicant on compassionate ground. Direction can only be

Summary

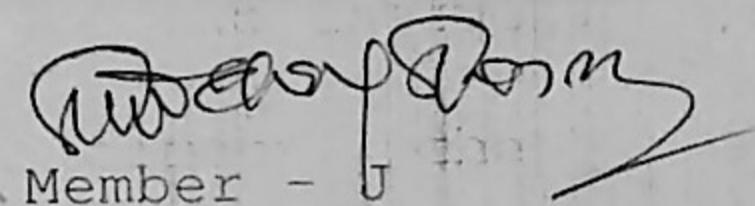
given for consideration to the candidature of the applicant. The Hon'ble Apex Court in the case of 'Life Insurance Corporation of India vs. Asha Ramchhandra Ambekar (Mrs.) and another (1994) 2 Supreme Court Cases 718' has held that straight way direction cannot be given by the Court for appointment, and only direction can be given for consideration. In the present case, I cannot give direction to the respondents to appoint the applicant, and only direction can be given for consideration. After a lapse of more than 11 years of the death of father, it will not be justified to direct the respondents to consider the case of the applicant because after lapse of reasonable time, the family is not expected that it is living in penury condition. The family is surviving for such a long period after the death of sole bread earner. Hence, it appears no justification for giving direction to the respondents to consider the case of the applicant for compassionate appointment.

8. For the reasons stated above, I am of the opinion that case of the applicant is not deserving one to direct the respondents to

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consider his case for compassionate appointment as more than 11 years had already lapsed after the death of the father in the year 1999, and it is expected that family survives for such a long period, and it is not expected that family is still living in penury condition. No useful purpose will be served to direct the respondents to re-consider the case of the applicant. O.A. lacks merit and is liable to be dismissed.

9. O.A. is dismissed. No cost.


Member - J

/M.M/