

ORDER DATED 21st SEPTEMBER 2007

DR. K.B.S. RAJAN, MEMBER(J)

Ld. Counsels for both the sides are present. This is second phase of litigation. In the earlier O.A.185/03 the Tribunal has passed the following order:-

“ Save and except the bald statement of the Respondents that there were non availability of vacancies under 5% quota to give compassionate appointment to the Applicant for a period of 3 years, no details have been provided by the Respondents, neither in the counter nor in the impugned order. The Government servant faced premature retirement (leading to distress condition of the family) during December, 2000 and application seeking compassionate employment was filed during April, 2001. Respondents ought to have looked as to how many vacancies were available in Gr. 'C' / Gr. 'D' category during 2001, 2002, 2003 and even during 2004 and ought to have identified vacancies under 5 % quota to be given the aspirants of compassionate appointment. As against those vacancies, the case of the aspirants should considered and out of them most deserving cases could have been considered for compassionate appointment. No such details have been given/disclosed by the Respondents, neither in their counter nor during hearing. It appears, without giving real consideration to the matter in issue, the rejection order has been passed under Annexure-R/3 dated 19.07.2004 and, therefore, the said impugned order under Annexure-R/3 dated 19.07.2004 is hereby quashed and while doing so, the Respondents are hereby called upon to give full consideration to the grievances of the Applicant by keeping in mind the provisions of the rules/instructions governing the field. Since due consideration was never given to the case of the Applicant, in its proper perspective as yet, his case should receive due consideration as against the future vacancies in Gr.'C' or Gr.'D' commensurate with his educational qualification. Applicant should put up a consolidated representation giving all details before the Respondents/competent authorities by the end of February, 2005 which should receive due consideration of the said authority/Respondent by the end of May, 2005. In the result, this Original Application is disposed of with the aforesaid observations and directions. There shall be no order as to costs.”

The Respondents have considered the case of the Applicant and rejected the case mainly on the following 3 grounds:-

- (a) That there are only limited vacancy to the extent of 5% of the direct recruitment.
- (b) From the facts of the case it is observed that there are not many liabilities.
- (c) The family is receiving pension of Rs.3,000/-.

The Applicant has challenged the aforesaid rejection order on various grounds as contained in Paragraph 5 of the O.A.

The Respondents have contested the O.A. According to them, the reasons given are in order and that there are more deserving cases than the case of the Applicant.

Arguments were heard and documents were perused. The Department seems to have rejected the case without having comparative merits and on the basis of the limited vacancies available under compassionate appoint' quota. It is not exactly known whether the Department has taken into consideration the fact that any such compassionate appointment case shall be considered 3 times. The precise reason for giving consideration of 3 times presumably is on account of the fact there is always a comparison with other cases to ascertain which is more deserving. If not at the first time it could be possible on the 2nd and 3rd time that case coming under the deserving category may be considered for compassionate appointment.

In this case rejection seems to have been on the very first occasion. Therefore, the Respondents should give two more looks to this case.

At present there are relaxations in respect of working out of 5% vacancy of direct recruitment for compassionate appointment cases. Earlier the said 5% is calculated on the basis of optimization of vacancy which comparatively reduced the number of 5% vacancy earmarked for compassionate appointment. After due consideration with the Unions, the Nodal Ministry viz. Ministry of Personnel, Public Grievances & Pension Department of Personnel & Training vide its order dated 14th June, 2006 decided as under:-

"After coming into effect of DOP&T instructions No.2/8/2001-PIC, dated the 15th May, 2001 on optimization of direct recruitment to civilian posts, the direct recruitment would be limited to 1/3rd of the direct recruitment vacancies arising in the year subject to a further ceiling that this does not exceed 1% of the total sanctioned strength of the department. As a result of these instructions, there has been a continuous reduction in the number of vacancies for direct recruitment consequently resulting in availability of very few vacancies or no vacancy under 5% quota for compassionate appointment. Because of this, the various Ministries have been facing difficulty in implementing the Scheme for Compassionate Appointment even in the most deserving cases.

On a demand raised by Staff Side in the Standing Committee of the National Counsel (JCM) for review of the compassionate appointment policy, the matter has been carefully examined and taking into account the fact that the reduction in the number of vacancies for compassionate appointment is being caused due to operation of the orders on optimization of Direct Recruitment vacancies, the following decisions have been taken:-

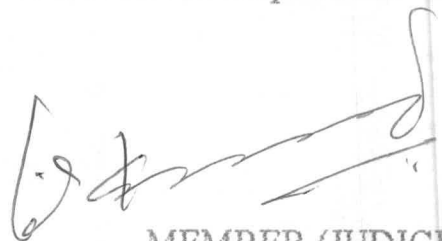
While the existing ceiling of 5% for compassionate appointment may not be modified but the 5% ceiling may be calculated on the basis of total direct recruitment vacancies for Group 'C' and 'D' posts (excluding technical posts) that have arisen in the year. Total vacancies available for making direct recruitment would

be calculated by deducting the vacancies to be filled on the basis of compassionate appointment from the vacancies available for direct recruitment in terms of existing orders on optimization.

The instructions contained in the O.M. No.14014/6/94-Estt.(D) dated 9th October, 1998 as amended from time to time stand modified to the extent mentioned above."

By virtue of the above there is every possibility of the total number of vacancy of the compassionate appointment getting increased. If so, one of the grounds namely on account of limited vacancy the applicant could not be considered for compassionate appointment justifies a review.

In view of the above the O.A. is disposed of with a direction to the Respondent to consider the case of the Applicant taking into account the latest order of DOP&T viz. order dated 14th June, 2006 and ascertain whether this case comes under deserving category for grant of compassionate appointment to the Applicant. If not coming within the deserving category, the reason there for by a speaking order, may be given to the applicant. Again, in such orders the Respondents shall also furnish the details of the other cases wherein compassionate appointment has been granted. Let this drill be completed within three months from the date of receipt of this order. No costs.



MEMBER (JUDICIAL)