

CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH

OA/961/96

Date of Order: 30-7-03

Present:

Hon'ble Mr.B.P.Singh, Administrative Member  
Hon'ble Mr.Nityananda Prusty, Judicial Member

Lakshman Dafadar

Applicant

- Vs. -

Union of India (Defence) & 3 ors.

Respondents

For the applicant : Mr.B.C.Sinha, Counsel

For the respondents : Mr.B.K.Chatterjee, Counsel

ORDER

B.P.Singh, AM

This application has been filed by the applicant against his non-selection for appointment on compassionate ground in place of his father who retired on the ground of health.

The applicant has prayed for the following reliefs :-

Direct the Respondents to absorb the applicant in/a suitable post on compassionate ground forthwith.

2. The fact of the case is that the father of the applicant was declared incapacitated for mental and physical work and, therefore, was subsequently boarded out medically by an Order dt.24-5-94 w.e.f. 4-6-94 as per Annexure A.

Since then the father of the applicant has been staying in his residence with all ailments and financial stringencies. The pension and other retiral benefits were not sufficient for the family consisting of four heads - the applicant, one un-married daughter, one son and his wife. The applicant

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submits that he has two elder brothers. The eldest brother is an employee of Govt. services and the second one is carrying small business. Both of them are married and they are living separately for the last seven years. The first two sons of the deceased employee have not been helping the family in any way and the present applicant who is the youngest son of the incapacitated employee had no employment though he was living with the incapacitated father, mother and the unmarried sister. Regarding the family condition, the applicant has produced two certificates issued by Chairman, Gobardanga Municipality enclosed as Annexure B and another issued by Local Ex-M.L.A. Mr. Prabir Banerjee enclosed as Annexure C. According to these certificates the financial condition of the applicant is extremely bad and the entire family is living in a very distress condition. Subsequently a combined mass petition was made by the residents of the village stating the financial position of the family etc. which is enclosed as Annexure G. The father of the applicant made representation for employment of the applicant and ultimately he was informed by Order dt.8-3-96 enclosed as Annexure F, by which his request for appointment of the applicant was rejected. Aggrieved with the said action of the respondent authorities, the applicant has filed this OA and for the reliefs stated above.

3. Mr.B.C.Sinha, ld. Counsel appears for the applicant. Mr.B.K.Chatterjee, ld. Counsel appears for the respondents. We have heard ld. Counsels for both sides. Reply has been filed. No rejoinder has been filed in this case.

4. Ld. Counsel for the applicant submitted that the

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father of the applicant retired by the Order dt. 24-5-94 with effect from 4-6-94. He made representation for appointment of his youngest son to the respondent authorities which was duly considered by the respondent authorities but, rejected. The family of the applicant was in indigent condition as would be clear from Annexures B, C and G. The case of the applicant is covered by the departmental guidelines in this respect and, therefore, should have been considered accordingly for appointment of his son.

5. Ld. Counsel for the applicant further drew our attention to the case decided by the Hon'ble High Court which is reported in Administrative Total Judgements 2003(1) page 492 Ashok Kumar Vs. State of Haryana. Ld. Counsel submitted that in the said case the Hon'ble High Court has held the claim of the petitioner for his appointment on exgratia basis because of the death of his mother Smt. Pushpa Devi and if the petitioner is found eligible for appointment in accordance with policy dt. September 15, 2000 then he would be offered an appointment as per his entitlement. He has further submitted that the income of his elder brother who is living separately and maintaining his own family, cannot be legally clubbed with the family income of the petitioner. In this case the two elder brothers of the applicant were already employed - one is in Govt. service and the second one is doing business and are already separated from the father. The respondent authorities have rejected the claim of the applicant on the ground that the two elder brothers of the applicant were in employment and, therefore, the decision of the respondent authorities should be quashed.

6. Ld. Counsel for the respondents submits that father of

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the applicant was retired w.e.f. 4-6-94 on medical ground. He died after retirement on 8-8-99. Ld. Counsel submits that the father of the applicant made representation first in 1994 for appointment of his son on compassionate ground. His case was considered by the respondent authorities and rejected on the ground that the same does not come under the scheme of compassionate appointment when one of his son was in Govt. Service. The said communication rejecting the claim of the applicant dt. 3-5-95 is enclosed as Annexure R/1 to the reply.

6.1. Ld. Counsel for the respondents further submitted that after this rejection, the father of the applicant made further representation for re-consideration of his prayer for appointment of his youngest son on compassionate ground. The case was also considered and was rejected on the following grounds which are quoted as under from the communication dt. 8-3-96 :-

" The scheme of compassionate appointment for the son/daughter of deceased/MBO employee is open to those families where there is no earning member in the family. Since the eldest son of Shri Tarapada Dafadar is already in Government service and the second son is also doing business the request for employment of third son on compassionate ground could not be accepted."

Ld. Counsel for the respondents submits that reasons for rejection has been clearly stated in the said reply and, therefore, the contention of the Ld. Counsel for the applicant that no reason for rejection has been intimated is not factually correct.

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6.2 Ld. Counsel for the respondents further submitted that the case of compassionate appointment of the applicant on the request of his father was considered twice and both the time the same was rejected and grounds for such rejection was stated in the said order and both the orders were communicated to the father of the applicant and, therefore, the submission of the Ld. <sup>counsel</sup> ~~Court~~ that the reasons for rejecting were not intimated is not correct. Since the reasons for rejection are reflected in the said communication, it cannot be said that the order is not a speaking order.

6.3 Ld. Counsel has further submitted that the income of the brothers was not accounted towards the financial position of the applicant and reasons for rejection of the claim of the applicant for compassionate appointment was on the ground that according to the guideline of the department the case was not covered as the two brothers of the applicant were already gainfully employed. In view of the above submission ld. Counsel submitted that the case cited by the ld. Counsel for the applicant reported in ATJ page 492 Ashok Kumar vs. State of Haryana is not applicable in the present case. Ld. Counsel for the respondents submitted that the facts of this case and the case reported in ATJ 2003(1) page 492, as stated above, are altogether different and, therefore, the present case does not appear to be covered by the citation.

6.4 Ld. Counsel for the respondents further submitted that the representation of the father of the applicant was considered by the respondent authorities and communicated to him as would be clear from annexure R/1 to the reply and annexure 'F' to the O.A. The 1st one was communicated on 3.5.95 and the

2nd one was communicated on 8.1.96. The father of the applicant was very much alive when the subsequent communication was communicated to him. If he was aggrieved with the said order, he should have approached the Tribunal against the same but, during his life time, the father of the applicant did not challenge the said order before this Tribunal. The father of the applicant died on 8.8.99. ~~The~~ present application was filed by the applicant on 8.8.96 during the life time of the father of the applicant. If the father was aggrieved he should have filed the same. The father of the applicant survived thereafter for about 3 years. Ld. Counsel for the respondents submits that on this ground alone, the application is not maintainable.

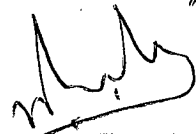
7. In view of the above the undisputed position is that the father of the applicant was retired in 1994 on health ground and after his retirement he made one application for employment of his youngest son in 1994 which was duly considered by the respondent authorities and rejected and the order was communicated to the applicant's father vide Order dt.3-5-95, (Annexure R/1 to the reply). The father of the applicant made further representation against the said rejection order which was again considered by the respondent authorities and final order was communicated by the Order dt.8-3-96 enclosed as annexure 'F' to the O.A. by which again the prayer was rejected and the said order listed the reasons for rejection. The present O.A. has been filed on 8-8-96 by the applicant who is the youngest son of the retired employee


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who died after retirement on 8.8.99. The present applicant was never the applicant before the respondent authorities for compassionate appointment in strict sense. His father has made application for his appointment both the times. The orders of rejection was communicated to the father of the applicant. If the father of the applicant was aggrieved with the said order he could have approached the Tribunal against the same. He never approached against the earlier or subsequent orders though he received the last orders ~~some time in~~ 1996 and he died in 1999. In other words, he died after about 3 years 5 months of receipt of the last orders of rejection. The application is not thus maintainable on this ground alone. So far as merit of the case is concerned, we do not find any merit as the case has been considered by the respondent authorities and they have listed the reasons for rejection and during his life time the father of the applicant has not challenged the said order. Therefore, he has accepted the said order. We do not find any justification to interfere in the said order dt.3-5-95 annexure R/1 and order dt.8-3-96 annexure 'F' to the O.A. on merit even.

8. Accordingly we do not find any merit in this case and the application is dismissed with no order as to costs.

  
Nityananda Prusty,  
Judicial Member

  
B.P. Singh,  
Administrative Member.