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CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH; JODHPUR

Original Application No. 44/2003

Date of Decision: 09.07.2004

Hon'ble Mr. J.K. Kaushik, Judicial Member.

Smt. Tanam, widow of Shri Veera Swami aged 39 years Plot No. 2, Sarda Park, Civil Airport, Jodhpur. Shri Veeraswami mazdoor working under the Garrison Engineer, Airforce, Jodhpur.

: Applicant.

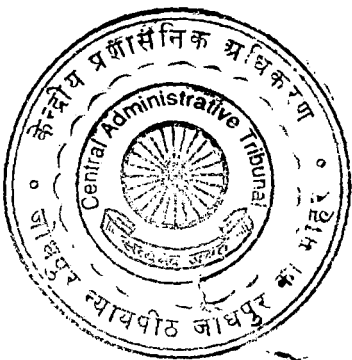
Rep. By Mr. Vijay Mehta: Counsel for the applicant.

Versus

1. Union of India through the Secretary to the Government Ministry of Defence, Raksha Bhawan, New Delhi.
2. Chief Engineer (Air Force) Camp Hanuman, Ahemedabad.
3. Commander Works Engineer, MES, Air Force, Jodhpur.

: Respondents.

Rep. By Mr. Vinit Mathur: Counsel for the respondents.



ORDER

Mr. J.K. Kaushik, Judicial Member.

Smt. Tanam has filed this O.A assailing the order dated 27.02.2002 Annex. A.1 and has prayed for setting aside the same with a direction to the respondents to give her appointment on compassionate grounds forthwith.

2. The abridged facts considered material for resolving the controversy involved in this case are that Smt. Tanam is the

widow of Shri Veeraswamy. Shri Veeraswamy was employed on the post of Mazdoor in the office of Garrison Engineers, Jodhpur and died while in service on 25.04.99, leaving the family in harness and in penury, and also without any means of livelihood. The deceased Government servant was survived by his widow, i.e. the applicant, two minor sons and one minor daughter. The applicant received terminal benefits to the tune of Rs. 1,20,049/- and she is getting a family pension to the tune of Rs. 1600/-+ dearness relief. The terminal benefits were released after two years after the death of Mr. Veeraswamy. The applicant also remains ill and has to incur expenditure on her treatment. She belongs to S.C community.

3. The further facts of the case are that the applicant has filed a representation on 07.05.99, for grant of appointment on compassionate grounds to her but the same has been turned down on the ground that her case does not deserve employment assistance. Certain information regarding the constitution of the Board of officers for recommending candidates for appointment on compassionate grounds etc have been enunciated. The O.A has been filed on many ground mentioned in para 5 and its sub paras.

4. The respondents have filed a detailed reply and have averred that the case of the applicant was considered by the competent authority and since more hardship cases were pending, her case came to be rejected due to less number of vacancies and a speaking order to this effect has been passed. It has also been averred that the matter was taken up for relaxation of the period to three years instead of one year for

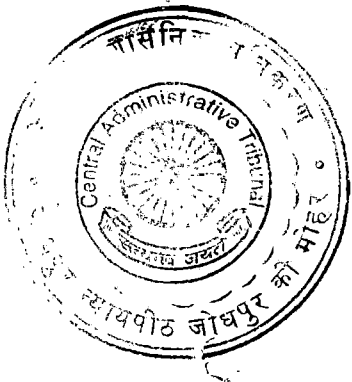


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consideration of the cases on compassionate grounds. Further it has been averred that there were number of applications were pending consideration and therefore the cut off date as July first, 1999 was fixed for consideration for the first quarter ending June 2000. As the applicant's case was prior to June 1999, the Board of Officers could not approve the same. The grounds have been generally denied.

5. I have heard the learned counsel for the parties at a considerable length and have also perused the pleadings and records of this case as well as the selection Board proceedings, which has been made available by the learned counsel for the respondents at the time of arguments.

6. The learned counsel for the applicant while reiterating the facts and grounds mentioned in the O.A has mentioned that the applicant has got 84 marks as per the merit position and her name was placed at Sl. No. 7 whereas one Shri Maheswari who has secured 65 marks and placed at Sl. No. 18 of the selection panel has been recommended for appointment. In this way the case of the applicant has been neglected and she has been visited with hostile discrimination. He has further submitted that the case of the applicant has been rejected through a stereotype order and the reasons of the rejection indicated in the rejection letter are quite different from the reasons, which are indicated by the officers of Screening Committee and the Government, as a model employer cannot be permitted to practice such arbitrariness.



7. On the other hand the learned counsel for the respondents has also reiterated the facts and statements of their defence as out in the reply. It has been stressed that there were number of persons waiting for compassionate appointment and keeping in view the vacancy position and the cut off date was fixed as 01.07.99 and the cases prior to that date were ordered to be kept out of consideration zone. Incidentally the case of the applicant also fall under class of persons who were kept out of consideration zone on the ground that her husband died prior to 30.06.99. i.e. the applicant's husband died on 25.04.99. Therefore in the instant case there has been no discrimination practiced in the case of the applicant and similar treatment has been given to all the similarly situated persons.



8. The learned counsel for the respondents was specifically confronted with a query as to what was the reason for fixing a such cut off date and whether such cut off date could meet the twin test of equality clause relating to the classification i.e. as to where there was any intelligible differentia for such classification or whether there was any nexus of the same with the object sought to be achieved. The learned counsel for the respondents strived hard to persuade me on the basis of defence taken by the respondents in their reply.

9. I have given my anxious thought to the controversy involved in this case. As far as the factual aspect of the matter is concerned there is absolutely no quarrel. It is a fact that a

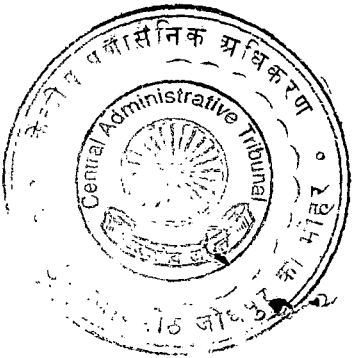
person who has secured 65 marks has been recommended for appointment on compassionate grounds. It is also a fact that the applicant has got 84 marks in the selection and she was at a much higher position in the merit list. The only question which requires my consideration is as to whether the providing of a cut off date i.e. 01.07.99 could be said to be justified. The husband of the applicant died on 25.04.99. As per the policy in vogue, dependent member of a deceased Government servant can be considered for appointment on compassionate grounds against the vacancy 5% of the direct recruit quota during the one year after the death of the Government servant. This one year period has been subsequently modified as 3 years as per OM No.14014/19/2002-Estt (D) dated 05.05.2003, issued by the Department of Personnel and Training. I do not find anything on the record that any order to the effect that the cut off date shall be 01.07.99 i.e. the cases for compassionate appointment would be considered if the death has occurred after that date. I am also constrained to observe that full particulars of such order have not been indicated and I do not find any reasonableness in fixing the said date. The said cut off date has been indicated in Col. 16 of the merit chart. Further the genesis of the cut off date is not forth coming. I also failed to understand as what is the object for providing such a cut off date. It is also very strange to know from the facts that the case of only 19 persons have been considered for compassionate appointment the said list includes only 5 persons whose case falls before the cut off date including that of Shri Maheswari and the remaining 15 cases fall after the cut off date. Therefore it is difficult to accept



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the version of the respondents that number of persons is waiting for compassionate appointment.

10. I find from the reply of the respondents that there was some order dated 03.12.99, wherein the time of one year was given for making compassionate appointment and the cases beyond 01.07.99 were only to be considered for making appointment for the first quarter ending June 2000 for the vacancies occurred for the quarter vacancies occurred between 1st April to 30th June 2000. The case of the applicant was not considered since her case falls prior to June 1999. This stand is quite contrary to the facts narrated in the comparative chart prepared by the screening Committee and the remarks given therein as "cut off date for death of deceased taken after 01.07.99 hence not considered". If this was the reason for rejection of the claim it is based on wrong facts since the date of death of applicant's husband was not after 01.07.99 but prior to that date i.e. on 25.04.99. In any case I am not impressed with the contrary statement made on behalf of the respondents and in my considered opinion no such cut off date can be introduced, since it goes contrary to the main instructions/ scheme framed by the DOPT. Therefore the action of the authorities is not only contrary to the rules but also unjust and also offends the fundamental rights of the applicant enshrined under Art. 14 and 16 of the Constitution of India and the impugned order cannot therefore be sustained on any count.



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11. As far as the impropriety of Annex. A1 is concerned, a mere perusal of the same reveals that it is a mechanical order and all possible grounds for rejection of a case for compassionate appointment have been incorporated. Precisely, the actual reasons for the rejection of the candidature of the applicant are not reflected in the impugned order. The actual reason for rejection is that the death of the applicant's husband took place prior to July 1999 as per pleading and after 01.07.99 as per reasons reflected in chart and Shri Maheswari's case has been recommended on the pretext that his father died on 19.03.2000. In view of this the action of the respondents cannot be sustained and it does not stand to the scrutiny of law. In normal cases, this Tribunal cannot direct for making appointment on compassionate grounds. But in the instant case, a person lower in merit position had already been recommended for appointment on compassionate grounds and in this view of the matter while granting the relief this factor shall be taken care of.



12. In the result, the O.A has ample merits and the same is allowed. The impugned order dated 27.06.2002 is hereby quashed. The respondents are directed to proceed with giving her offer of appointment on a suitable post within a period of three months from the date of receipt of a copy of this order. No costs.

J.K. Kaushik
(J.K.Kaushik)
Judicial Member.