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CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH; JODHPUR

Original Application No. 84/2003

Date of Decision: 09.07.2004

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

Anand Prakash, S/o Shri Bhallal Ram Bheel, aged 26 years, Bheel Basti, Nagori Gate, Jodhpur. Bhalla Ram Son of Shri Jagga Ram Ex- Mazdoor in the office of Garrison Engineer, MES, Air Force, 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, Ahmedabad.
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.

Shri Anand Prakash has filed this O.A assailing the order dated 26.3.2003 Annex. A.1 and has prayed for setting aside the same with a direction to the respondents to give him appointment on compassionate grounds forthwith.





2. The abridged facts considered material for resolving the controversy involved in this case are that applicant is the son of Shri Bhalla Ram. Shri Bhalla Ram was employed on the post of Mazdoor in the office of Garrison Engineers, Jodhpur and died while in service on 06.11.99, leaving the family in harness and in penury, and also without any means of livelihood. His son i.e. the applicant, three daughters survived the deceased Government servant. All the daughters except the eldest one are minor and unmarried. The applicant received terminal benefits to the tune of Rs. 67798/- and he was getting family pension, which has also been stopped on the ground of attaining 25 years of age. The family does not possess any immovable property.



3. The further facts of the case are that the applicant immediately applied on dated 20.11.99 for appointment on compassionate grounds to the competent authority. He was asked to fulfil certain formalities and furnish the additional informations vide communications dated 10.12.99, 08.08.2000 and 5.7.2001, which he did well in time. His case came to be rejected vide impugned order dated 26.3.2003 (A/1) and it has been mentioned that he does not deserved employment assistance. The Original Application has been filed on diverse grounds 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. The applicant did not submit the requisite

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document in time and the complete documents were submitted only by May 2001 and that too on insistence by the respondents. Therefore the application for seeking compassionate appointment has been taken as made in May 2001. Further it has been averred that the case of the applicant was duly considered and it has been rejected. There is only right to consideration and one has no right as such for appointment. The death of Government has taken place on dated 6.11.99 but the applicant applied for appointment only on dated May, 2001 i.e. after a lapse of one year from the date of death. The time limit for making the application for compassionate appointment is only one year. Since the applicant applied at belated stage, he is not entitled for consideration for such appointment. Further, the family has survived for a long time and must have got some means of livelihood as per the presumption enunciated in the policy in vogue.



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. He has contended that as per the records made available by the respondents the applicant has got 84 marks as per the merit position and his name was placed at Sl. No. 4 whereas one Shri Mahender s/o

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late Prahalad who has secured 47 marks and placed at Sl. No. 9 of the selection panel, has been recommended for appointment. In this way the case of the applicant has been neglected and he 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 set out in the reply. It has been stressed that the applicant did not apply for compassionate appointment within a period of one year from the date of death of the government servant as per the rules in force and that has been one of the prime reason for rejection of the case of applicant. The cases of all such persons were rejected and therefore no discrimination has been practiced in the case of the applicant; rather similar treatment has been given to all the similarly situated persons. The Original Application deserves to be dismissed.

8. The learned counsel for the respondents was specifically confronted with a query as to whether there was any specific provision under the rules or instructions that one cannot apply for compassionate appointment and the application submitted beyond one year of the date of death cannot be considered at



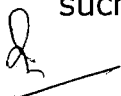
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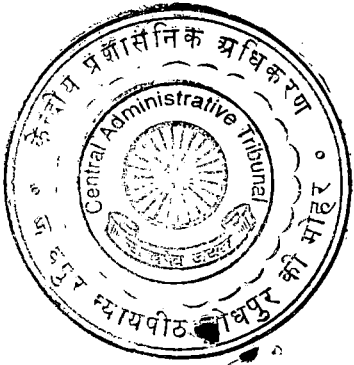
all. The learned counsel contended that as per para 5 to the Annexure to the scheme of compassionate appointment, such cases are to be to be considered against 5 % of the direct recruitment quota arising during one year from the date of death and that infers the preposition that no application for such appointment is to be considered in case filed beyond one year of death.

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. I find from the records that a person named Shri Mahender who has secured 47 marks has been recommended for appointment on compassionate grounds. On the other hand the applicant has secured 84 marks which is the second highest marks in the in the selection. Firstly, it is a fact that the applicant has applied for compassionate ground well in time and the records show that the respondents have been asking him to submit additional information/document which admittedly submitted immediately, thus it is wrong to say that there was any delay on the part of the applicant in applying for appointment on compassionate grounds.

10. The only question, which requires my consideration, is as to whether merely one who has applied for compassionate ground appointment, after a year of the death of government servant, the case can be thrown. Firstly, in the case before me, such reason has not been indicated in the impugned order.



Secondly, there is no rule to this effect. 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 am not impressed with the submissions of the learned counsel for the applicant that the application itself could not be considered in case filed after one year of the death. The bare perusal of the policy would reveal that no specific time limit has been provided for filing the applications. The age of the dependent family member is relevant at the time of death of the Government servant and the applicant was below the age of 25 years at the time of the death of his father. It is not the case of the respondents that no vacancy was available against the particular quota for the year 2000 and one year thereafter of the date of death as per policy in vogue. Therefore the action of the authorities is not only contrary to the rules but also unjust and offends the fundamental rights of the applicant enshrined under Art. 14 and 16 of the Constitution of India and the impugned order, therefore, cannot be sustained on any count.



11. As far as the impropriety of Annex. A/1 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,

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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 applicant applied after one year from the date of death of his father, which has been indicated in the reply as well as in the comparative chart prepared by the screening committee. But as noticed above different reasons have been adduced in the impugned order. 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. Before parting with this case, I want to give a word of caution to the respondents that the case of applicant ought to have/ has been considered on the basis of the very application he initially submitted and there is no rule for applying any fixation and treating the same as of the date when the formalities have been completed. The respondents are expected to give a fair treatment in such matter so as to develop the public confidence in their working and should not resort to *Such* adventure just to defeat genuine claims of the individuals on one pretext or the other.

13. In the result, the O.A has ample merits and the same is allowed. The impugned order dated 26.3.2003 is hereby

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quashed. The respondents are directed to proceed with giving offer of appointment to the applicant on a suitable post (i.e. Mazdoor), as per his merit 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.

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