

**CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR**

ORIGINAL APPLICATION NO: 260/2002

DATE OF ORDER: May 27, 2003

Suraj Bhan, aged about 24 years, S/o late Shri Devi Lal, by caste Gurjar, resident of 40, Shakti Nagar, IInd road, Paota "C" Road, Jodhpur.

...Applicant

VERSUS

- (1) The Union of India through the Secretary,
M/o Defence Raksha Bhawan, New Delhi.
- (2) The Chief Engineer, Headquarter, Southern Command,
Engineer's Branch, Military Engineer Service (MES),
Pune-411 001.
- (3) Engineer in Chief, E-in-C's Branch,
Army Headquarters, Kashmir House,
P.O. New Delhi.
- (4) Chief Engineer, Head Quarter Chief Engineer,
Jaipur Zone, Power House Road, Bani Park, Jaipur.
- (5) Commander Works Engineer (Army) Multan Lines,
Jodhpur - 342 010.
- (6) Garrison Engineer (Army No. 1),
Multan Lines, Jodhpur.

.....Respondents.

Mr. Narpat Singh, counsel for the applicant.

Mr. B.R. Mehta, counsel for the respondents.

CORAM:

HON'BLE MR. J.K. KAUSHIK, JUDICIAL MEMBER




ORDER

Shri Suraj Bhan has filed this Original Application assailing the impugned order dated 21.08.2000 (Annex. A/3), along-with order dated 17.04.2001 (Annex. A/1) and order dated 21.12.2000 (Annex. A/2) and has prayed for a direction to give the applicant appointment on the post of Meter-Reader/Store Keeper and in the alternative on the post of Mazdoor.

2. The material facts leading to filing of this Original Application are that applicant is the son of one Shri Devi Lal. Shri Devi Lal was holding the post of M.T.D. in grade I (Driver) in the office of Garrison Engineer, Army No. 1, Jodhpur. Shri Devi Lal expired on 07.07.1997 in a road accident while in service. Late Shri Devi Lal was surviving with four dependents i.e. Smt. Mathura Devi (Mother), Smt. Tija Devi (Wife), Suraj Bhan (Son) and Rajesh (Son).

3. The further case of the applicant is that applicant had qualification of 12th pass and was eligible for Meter-Reader/Store Keeper. An application was submitted on 02.09.1997 for compassionate appointment. He was asked to submit certain formalities which were duly fulfilled. In the year 1999, he was informed that there was no vacancy for Meter-Reader and the applicant's name were placed in waiting list for the post of Meter-Reader. Another application were moved through his



mother in the month of September 1999 that the family of the deceased Government servant was in dire need of the financial support and therefore the case of the applicant may be considered for the lower post of Mazdoor. An order dated 21.08.2000 was issued vide which it was communicated that the case of the applicant has been approved for the post of Mazdoor but certain relaxation was required in regard to the time. Thereafter, number of representations were made in the matter and the order dated 21.08.2000 has been held to be justified.

4. The Original Application has been filed on multiple grounds mentioned in the Original Application which are not being narrated here and the only grounds which are stressed during the arguments will be examined at appropriate place in the later part of this order.

5. A detailed reply has been filed on behalf of the respondents who have vigorously contested the case. The respondents have maintained their stand that the applicant has submitted an application only in September 1999 and the same was not within the time limit. However, they have asserted that para (b) & (c) of letter dated 21.08.2000 (Annexure A/3) does not pertain to him and is a clerical error which could not be deleted while dispatching. They have further submitted that a speaking order has been passed on 12.10.2002 vide Annexure

R/4.



6. The further defence of the respondents is that the family of the deceased Government servant have received terminal benefit to the tune of Rs. 2,49,216/- and an amount of family pension to the extent of Rs. 2225/- is being paid per month. They have further submitted that the claim of applicant for the post of Meter-Reader was not acceptable and now the second prayer has not been accepted. The compassionate appointment is meant to provide immediate help and each case is to be considered on his merits as such this privilege cannot be treated as right.

7. I have heard Shri Narpat Singh, the learned counsel for the applicant as well as Shri B.R. Mehta, the learned counsel for the respondents and have bestowed my earnest consideration to the pleadings and the records of this case.

8. The learned counsel for the applicant has submitted that the applicant initially requested for grant of appointment on compassionate ground to the post of Meter-Reader/Store Keeper in MES since he possessed the qualification of Higher Secondary and he was fully qualified for the same but he was communicated that he cannot be considered for the post of Meter-Reader. He immediately informed that his case may be considered on the lower post of Mazdoor. The respondents did consider his claim for the post of Mazdoor and his case was also

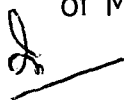


approved vide order dated 21.08.2000. But his case has been turned down only on the pretext that he has not applied within two years of death of his father for compassionate appointment. It is also submitted that said letter makes a mention that a letter was forwarded to the Higher Authorities for relaxation of time but nothing seems to have been done by the respondents. It has further contended that the applicant has applied on 02.09.1997 itself i.e. just within a period of about two months from the date of death and it is totally wrong that there was delay in applying for grant of appointment on compassionate ground. As regards the other two reasons, it is submitted that respondents themselves in their para 4.11 & 4.12 of the reply have categorically submitted that para (b) & (c) of the order did not apply to his case and could not be deleted while dispatching letter due to clerical error. It has also been submitted that there was absolutely no reason to deny the applicant to appointment on compassionate ground at least to the post of Mazdoor and had the respondents considered the matter objectively, he would have got the employment. The further argument of the learned counsel for the applicant is that the order Annexure A/1 & Annexure A/2 are subsequent orders but basic order is order dated 21.08.2000 (Annexure A/3) which cannot be sustained in the eyes of law. On the contrary, the learned counsel for the respondents has reiterated the stand of the respondents as indicated in the reply. It has been submitted that as a matter of fact, the case of the applicant for the post of Mazdoor was



considered only on his subsequent application which was filed in September 1999 and that is the reason that the same was said to be delayed. As regards the para (b) & (c), he admitted the position that the same did not relate to the applicant. He fairly submitted that the case of the applicant has been solely rejected on the ground that his application for appointment was not filed within a period of two years from the date of death. However, he has admitted that the first application for appointment on compassionate ground for the post of Meter-Reader/Store Keeper was of course filed on 02.09.1997 and the same was well within the time. He has urged that the earlier application was disposed of by intimating the applicant that his case could not be considered for appointment to the post of Meter-Reader and since his subsequent application has been considered the question of considering the earlier application for reckoning the time period does not arise. Hence, there is no fault on the part of the respondents.

9. I have considered the rival contentions raised on behalf of the parties. The admitted position of the case is that the applicant at the first instance submitted application on 02.09.1997 just within a period of two months from the date of death and this application was very much in time as per the stand of the respondents. It is also true that the said application was for consideration of compassionate appointment for the post of Meter-Reader/Store Keeper. It is also true that the applicant



was communicated with the decision of the respondents that his case for appointment to the post of Meter-Reader was not acceptable. Thereafter, in September 1999, the applicant applied for consideration of his case against the post of Mazdoor. His case was approved for the post of Mazdoor but he has not been given offer of appointment only for the reason that his application for consideration to the post of Mazdoor was belated i.e. filed after two years of the date of death. Therefore, the primary question for determination by this Tribunal is whether the applicant submitted his application for grant of compassionate appointment within time or it was belated. In case, this Tribunal reaches to the conclusion that the application submitted by him was well within time. The applicant will swim and in case the finding is otherwise he will sink. Another ancillary question would be as to whether appointment to the post of Meter-Reader/Store-Keeper on compassionate ground whether the application initially submitted on 02.09.1997 could be construed to be the application as contemplated with the rules or not.

10. The main objective of the Scheme for consideration of appointment on compassionate ground has been defined in the very Scheme as well in the various pronouncements of the Supreme Court. The Rule of appointments to public service is that they should be on merits and through open invitation. It is the normal route through which one can get into a public

dm

employment. However, as every rule can have exceptions, there are a few exceptions to the said rule also which have been evolved to meet certain contingencies. As per one such exception relief is provided to the bereaved family of a deceased employee by accommodating one of his dependents in a vacancy. The object is to give succour to the family which has been suddenly plunged into penury due to the ultimately death of its sole bread-winner. The Supreme Court has observed time and again that the object of providing such ameliorating relief should not be taken as opening an alternative mode of recruitment to public employment. (**Haryana State Electricity Board v. Hakim Singh**: (1997) 8 SCC 857).

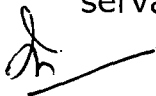
11. In addition to the aforesaid, the appointment on compassionate ground is to be made against lowest posts in non-manual and manual categories and there is no choice or compulsion as regards the post on which one is to be appointed. The Department is required to consider and find out the suitable vacant post for the dependent of the deceased Government servant and this position has been amplified in **Umesh Kumar Nagpal v. State of Haryana**: 1994 (4) SCC 138, where the Supreme Court has taken note of the object underlying the rules providing for appointment on compassionate grounds and has held that the Government or the public authority concerned has to examine the financial condition of the family of the deceased and it is only if it is satisfied, that but for the provision of

dn

employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. In that case of the Supreme Court was considering the question whether appointment on compassionate grounds could be made against posts higher than posts in classes III and IV. It was held that such appointment could only be made against the lowest posts in non-manual and manual categories. It was observed:-

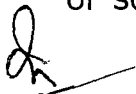
"The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependent of the deceased employee in such posts has a rational nexus with the object sought to be achieved, viz, relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate exceptions, and the change in status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned".

12. Now examining the case of the applicant keeping in view the aforesaid proposition of law, it is no doubt true that the applicant initially did apply for appointment to the post of Meter-Reader perhaps under impression that he was eligible for the same. But unfortunately, the same was not acceptable to the authorities and his case was considered for the lower post of Mazdoor which came to be approved also. The conjoint consideration of the instructions and the aforesaid ruling makes it evident that which post one should be appointed is the prerogative of the employer of the deceased Government servant and no choice rests with the dependent family member.



There was no restriction on the part of the respondents to consider the case of applicant only for the post of Meter-Reader and if there was vacancy for the post of Mazdoor (which was) there, they could have very well considered his case for the post of Mazdoor itself, and submission of fresh application was not at all required since his earlier application would have been sufficient. Merely, because the applicant has applied and requested for consideration of his appointment on the lower post of Mazdoor the same does not become a delayed case of applying for appointment on compassionate grounds. In this view of the matter, the contention of the applicant that applicant applied for consideration of his case well in time is well founded and I am unimpressed with the submissions of the learned counsel for the respondents and also unable to subscribe to his views that since the applicant submitted second application for consideration for the post of Mazdoor only in September 1999, his case was beyond the period of two years.

13. Now looking the matter from another angle, as would be obvious from the aforesaid discussion that the applicant could have no choice as regards the post to which he could be considered for appointment or found suitable, once the department has considered his case for grant of appointment on compassionate ground to the post of Mazdoor, he cannot insist or claim for giving him appointment on the post of Meter-Reader or some other post requiring qualification which he possessed in



view of the clear verdict of the Supreme Court in **Umesh Kumar Nagpal's** case (*supra*). In this view of the matter, the claim of the applicant for grant of appointment on compassionate ground to the post of Mazdoor must sustain.

14. The upshot of the aforesaid discussion is that the Original Application deserves to be partly allowed and the same is so allowed. The conditions of para 1 (a), (b) & (c) and para 2 of order dated 21st August 2000 (Annexure A/3), order dated 17th April 2001 (Annexure A/1) and order dated 21st December 2000 (Annexure A/2) are hereby quashed. The respondents are directed to proceed with issue of offer of appointment to the applicant to the post of Mazdoor in pursuance with selection/approval vide letter dated 21st August 2000 (Annexure A/3) ignoring condition mentioned in para 1 (a), (b) & (c) and para 2, within a period of three months from the date of receipt of a copy of this order. However, in the facts and circumstances of the case there shall be no order as to costs.


(J.K. KAUSHIK)
JUDICIAL MEMBER

Kumawat

