

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No. 301/2005
Date of Order: 31.10.2006

HON'BLE MR. J K KAUSHIK, JUDICIAL MEMBER

Nandlal Deshantri S/o Late Shri Jethanand Ji, aged 31 years, resident of – Jathliyon Ka Bas, Hamirpura, District – Barmer (Raj.).

...Applicant

VERSUS

1. Union of India through Secretary, Ministry of Urban Development, Nirman Bhawan, New Delhi.
2. Chief Engineer, North Achal-III, Central Public Works Department (C.P.W.D.), Nirman Bhawan, Sector-10, Vidhyadhar Nagar, Jaipur (Raj.).
3. Executive Engineer, Central Public Works Department (C.P.W.D.), H.Q., N. Z.-III, Jaipur (Raj.).

...Respondents.

Mr. Himanshu Shrimali, counsel for applicant.

Mr. M. Godara, proxy counsel for Mr. Vinit Mathur, counsel for respondents.

ORDER

Shri Nandlal Deshantri has undertaken second journey to this Bench of the Tribunal in the matter of his appointment on compassionate grounds. He has, inter alia, challenged the order dated 11.04.2005 (Annexure A/3) and has sought for setting aside the same with further direction to re-consider his case of appointment on compassionate grounds.

2. This case was heard in piecemeal at number of occasions and the arguments were finally concluded on 13.10.2006. I have heard elaborate arguments advanced at the bar by both the learned counsel for the contesting parties and have carefully perused the pleadings as well as records of this case. The minutes of the Central Relaxation Committee were also produced for perusal.

3. The factual matrix of this case is that applicant's father late Shri Jethanand was a class-IV employee in the office of Central Public Works Department, Jodhpur. Shri Jethanand expired on 28.06.2001 while in service due to heart attack. The deceased Government servant was survived with three sons and none of them was employed. The applicant had previously filed an Original Application No. 156/2003 which came to be disposed of vide order dated 08.12.2004 whereby the respondents were directed to consider the case of the applicant afresh in accordance with the modified instructions issued vide OM dated 05.05.2003 within a period of three months. The respondents passed an order dated 11.04.2005 (Annexure A/3) in implementation of the said decision and the applicant's case was turned down on the ground that there is a waiting list already existing for such appointment and due to the constraint of vacancies, he could not be offered appointment within a period of one year. The Original Application has been filed on numerous grounds mentioned in para 5 and its sub-paras.

4. The respondents have contested the case and have filed a detailed reply to the Original Application. It has been averred that the case of the applicant was considered in the light of OM dated 5th May 2003 but it was not found most indigent or fit for recommendation. The reply further contains the details of the terminal benefits granted to the legal heirs of the deceased Government servant. The grounds raised in the Original Application have been generally denied. The case of the applicant has been rejected for the reason of non-availability of vacancy under direct recruitment quota and also because of a long waiting list which was also in existence. A short rejoinder has also been filed on behalf of the applicant refuting the averments made in the reply to the Original Application and also reiterating the facts and grounds raised in the Original Application.

1/12

5. Both the learned counsel representing the parties have reiterated the facts and grounds mentioned in their respective pleadings as noticed above. The learned counsel for the applicant has submitted that the case of the applicant has not been dealt with in accordance with the Scheme in force and to his case has not been considered in accordance with the directions of this Bench of the Tribunal. The same has been abruptly rejected. He has also submitted that the Scheme also provides that in case the sufficient vacancies are not available in the particular office, the persons in the waiting list for appointment on compassionate grounds could also be considered for appointment in other Ministry/Department/Office of Government of India. Learned counsel for the respondents has submitted that the orders of this Bench of the Tribunal have been duly complied with and due to the scarcity of vacancy, the applicant could not be offered the appointment.

6. I have considered the rival contentions put forth on behalf of both the parties. This petition is almost an execution petition and the vital question involved in this case is as to whether the case of the applicant has been considered in view of modified instructions as per the OM dated 05.05.2003 or not. The said OM prescribes that the deserving cases for appointment on compassionate grounds may be considered against the vacancies of three consecutive years. In the instant case, death of the deceased Government servant took place on 28.06.2001 and the modified instructions came to be issued on 05.05.2003, therefore, his case could be considered against the vacancies for the year 2003-2004 in addition to the one time already considered earlier.

7. In the instant case, the case was put up to the Committee but the same has been rejected on the ground that there existed a waiting list of 122 candidates above the applicant awaiting appointments and that is the precisely reason that his candidature came to be rejected. His case

2

5/13

had also been considered once against the vacancies during the first year of the death of his father. To appreciate the issue, I take judicial notice to the OM dated 22.6.2001 which is taken into account by the Central Relaxation Committee. The contents of para 1 of the same are reproduced as under:

"G.I., Dept. of Per. & Trg., O.M. No. 14014/18/2000-Estt. (D), dated 22-6-2001.

Compassionate Appointment percentage is limited to availability of vacancy. The undersigned is directed to refer to Paragraph 7 (f) of the Department of Personnel and Training (DOP&T), Office Memorandum (O.M.) No. 14014/6/94-Estt.(D), dated 9-10-1998 read with O.M. No. 14014/23/99-Estt.(D), dated 3-12-1999 (Sl. Nos. 229 and 235 of Swamy's Annual, 1998 and 1999 respectively) on the above subject and to say that the matter has been further examined. Generally, it is seen that in view of the 5% ceiling prescribed for compassionate appointment under the extant instructions, there are not enough vacancies to accommodate even requests for compassionate appointment from family members of Government servants belonging to the same Ministry/Department/Office. Consequently, there are no spare vacancies left to accommodate requests from other Ministries/Departments/Offices for such appointments. Therefore, while no useful purpose is being served by taking up the matter with other Ministries/Departments/Offices of the Government of India to consider such other cases received by them from other Ministries/Departments/Offices for compassionate appointment, it on the other hand, only gives false hope to the applicants as grant of such appointment by other Ministries, etc., cannot be guaranteed. It has, therefore, been decided that in future the Committee prescribed in Paragraph 12 of Office Memorandum, dated 9-10-1998 for considering a request for appointment on compassionate grounds should take into account the position regarding availability of vacancy for such appointment and it should limit its recommendation to appointment on compassionate grounds only in a really deserving case and only if vacancy meant for appointment on compassionate grounds will be available within a year in the concerned administrative Ministry/Department/Office, that too within the ceiling of 5% of vacancies falling under DR quota in any Group 'C' or 'D' post prescribed in this regard in Para. 7 (b) of Office Memorandum, dated 9-10-1998 referred to above."

The bare perusal of the aforesaid instructions implies that the concept of maintaining the waiting list is given a go-by and the candidate to be recommended for appointment should not exceed the vacancies meant against compassionate appointment quota i.e. 5% of DR for the year. The same also gives a complete answer to the plea of the learned counsel for the applicant that case of applicant ought to have been referred to other departments/Ministries as per scheme in vogue and such requirement has been dispensed with.

8. It is difficult to understand as to once the number of candidates to be recommended were supposed to be equal to that of vacancies available, where is the question of maintaining any waiting list. Further, the

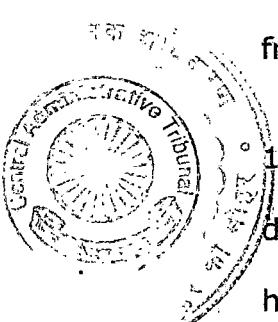
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TJM

question of giving any appointment from such a non-existing waiting list did not arise. Thus, it is factually wrong that due to pending long waiting list the case of applicant had to be rejected. I have no hesitation in holding that case of the applicant has not been considered against the vacancies for the subsequent year as per the true spirit of OM dated 5.5.2003 and directions of this bench of the Tribunal on dated 8.12.2004 in OA No. 156/2003 supra. Therefore, the action of the respondents shall have to be held as arbitrary and illegal.

9. Before parting with this case, I would enter into a caveat with the respondents that they should take judicial notice of the relevant instructions and deal with such matters with full care and caution and not in a cursory and casual manner as done in the instant case. I hope and trust that they shall be careful in future so as to avoid unpleasant orders from court of law.

10. In the result, this Original Application has ample force and deserves acceptance. The impugned order dated 11.4.2005 (A/3) is hereby quashed and OA stands allowed. The respondents are directed to reconsider the candidature of the applicant for appointment on compassionate grounds in accordance with rules in force and observations made above as expeditiously as possible and in any case not later than three months from today. No costs.


J K KAUSHIK
 (J K KAUSHIK)
 JUDICIAL MEMBER

Kumawat

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