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

Original Application No. 264/2006

Date of order: 30th July 2007

CORAM:

HON'BLE MR. TARSEM LAL, ADMINISTRATIVE MEMBER.

Richard Massey son of late Shri Vinod Kumar Masih, aged 21 years, r/o Pal Link Road, Jodhpur; Shri Vinod Kumar Masih deceased Electrician HS II, in the office of Garrison Engineer (Air Force), Jodhpur.

...Applicant.

Mr. Vijay Mehta, counsel for applicant.

VERSUS

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

...Respondents.

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

ORDER

1. The applicant, Mr. Richard Massey, has filed this Original Application No. 264/2006 asking for the following reliefs:

"That on the basis of facts and grounds mentioned herewith, the applicant prays that order ANN A 1 may kindly be quashed and the respondents may kindly be directed to give appointment on compassionate grounds to the applicant forthwith. Any other order as deemed fit in the facts and circumstances of this case may kindly be also passed and the costs be also awarded to the applicant."

2. The applicant has explained in his Original Application that Shri Vinod Kumar Masih was a permanent employee working on the post of Electrician II in the office of Garrison Engineer

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(AF), Jodhpur. Mr. Masih died while in service on 10.11.2001. He left behind one minor son (applicant) and one minor daughter who is still studying. Both the children are unmarried. The applicant became major on 30.10.2003. The family has liability of education and marriage of the children. The applicant and his sister are living with their maternal grand father. The family has no means to sustain. The family does not own any movable and immovable property.

3. That immediately after the death of his father, the applicant submitted an application on 02.12.2001 for giving him appointment on compassionate grounds. The case of the applicant was turned down vide letter dated 13.02.2003 informing him that the applicant was only 17 years old and was not eligible for appointment and the request could only be considered within one year after the death. The applicant filed an OA before this Hon'ble Tribunal challenging above order. This Hon'ble Tribunal vide its order dated 01.06.2005 passed in OA No. 217/2004 (Annexure A/2) while allowing the OA directed the respondents to consider the case of the applicant.

4. The applicant further filed a contempt petition for implementation of orders dated 01.06.2005. In response to the above, he was informed that the said order dated 01.06.2005 has already been complied with by issuance of order dated 08.11.2005 (Annexure A/1). The respondent No. 2 namely Chief Engineer (AF), MES, Camp Hanuman, Ahmedabad, has rejected the application of the applicant due



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to his low merit and non-availability of vacancies. Orders dated 08.11.2005 stipulated that he has been considered for the post of Mazdoor for which no vacancies are available. The applicant did not apply for the post of Mazdoor. He is educated enough to be appointed on Group 'C' posts. The case of the applicant has not been considered for Group 'C' post.

5. That the respondents have neither informed the applicant about the preparation of mark-sheet nor they have supplied a copy of the same to the applicant. The applicant has pointed out that there is a glaring incorrect information in annexure A/1 which has been taken into consideration. There is no column of liabilities of family. Obviously this aspect of the matter has not been considered while considering the case of the applicant. Thus, the whole process has vitiated.

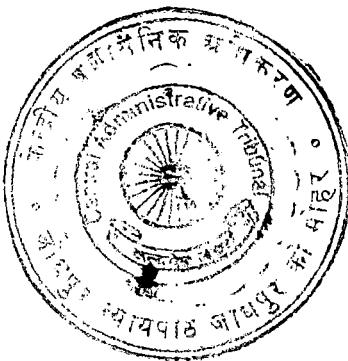
6. The perusal of the Scheme formulated by the DOP&T vide its letter dated 09.10.1998 at annexure A/4 and instructions at annexure A/5 reveals that for giving such appointment, the respondents are required to decide the cases taking into consideration a number of factors. The Scheme requires that the Welfare Officer will meet the member of the family of deceased and assist them in getting appointment on compassionate grounds. The Welfare Officer of the respondents or any other Officer did not visit the family of the deceased to assist the family of the deceased. No objective assessment of the financial condition and social status of the family was made.



7. That the order dated 08.11.2005 (annexure A/1) has only mentioned cut off marks. The marks given to the applicant have incorrectly been assigned. The applicant is entitled to get much more marks than 58. The applicant has not been supplied the details of the proceedings and merit list prepared by the Board of Officers. From the production of the proceedings of the Board of Officers and the merit list, it shall be known as to how the cases were clubbed together and how marks were given to the candidates.

8. It will also be known from the documents as to how many vacancies were available and how many of them were filled in. The applicant has requested that the action of the respondents in passing the order at Annexure A/1 is ex facie illegal and the same may be quashed. Aggrieved by the orders passed by the respondents vide annexure A/1, the applicant has filed this O.A. and prayed the relief as given in para 1 above.

9. On the contrary, the respondents have not agreed to the relief asked for by the applicant and has filed a detailed reply to the O.A. The respondents have explained that the father of the applicant named late Shri V.K. Massey expired on 10.11.2001. As per service record available with the answering respondents, he got married with Smt. Adrina and from their wed-lock, he had two children i.e. the applicant and Nidhi Massey. Thereafter, the deceased and his wife got separated themselves vide court's decree dated 14.11.1995 on the basis of mutual consent. Smt. Adrina had undertaken the



responsibility to look after the children and to attend their needs without any financial support from the deceased. As a result, virtually, the children were not at all dependent on the deceased. Smt. Adrina (Widow) is a State Government employee and working in the Group-C post, therefore, without any financial support from the deceased, she was able to maintain the family consisting of three members. However, after the death of the applicant's father, the terminal benefits were extended to the deceased family and apart from that Smt. Adrina submitted an application for seeking appointment on compassionate ground for her son i.e. the applicant.

10. That on receipt of the application, the case was considered by the competent authority but the same was rejected on the ground that the applicant was below the age of 16 years. On rejection of the same, the applicant filed an original application No. 217/2004 which came to be allowed vide order dated 01.06.2005 with a direction to consider his case.

11. That after receipt of the order from this Hon'ble Tribunal, the case of the applicant was considered by the competent authority covering the quarters commencing from 01.10.2003 to June, 2005 as the marks assigned to the applicant as per the scheme are only 58 which are below the cut off marks of the other candidates whose names were recommended by the Board of Officers, therefore, his case was rejected vide order dated 08.11.2005 on the ground of not falling within the ambit of most indigent and non-availability of the sufficient



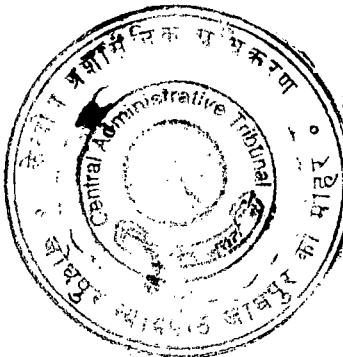
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vacancies. Therefore, this Hon'ble Tribunal would not like to interfere in the lawful order passed by the competent authority.

12. The respondents have explained that applicant's father Shri Vinod Kumar, Elect HS II died on 10 Nov., 2001 while serving under the Garrison Engineer (AF), Jodhpur. The statement by the applicant that "His father died leaving family in harness and in penury and without any means of livelihood is denied being not correct. The applicant's mother Smt. Adrina is legally separated from his father and was divorce granted by Family Court vide decree order dated 14.11.1995 (Annexure R/1). On the basis of mutual consent, as accepted by the Family Court, the applicant's mother had owned the responsibility to look after herself and two children (i.e. the applicant Richard Massey and Miss Nidhi Massey) herself and without any monetary assistance. The applicant's divorced mother is employed as III grade Teacher under the Rajasthan Government drawing moderate payment which is evident from her salary certificate (Annexure R/2) issued by the District Education Authority, Jodhpur. As the applicant's mother had undertaken the responsibility of the well being of the children without any monetary assistance from her Ex-husband.

13. The case of Mr. Richard Massey was considered for appointment on compassionate grounds on attaining the age of 18 years by a duly constituted Board of Officers under the order of the respondent. The case of compassionate



appointment is considered based on marks secured on the basis of liabilities on various aspects such as size of family, number of minor children, unmarried daughter, sources of income, quantum of movable/immovable property, and also subject to availability of vacancy reserved to 5% out of the total vacancy for direct recruitment. As per the norms and the rules in force, candidates, who score higher marks are given the appointments on compassionate grounds. The applicant secured only 58 marks, while minimum cut off marks of highest scoring candidates considered/offered compassionate appointment as under: -

QE Dec. 2003	-	88
QE March 2004	-	82
QE June 2004	-	77
QE Sept 2004	-	75
QE Dec 2004	-	88
QE March 2005	-	There was no vacancy, hence no appointment.
QE June 2005	-	- do -

As regards retiral benefits, all the dues have been paid on production of succession certificate dated 21.02.2003 issued by the District Judge, Jodhpur.

14. As per the judgement dated 01.06.2005 in the case of OA No. 217/2004 filed by the applicant for compassionate appointment, the respondents were directed to consider his case within the stipulated time of limit of 5 years from the date of death of the Government Servant. The respondents accordingly complied with the CAT Jodhpur Bench order by constituting a special Board of Officers. The board duly

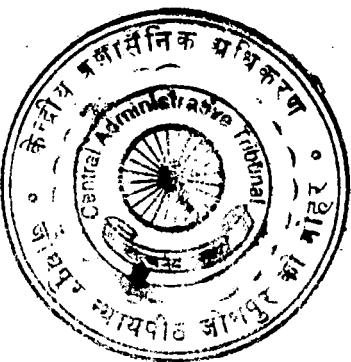


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considered the various aspects of liabilities of the applicant arisen due to death of his father. As the applicant could secure only 58 marks and there were other candidates scored higher marks ranging from 75 to 88.

15. That though the applicant was not at all under the purview of the scheme as he was not the dependent of the deceased, as his mother, who separated herself through court decree including owning the responsibility to take care of the two children, still his case for compassionate appointment was considered by the answering respondents to honor the CAT Jodhpur judgement dated 01.06.2005. His case was considered by the board of officers right from the quarter ending Dec. 2003 (i.e. for the period covering the 3 months of 1.10.2003 to 31.12.2003) during which he attained 18 years. This has been amply indicated in the speaking order dated 08.11.2005 (Annex. A/1). Para 2 (k) of the said order is specific. Further he contended that the decision of rejecting his case assumed to be on the wrongly assigned marks is totally baseless.

16. He also blatantly stated that he had not applied for the post of Mazdoor. He has specifically requested for the post of Mazdoor declaring that he is 8th passed. The certificate/request of the demand applying for the post of Mazdoor furnished by the applicant along his case is produced as Annexure R/3 & 4. He was not qualified for any higher post nor did he demanded for any such post duly supported with



higher education certificate.

17. The selection Committee (duly constituted Board of Officers for this purpose) have minutely drawn the merit list based on the marks scored on various factors as applicable to the applicant so that no injustice or inaccuracy occur. So the applicant is blaming the answering respondents merely on imaginary grounds.

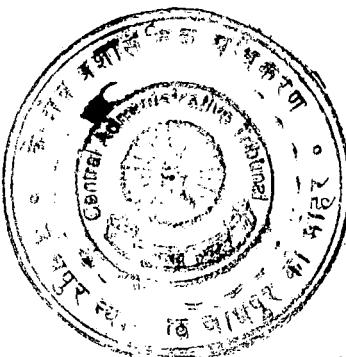
He has further pleaded that the applicant has pointed out that the manner in which mark-sheet has been prepared has neither been indicated nor supplied to him. This argument is not acceptable. As per Scheme, no details are required to be furnished to the applicant. The applicant is informed of the position through the detailed speaking order which has been done vide order dated 08.11.2005 (Annexure A/1).

18. The family members were assisted in getting compassionate appointment and all possible assistance was rendered in preparation of documents, whenever needed.

19. The applicant could score only 58 marks, which was far below that of other candidates, his case had to be rejected and informed him accordingly through the speaking order as per the scheme.

20. In view of the facts and circumstances of the case, none of the grounds raised by the applicant are sustainable in the eyes of law, therefore, the Original Application filed by the applicant deserves to be dismissed with costs.

21. The applicant has filed the rejoinder refuting the defence



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taken by the respondents in their reply to the O.A. and requested that the O.A. may be allowed.

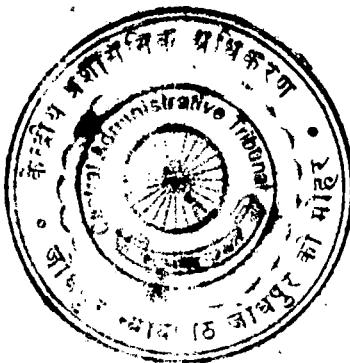
22. Learned counsel for both the parties have been heard and documents perused.

23. Learned counsel for the applicant pleaded that the applicant has been secured 58 marks only on the basis of which his request for compassionate appointment has been rejected. He averred that it is not clear that what factors have been taken into account while awarding 58 marks to the applicant. He requested for production of the documents in the Court on the basis of which he has been awarded 58 marks to ascertain whether or not the marking has been done correctly. He pleaded that the respondents may be directed to produce the board proceedings before the Court. Failure to produce the board proceedings/documents by the respondents may result into allowing the O.A.

24. In support of his arguments, he cited a case of **Vijay Narain Singh vs. Supdt. of Police, Bijnore (U.P.) and others** reported in 1994 Supp (2) Supreme Court Cases 56, wherein it has been provided as under:-

“4. There can be no doubt that the State which is in possession of the entire record was not in a position to show with reference to the record that the factual position was different. The failure of the State Government to produce any record in support of its submission is alone sufficient to reject its submission to this effect.”

25. Learned counsel for the respondents pleaded that this case was rejected earlier and subsequently an O.A. No. 217/2004

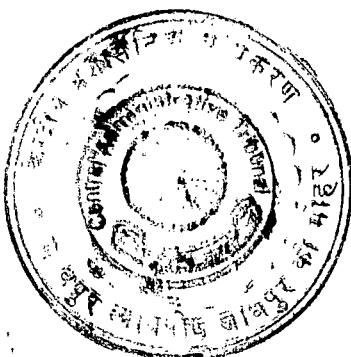


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was filed which was allowed vide order dated 01.06.2005. As directed by this Bench of the Tribunal, this case has been considered. The only question at this stage is whether or not his case has been considered correctly. He pleaded that the applicant does not have any case for production of documents unless he can prove that the case was *prima facie* decided in arbitrary or *mala fide* manner, only then he can ask for production of documents.

26. He further averred that the marks have been allotted according to the laid down criteria as given in Annexure 'C' to the Annexure A/5 scheme for compassionate appointments formulated and circulated by DOP&T vide their letter dated 09.10.1998 as Annexure A/4. As directed by this Bench of the Tribunal, the case of the applicant has been considered against the vacancies during the period of 2003, 2004 and 2005. None of the candidates whose secured lesser marks than the applicant, has been recommended for compassionate appointment. He has not pointed out any errors which were considered in arriving at the score of 58 marks. He, therefore, pleaded that the O.A. filed by the applicant may be dismissed.

27. At this stage, learned counsel for the applicant pleaded that he cannot point out as to what mistakes have been made in arriving at the score given to the applicant unless the documents are produced in the Court. He also pleaded that he has not alleged any *mala fides* whereas he has only asked



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for production of documents in the Court.

28. I have considered this case carefully and find that it is clear from the decree/order passed by the Judge, Family Court, Jodhpur, on 14.11.1995 that the marriage of Mr. Vinod Kumar Massey and Mrs. Adrina was solemnised on 27.12.1984 and they were legally divorced on 14.11.1995. Before their divorce, Mr. Vinod Kumar Massey and Mrs. Adrina had two children. At the time of the divorce, both the children were living with Mrs. Adrina and Court had decided that both of them will be brought up by her and she will not demand any amount for their expenditure from the respondent (ex-husband). There will be no claim by either of the party against each other. It has further been stipulated in the decree that she will not ask for any amount for bringing up the children.

It is clear from the above that at the time of the divorce of the couple and at the time of death of the Government servant, both the children were living and have been brought up by Mrs. Adrina.

29. However, the applicant filed an O.A. No. 217/2004 which was decided on 01.06.2005 wherein the following directions were given: -

"10. In view of what has been said and discussed above, we dispose of this Original Application with a direction to the respondents to consider the case of the applicant for grant of appointment on compassionate grounds afresh on merits against the vacancies which have arisen after the date on which he has attained the age of 18 years but limited to the period of 3 years thereof. The impugned order dated

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13th February 2003 at annexure A/1 stands quashed. This order shall be complied with within a period of three months from the date of receipt of a copy of this order. However, the parties are directed to bear their own costs."

30. In pursuance with the directions given by this Bench of the Tribunal, the case of Mr. Richard Massey has been considered by the respondents, seven times against the vacancies for the year 2003, 2004 and 2005 as per the details given in para 4.2. of the reply. It is seen that all the candidates selected for appointment have scored much higher marks compared to Mr. Richard Massey. It has also been seen that the mother of Mr. Richard Massey, Mrs. Adriana is employed as III grade Teacher under the Rajasthan Government and was drawing a salary of Rs. 7583/- per month as on 01.07.1998, as per details given below:

Basic Pay	-	Rs. 4500/-
DP	-	Rs. 2250/-
DA	-	Rs. 495/-
HRA	-	Rs. 338/-
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Total Rs. 7583/-		

This salary was payable as on 01.07.1998 whereas the same would have been further increased. In addition to the above, family pension of Rs. 1860/- per month is also being paid.

31. The applicant has a right for consideration of case which has already been done by the respondents, seven times. He could not be appointed on compassionate grounds in view of his lower marks.



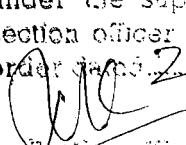
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32. As regards the production of documents in the Court, it is considered that the marks obtained by the applicant are very low compared to the successful candidates, therefore, there is no justification or necessity for calling the documents in the Court.

33. In view of the above discussion, it is clear that Mr. Richard Massey was neither living nor dependent on the deceased Government servant. Both the children were living with their mother and she had willingly taken the responsibility to bring them up without asking for any expenditure from the other party i.e. the deceased Govt. servant. His mother is a State Government Servant and has been getting a salary of Rs. 7583/- per month as on 01.07.1998 which would have been further increased by now. Family pension of Rs. 1860/- per month is also being paid to the family members. It is considered that the condition of the applicant is not indigent. The Original Application is, therefore, dismissed. No order as to costs.

Tarsem Lal
[Tarsem Lal]
Administrative Member

Part II and III destroyed
in my presence on 16/14
under the supervision of
section officer (I) as per
order dated 26/2/19



Section officer (Record)

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