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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH AT JODHPUR**

Original Application No.381 of 2011

with

Misc. Application No.150/2011

Dated this the 24th day of April, 2012

CORAM

HON'BLE MR. B K SINHA, ADMINISTRATIVE MEMBER

Raghuveer Singh aged 20 years, S/o Shri Kushan Singh,
Ex-Chowkidar in the office of the respondent No.2,
Residing at Village Madhopura (Sankda) Dist. Jaisalmer. ...Applicant

(By Advocate Mr. Vijay Mehta)

Vs.

1. Union of India, through the Secretary to the Government of India, Ministry of Defence, Raksha Bhawan, New Delhi.
2. Officer Commanding, 41 (independent) Supply Platoon ASC, Jassai, District. Barmer.
3. Sub Area Commander, Army Sub Area Hdq. Jodhpur.Respondents

(None for the respondents)

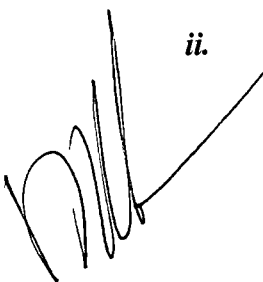
ORDER

The instant OA is not directed against any particular written order but rather against the oral orders of the Officer Commanding, 41(Independent) Supply Platoon, ASC, Jassai, district Barmer. The MA No.150/2011 is also directed against the failure of the respondent organisation to provide appointment on compassionate grounds to the applicant and for condonation of delay accruing in the process.

Relief Sought

2. The applicant has sought the following relief:

- i. *That on the basis of the facts and grounds mentioned herein above the applicant prays that the respondent may kindly be directed to give appointment on compassionate grounds to applicant forthwith.*
- ii. *Any other order as deemed fit in the facts and circumstances of the case may kindly be also passed and the costs also awarded to the applicant.*



Facts of the Case in Brief

3. Admittedly, the deceased employee, father of the applicant, was a Chowkidar employed in 41(Independent) Supply Platoon, ASC, Jassai, district Barmer who died while in service 10.6.91. He had served the Department for 11 years and still had 30 years of service left at the time of his demise. The deceased employee was survived by his widow and 2 sons including the applicant who was 1 year old while his younger brother was only a few months old. The mother of the applicant was granted a monthly family pension of Rs. 375/ per month in the year 1992 and terminal benefits amounting to Rs. 35,000/- The family owns a 'kutcha' house in the village and shares a small plot of unirrigated desert land with his agnates which yields no income. The applicant states that after the death of the deceased employee his mother met the authorities on several occasions and made attempts to secure employment for her son on the post of Mazdoor or any other suitable post. After the applicant had attained majority the applicant applied for appointment on compassionate grounds in May 2009. She met the Respondent 2 who recommended his case. He, further, issued a certificate dated 12.5.2009 desiring for providing necessary assistance [A/1]. The mother of the applicant continued to meet Respondent 2 and also submitted applications seeking appointment [A/2]. The applicant states that he has waited for more than 2 years for the appointment to materialise. Finally, the Respondent 2 has orally communicated his inability to provide employment. The applicant pleads the respondent organisation has a well structured system of considering the claims of appointments on compassionate grounds involving a scoring system and asserts that this has been disregarded.

Facts-in-issue

4. As stated there is no formal order passed rejecting the claim of the applicant. The circumstances of the case give rise to the following facts-in-issue:

- i. *Whether the delay in filing application is to be condoned as prayed for in the MA No.150/2011?*
- ii. *Whether there is sufficient cause of action for this Tribunal to intervene at this stage?*
- iii. *What relief could be provided to the applicant?*

Whether the delay in filing application is to be condoned as prayed for in the MA No.150/2011?

5. Admittedly, the death of the applicant took place on 10.06.1991 when the applicant was about one year old. He attained majority in the year 2009 and filed application for appointment on compassionate grounds in November, 2009. However, the mother of the applicant had applied for compassionate appointment of the applicant in May, 2009. She had in response to this, the respondent No.2 had granted a service certificate to the applicant dated 12.05.2009. A second representation was filed by the applicant in November, 2009. From the narration of the above facts, it transpires that at the time of the death of the deceased employee, the applicant was about a year old. The applicant's mother, therefore, rightly waited for the applicant to attain majority and filed her representation in May, 2009. Even prior to that she had been meeting the respondent No.2 periodically and in the interregnum even ask for a job of Mazdoor. The limitation here would commence only from the date that the applicant became eligible to work. Thereafter, the process has been continuing. Hence, I find that there is no delay involved and as stated the MA in question is only a measure of abundant precaution. Hence, I conclude that the O.A. is not barred by limitation.

Whether there is sufficient cause of action for this Tribunal to intervene at this stage?

6. In so far the first issue is concerned Section 20 (1) of the Administrative Tribunals Act, 1985 provides that a Tribunal shall not ordinarily admit an application unless it is satisfied that unless the applicant has availed of all remedies available to him under the relevant service rules as to redressal of grievances. Section 20(2) of the Act further provides:

"(2) For the purposes of sub-section 91) a person shall be deemed to have availed of all remedies available to him under the relevant service rules as to redressal of grievances,-

- (a) if a final order has been made by the Government or other authority or officer or other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievance; or*
- (b) where no final order has been made by the Government or other authority or officer or other person competent to pass such order with regard to the appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or representation was made has expired."*

7. From a simple perusal from the facts of the case it is apparent that the application for appointment on compassionate grounds was filed in May 2009 and since then the applicant has waited for a response in this matter which has not been forthcoming. The Scheme for Compassionate Appointment is covered under the OM No.14014 /6/94-Estt.(D) of the GI, Department of Personnel & Training dated 9.10.98 does not provide for any appeal in such cases within the Department. Hence, there are no Departmental remedies to be exhausted. Hence, the OA is covered under the provisions of Section 20(2)(b) of the Administrative Tribunals Act, 1985 and this represents sufficient cause of action for the application to be entertained and adjudicated.

What relief could be provided to the applicant?

8. This issue represents the substantial part of the OA. Admittedly, there is no written order as yet. However, the applicant has spent not 2 years but the years since the death of the deceased employee in the year 1991. The OM of the respondent organisation issued vide lays down a comprehensive system for appraisal of the claims for such appointment. Though, such appointment is not a right inherent to the applicant and is such to competitive claims the above referred system for obtaining and assessment of the claims is intelligible and established a matrix wherein the claims to be assessed. However, like all systems it is not infallible and is sensitive to a number of counts where the integrity of the system could be compromised. The best person to assess this is the respondent organisation itself. Hence, the case is remanded to the competent authority, that being the Respondent No. 3 to consider and pass a speaking order clearing mentioning the scores of the applicant and the primary information adopted for filling up the first form. The Respondent will also indicate the cut off marks for the appointment years considered and the scores of the competing successful candidates just above and those not succeeding just below and will pass a reasoned and speaking order.

9. With this, the instant OA is disposed of with no order to the costs.



(B K SINHA)

ADMINISTRATIVE MEMBER

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