

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

Original Application No.39/2012

Date of Order: 22.08.2012

CORAM

Hon'ble Mr. B K Sinha, Administrative Member.

Narendra Maru S/o Late Shri Jugal Kishore, aged about 28 years, R/o Near Tyagi Vatika Dhabian Ka Mohalla, Bikaner (Rajasthan), Ward of Ex. Elect. (HS) office of GF (AF) Nal Bikaner (Rajasthan).

.....Applicant
(By Advocate Mr. S.K.Malik).

Vs.

1. Union of India through the Secretary, Ministry of Defence, Raksha Bhawan, New Delhi.
2. Chief Engineer (AF) WAC Palam Delhi Cantt-110010.
3. Commander Works Engineer (AF) Bikaner (Rajasthan).
4. Garrison Engineer Nal (AF) Bikaner (Rajasthan).

.....Respondents

(By Advocate Mr. M. Prajapat for Adv. Mr. Ravi Bhansali)

ORDER (ORAL)

The instant OA is directed against the impugned orders dated 14.07.2010 [A/1], 14.09.2010 [A-2] and 09.12.2010 [A-3] of the Chief Engineer (AF) WAC Palam Delhi Cantt., rejecting the request of the applicant for appointment on compassionate grounds.

Reliefs sought

"(i) by an appropriate writ order or direction impugned orders dated 14.07.2010, 14.09.2010 and 09.12.2010 Annex.A/1, Annex.A/2 and Annex.A/3 be declared illegal and be quashed and set aside as if these were never issued against the applicant.

(ii) by an order or direction respondents may be directed to consider the case of applicant and give appointment on compassionate ground on any Group 'C' or Group 'D' post.

(iii) any other relief which is found just and proper be passed in favour of the applicant in the interest of justice by the Honourable Tribunal."

Case of the applicant

2. The case of the applicant, in brief, is that admittedly the applicant's father, Jugal Kishore, died in harness while working against the post of Elect. (HS), under Garrison Engineer Nal (AF), Bikaner (Rajasthan), on 28.05.2009. The deceased Government employee was survived by his wife, two un-employed sons and one daughter. The deceased family resides in rented accommodation and does not possess movable and immovable property. The case of the applicant for appointment on compassionate grounds has been supported by the widow of the deceased and the other family members and submits that in case the applicant will appoint he will be looked after his family. The case of the applicant is that the respondent No.2 that being Chief Engineer (AF) WAC Palam Delhi Cantt, has not gone into the merits of the case as supported by documentary evidence and affidavits furnished under Annexure-A/4. Instead, he has rejected the cases by means of stereotyped orders vide the impugned orders dated 14.07.2010, dated 14.09.2010 and likewise dated 09.12.2010. Learned counsel for the applicant asserts "*in all the impugned orders word to word every thing is same that your case has been considered as per DOPT guidelines on the compassionate appointment scheme and case could not be considered fit for appointment due to low merit and non availability of sufficient vacancies.*" It has not been mentioned that what was the merit first time, second time and third time and also not mentioned what was the position of vacancies. The applicant has further submits that the vacancies

position as indicated in Annexure-A/5, which indicates 61 vacancies for Mazdoor and 10 vacancies for Chowkidar against both of which he could be appointed.

Case of the respondents

3. The respondents filed a counter affidavit and vehemently opposed the Original Application. They submit that 5% of the total Direct Recruitment vacancies in their eligible group are earmarked for consideration at the central level. No cases are considered at the individual unit level. The respondents further submits "*that the averments contained in ground (c) of the OA are denied in the manner as alleged by the applicant. It is submitted that the act and action of the respondents is just and legal and the orders enclosed as Annexure-A/1, Annexure-A/2, and Annexure-A/3 to the OA issued by the respondents has rightly been passed in pursuance to the direction issued by the DoPT letters dated 09.10.1998 and 09.03.2011. It is worthwhile to submit here that in the years of 2009 & 2010, no vacancy in Group-D post had arisen in pursuance of the DoPT letter referred herein above, the case of the applicant was finally closed.*" The same position was reiterated during the course of the arguments.

Facts in issue:

4. Having gone through the pleadings of the rival parties and having heard the Learned Counsels, the following facts in issue emerges: -

(i) ***Whether the respondents are correct in holding that the case shall be deemed to have been considered despite the fact that no vacancies have arisen during the period of consideration?***

- (ii) How many times will be case of the applicant be considered?**
- (iii) Whether such stereotyped order speak of the application of mind on part of the considering authority?**
- (iv) What relief, if any, can be granted to the applicant?**

Whether the respondents are correct in holding that the case shall be deemed to have been considered despite the fact that no vacancies have arisen during the period of consideration?

5. So far as the first issue is concerned, one has to look at into the sequence of the events. The deceased employee expired on 28.05.2009 and the application for appointment on compassionate ground was filed on 01.09.2009 within time. The first order of rejection was communicated on 14.07.2010, the second on 14.09.2010 and the third on 09.12.2010 within an interval of two months between the first and second, and three months between the second and third order. The paragraph 4 of the order dated 14.07.2010 [Annex.-A/1] were producing here:-

"4. According to the information available on record, the following is the position/status of the family of the deceased government servant:-

- (a) The death of the Government Servant occurred on 28 May 2009. His Wife, 01 Son and — daughter survive him. The deceased Govt. servant's family received Rs.14,36,658/- terminal benefit. At present they are in receipt of monthly pension of Rs.8760/- plus Dearness relief of Rs. as admissible.
- (b) The family owns — (property) (Land) worth Rs.-Nil with income pa-of and house (flat) worth Rs. Nil/- to live in.
- (c) The — (earning members irrespective of living together or separate) is employed and earning Rs. Nil PM.
- (d) Part of the terminal benefits received by the family has been invested Nil for meeting the expenses of (unmarried daughter etc.)."

6. The same language and the same order word to word have been repeated in the other orders/cases. Here, it is pertinent to

note that the Revised Scheme for appointment on compassionate grounds has been communicated vide Government of India, DoPT, OM No.14014/6/94-Estt.(D) dated 09.10.1998. On the basis of this Scheme, the Ministry of Defence has issued a Scheme for Compassionate appointment – Relative Merit Points and Revised Procedure for selection, which has been annexed at Annexure-R/2 of the reply. Paragraph 4 of this Scheme provides:

" 4. The weightage fixed above is to be strictly followed for assessing comparative merit keeping in view the instructions issued by the DOP&T from time to time. Further, all applications may be acknowledged immediately on receipt and decision of the Board of Officer (BOO) be communicated to the applicants after every sitting. The system of WAITING LISTS have already been discarded (Ref DOP&T OM F. NO.14014/23/99-Estt(D) dated 03 Dec 1999). The candidates are required to apply only once and the application if not recommended in the first BOO for want of vacancy, is to be considered afresh along with the fresh applicants by the BOO on three occasions consecutively and ensure that the final decision is communication to the applicant by a detailed speaking order."

7. The key question here under consideration is that whether the vacancies have arisen or not. The applicant has already provided a list of vacancies that has arisen in the Local Station Wise (Annexure-A/5) under the respondent No.4. It is to be noted that since the consideration is held at an aggregated level of an all India basis, the possibility of their being no vacancies is very remote. This scheme that no vacancies have arisen become particularly verdurous in light of the fact that there are vacancies at the local legal and therefore, the number of vacancies at an aggregated level is bound to being note. The respondents have not produced documents/copies of the proceedings of the Committee at the national level to show that no vacancies have arisen. This kind of lackadaisical compliance definitely bespeaks of a lack of application of mind on the subject.



How many times will be case of the applicant be considered?

8. The next question arises is that how many years the consideration will be there? In this regard, the paragraphs 1, 2 and 3 of the Government of India, DoPT OM No.14014/19/2002-Estt.(D), dated 05.05.2003 were reproducing here:-

"The undersigned is directed to refer to Department of Personnel and Training OM No.14014/6/94-Estt.(D), dated 09.10.1998 and OM No.14014/23/99-Estt.(D), dated 03.12.1999 (Sl. Nos.229 and 235 of Swamy's Annual, 1998 and 1999 respectively) on the above subject and to say that the question of prescribing a time-limit for making appointment on compassionate grounds has been examined in the light of representations received, stating that the one-year limit prescribed for grant of Compassionate Appointment is often resulting in depriving genuine cases seeking compassionate appointments, on account of regular vacancies not being available, within the prescribed period of one year and within the prescribed ceiling of 5% of Direct Recruitment quota.

2. It has, therefore, been decided that if Compassionate Appointment to genuine and deserving cases, as per the guidelines contained in the above OMs is not possible in the first year, due to non-availability of regular vacancy, the prescribed Committee may review such cases to evaluate the financial conditions of the family to arrive at a decision as to whether a particular case warrants extension by one more year, for consideration for Compassionate Appointment by the Committee, subject to availability of a clear vacancy within the prescribed 5% quota. If on scrutiny by the Committee, a case is considered to be deserving, the name of such a person can be continued for consideration for one more year.

3. The maximum time a person's name can be kept under consideration for offering Compassionate Appointment will be three years, subject to the condition that the prescribed Committee has reviewed and certified the penurious condition of the applicant at the end of the first and the second year. After three years, if Compassionate appointment is not possible to be offered to the applicant, his case will be finally closed, and will not be considered again."

9. This has been further clarified by the fact that in simple words the case will be ordinarily considered for three times. Now the question would arise that what happens if vacancies do not arise in these periods. Here, there is apparent conflict that if vacancies do not arise where is the scope for consideration. In such an eventuality the compliance will be reduced to formalism as the cases/ are considered against vacancies. By a harmonious construction it has been deemed that consideration implies

consideration only in the year when appointments have been made. Here, the consideration has been made over a period of five months and there is no indication as to how many vacancies were there and how many considerations has been made and what has been the position of the applicant in the comparative merits place. The figures in the impugned orders in paragraphs 4 (a) (b) (c) and (d) have been left blank and no figures have been provided to back up the claim and word to word every thing is same that your case has been considered as per DoPT guidelines on the compassionate appointment with the others. The same position is repeated in the subsequent two impugned orders as well. Hence, it can be safely concluded that there is nothing on record to indicate consideration. Normally a consideration takes place only one every year. It cannot be accepted that consideration has been taken place over a three times over a course of five months. This fact is well clear from the language of all three communications, it is evident that computer software has been prepared and only the name of the applicant changed. This is evident from a plain reading of these communications. It must be held that this kind of consideration is no consideration.

Whether such stereotyped order stick of the application of mind?

10. Comparing the position of the applicant to ascertain relative merit points with others, this application has been is simply not there. Consideration implies application of mind to the content and circumstances of the application to the rules, the facts and circumstances of the applicants and selecting the most meritorious amongst them on this basis. It is true that the Defence

Establishments have evolved a unified system where the various circumstances have been made normative by being reduced to a point system. Since the consideration is made at the level of the Army HQ with the scope of individual discretion is practically minimized and the exercise is attended by substantial transparency. However, yet it is not that the entire consideration has become a mechanical exercise and has been reduced to a play of figures. Still, it requires an application of individual mind at the level of application to apply these norms. Moreover, mere application of mind is not sufficient. It should also appear to the applicant that application is has been made. Each application will be different from the other notwithstanding the standardization of the procedures. The facts of comparison will also change. Where the orders are stereotyped to the extent that coma and full stops also do not change the only deduction to be drawn is that there has been no application of mind. This is a fact in the instant case that cannot be denied. In this age of computer simulation such exercises have become so easy. The Hon'ble Supreme Court has already taken a view against such stereotyped order being there shutting out the process of the application of mind in the case of **Director (Marketing) Indian Oil Corp. Ltd. & Anr. v. Santosh Kumar**, reported in JT 2006 (&) SC 31. The Hon'ble Supreme Court has held as under:-

"11. A perusal of the order passed by the Appellate Authority would only reveal the total non-application of mind by the Appellate Authority. We, therefore, have no other option except to set aside the order passed by the Disciplinary Authority and the Appellate Authority and remit the matter for fresh disposal to the Disciplinary Authority. The Disciplinary Authority shall consider the detailed representation made by the respondent and also consider the detailed report of the Enquiry Officer and the records placed before him in its proper perspective and decide the matter afresh on merits. The Disciplinary Authority is directed to consider the entire case only on the basis of records already on record. The respondent is not permitted to place any further material on record before the Disciplinary Authority. The order passed by the High Court is set-aside the direction issue by the High Court ordering re-instatement into service with continuity in service and all consequential benefits. The Disciplinary Authority is



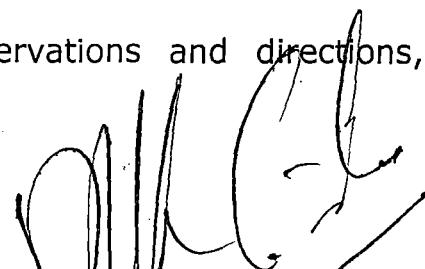
also directed to dispose of the matter, within three months from the date of receipt of this order, after affording an opportunity to both the parties. The civil appeal is disposed of accordingly. No order as to costs."

What relief, if any, can be granted to the applicant?

11. In view of the aforementioned issue as to what relief can be provided to the applicant, it is evident that there is a lack of consideration of the application and also lacks of application of mind on the part of the respondent authorities. Hence, the following orders are given:

- (i) ***The impugned orders dated 14.07.2010 [A/1], 14.09.2010 [A-2] and 09.12.2010 [A-3] are quashed and set aside.***
- (ii) ***The respondents are directed to consider the case of the applicant as per the provisions of the Scheme for three appointment years and indicate the position of the vacancies vis-à-vis his relative merits in the comparative list prepared and the individual scored in each individual appointment years.***
- (iii) ***There shall be no order as to costs.***

12. With the above observations and directions, the OA is allowed.


(B K SINHA)
Administrative Member

See ~~Drury~~
S. K. Malhotra
30/8/12

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