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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No. 497/Jodhpur/2011.

Date of decision:05.09.2012

CORAM :

HON'BLE MR. G. GEORGE PARACKEN JUDICIAL MEMBER
HON'BLE Mr. B.K.SINHA, ADMINISTRATIVE MEMBER

Atul Kumar Hans alias Atul S/o Late Shri Ashok Kumar Hans aged 19 years, by caste Harijan resident of Pancholia Nadi Harijan Basti, Jodhpur (His father was last employed on the post of UDC in the Office of Garrison Engineer, AF, Military Engineering Service at Uttarlai (Barmer, Rajasthan).

..... Applicant

[By Mr. S.P.Solanki, Advocate]

Versus

1. Union of India through Secretary to the Government of India, Ministry of Defence, Raksha Bhawan, New Delhi.
2. Chief Engineer (AF), Military Engineering Services, Near CRPF Campus, Lakawada Patia, Chiloda, Gandhinagar – 383410.
3. Headquarter, C.E.,S.C., Pune, Maharashtra.

.....Respondents

[By Mr. Niranjana Mathur for Mr. Kuldeep Mathur, Advocate]

ORDER (Oral)

[PER HON'BLE MR. G. GEORGE PARACKEN]

The applicant is the son of the deceased Government servant Shri Ashok Kumar Hans who died while in service on 12.11.2006 leaving his wife Smt. Kanchan Devi aged 36 years, applicant then aged 15 years and two other minor sons Sachin Hans and Rohit Hans and his mother Sharda Devi, aged 75 years. The applicant, when he became major, applied for appointment on compassionate ground vide his application dated 5.4.2010. Since there were some mistakes in the said application, it took some time to rectify them and the final application was submitted to the respondent No. 2 i.e.

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Chief Engineer (AF), Military Engineering Services, Near CRPF Campus, Lakawada Patia, Chiloda, Gandhi Nagar on 21.09.2010.

2. The Board of Officers, duly constituted by the respondents, at its meeting held on 14.03.2011 and subsequent days, considered the case of the applicant along with other cases for compassionate appointments falling within the quarter 1.7.2010 to 30.09.2010. Altogether, there were 243 cases including four cases of individuals who have earlier filed cases in the Court/Tribunal. They were also guided by the following observations/directions contained in Para 4 (c) of E-in-C's Branch letter No. B/22560/Policy/Vol-09/E1C(IV) dt 23 Oct. 2006, which reads as under :-

"No cases will be considered for appointment by BOOs after three years from the date of the death of Govt. employee. However, no case will be rejected before it is placed before the BOOs i.e. all these cases will be put up to BOOs.

Thus, out of those 243 cases, they could recommend only two names for the post of Mazdoor and one name for the post of Safaiwala. Since there were no other posts available, names of the other candidates including that of the applicant was not recommended for appointments. Later on, the applicant's case was rejected vide the impugned Annex.A/1 letter dated 14.07.2011, stating that while there were 243 claimants, only two vacancies were available and his position in the waiting list being 50 with 55 marks, he could not be selected. The recommendation of the Board of Officers in his case was as under :-

"Recommendation of the present Board – As per policy the case has been considered upon the time limit in 03 Yrs. From the date of death of the deceased Govt. servant, hence final

speaking order is being issued and the case will be deleted from the next board.

DOP&T OM No. 14014/10/2003-Estt.(D) dated 05 May 2003 lays down the time limit for making compassionate appointment and prescribed the maximum time a person's name can be kept under consideration for offering compassionate appointment, will be three years subject to the conditions that the prescribed committee has reviewed and certified the penurious conditions of the applicant at the end of first and 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."

The other relevant part of the aforesaid letter dated 14.07.2011 is also reproduced as under :-

"5. The screening committee at Command Headquarters and after taking into account each aspect referred to above has considered your case alongwith other candidates. However, due to more deserving cases and few vacancies available, you could not make in the merit for appointment on compassionate grounds. In view of this the competent authority is of the view that your case does not deserve merit in employment assistance on compassionate grounds".

3. The applicant challenged the aforesaid letter in this OA stating that the consideration of his case by the respondents was not objective. According to him, even though he was fully entitled for grant of appointment on compassionate grounds and many similarly situated persons who were even in less indigent circumstances than him and whose parent's deaths were even subsequent to the date of death of his father were given appointments. He has submitted that the action of the respondents in rejecting his case vide impugned letter dated 14.7.2011 was discriminatory, whimsical and arbitrary, thus violative of Articles 14 and 16 of the Constitution of India. He has, therefore, sought a direction to the respondents to consider his case afresh after quashing and setting aside the said impugned order.

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4. The respondents have stated that the Board of Officers have correctly assessed and considered all aspects of the case of the applicant including the number of dependants, who have been left behind by the deceased, number of minor children of the deceased and awarded marks as per the Guidelines issued by the Government of India, Ministry of Defence in 2011. They have also stated that the applicant's case has been rejected in terms of OM No. 14014/10/2003-Estt.(D) dated 05 May 2003 of DOP&T as the same was pending for more than three years from the date of death of the Government servant.

5. The learned counsel for the respondents has also relied upon the Hon'ble Apex Court's judgment in the case of **Umesh Kumar Nagpal** reported in JT 1994 (3) SC 525, wherein, it has been held as under :-

"Offering appointment on compassionate grounds as a matter of course irrespective of the financial condition of the family of the deceased or medically retired Government Servant is legally impermissible and compassionate appointment can not be granted after lapse of reasonable period and it is not a vested right which can be exercised at any time in future."

6. We have heard the learned counsel Shri S.P. Solanki for the applicant and Shri Niranjana Mathur proxy for Kuldeep Mathur, counsel for respondents. In our considered view, the impugned Annex. A/1 order dated 14.07.2011, the case of the applicant has been rejected without proper application of mind and without properly understanding the provisions contained in DOP&T's OM No. 14014/10/2003-Estt.(D) dated 05 May 2003. In fact the Board of Officers have considered his case only once on 14.03.2011. Of course, while there were 243 claimants and only two vacancies were

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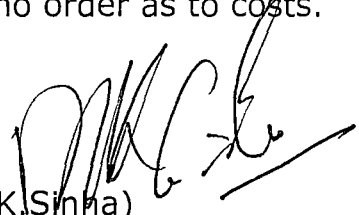
available and the applicant's position among them was 50 as on the date of consideration of his case, the respondents did not consider his case again in view of the aforesaid O.M. dated 5.5.2003 wherein it has been stated that "after three years, if compassionate appointment is not possible to be offered to the applicant his case will be finally closed and will not be considered gain". Such a decision in the case of the applicant on the part of the Board of Officers was not proper. First of all, the applicant was a minor at the time when his father passed away on 12.11.2006. He was only just 15 years of old and he was studying. Only when he became major, he submitted his application on 05.04.2010. Since the said application was not complete, by respondents own admission, the correct form was received by them only on 21.09.2010. The respondents considered him eligible for grant of appointment on compassionate ground and accordingly his name was included in the waiting list. In above circumstances, irrespective of the date of death of his father, his case for compassionate ground appointment should have been considered atleast thrice against the vacancies for the year 2010, 2011 and 2012. But, the respondents did not do so wrongly quoting the OM dated 5.7.2003 which lays down the time limit for making compassionate appointments. When the applicant has admittedly applied for compassionate ground appointment only on 5.4.2010, as he could not do so earlier, his case should have been first considered against the 5% direct recruitment vacancies available during the period from 1.4.2010 to 31.3.2011. As he could not be given appointment on compassionate grounds during the first year of consideration, for want of vacancies and his family continues to be in indigent circumstances, he is to be considered


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during the subsequent periods from 1.4.2011 to 31.3.2012 and from 1.4.2012 to 31.3.2013 also.

7. We, therefore, direct the respondents to assess the number of vacancies became available for compassionate ground appointment separately for the period from 1.4.2011 to 31.3.2012 and 1.4.2012 to 31.3.2013 and consider him again against those vacancies based on his position in the waiting list. Ofcourse, it goes without saying that if the applicant's turn for appointment comes within the said two years, he shall be given the appointment. If not, his name will get automatically removed from the waiting list, as per the existing instructions.

8. With the aforesaid directions, this O.A. is disposed of. There shall be no order as to costs.


(B.K. Sinha)
Administrative Member


(G. George Parackal)
Judicial Member

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Per - K. Weston
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