

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH AT JODHPUR

Original Application No. 504 of 2011

Dated this the 12th day of April, 2012

CORAM

Hon'ble Mr. B K Sinha, Administrative Member

Parwati Devi widow of Shri Rajendra Kumar
Aged 46 years, R/o C/o Shanker Ji Kirana Wale,
Near Arya Samaj, Pabupura, Jodhpur
Deceased Ex-Mason in the Office of Garrison
Engineer, Airforce, MES, Jodhpur.

...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. Chief Engineer (Air Force) MES, Lekawada Patia,
Chiloda, PO CRPF Campus, Lekawada Patia
Chiloda, Gandhinagar-382042.
3. Garrison Engineer, MES, Air Force, Jodhpur.Respondents

(By Advocate Mr. Vinit Mathur)

ORDER

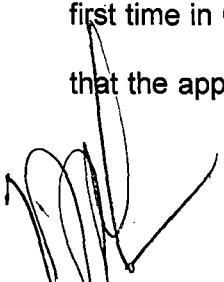
1. The instant OA has been directed against the communication of the reasoned final speaking order dated 22.10.11 in compliance to the order of the Hon'ble High Court/CAT rejecting the representation of the applicant for appointment on compassionate grounds.
2. The following relief have been sought by the applicant:
 - i. ***That on the basis of facts and grounds mentioned herewith, the applicant prays that the impugned order ANN A1 may kindly be quashed and the respondents may kindly be directed to give appointment on compassionate grounds to the applicant forthwith.***
 - ii. ***Any other order as deemed fit in the facts and circumstances of the case may kindly be also passed and costs to be awarded to the applicant.***

Facts of the Case in Brief

3. The facts of the case in brief are that the husband of the applicant was employed as a mason in the office of the Garrison Engineer, Air Force, MES, Jodhpur. He expired on 4.12.2002 while still in service leaving behind his widow, the applicant in the instant case, 3

daughters aged 12,13 and 15 respectively and a son aged 9 at the time of his death. All the 3 daughters and the son are yet to be married. The widow applied for appointment on compassionate grounds but the same was rejected vide the letter dated 10.4.2003 of the Respondent 3 on the ground that she was not eligible on account of being overage. The applicant approached this Tribunal vide OA No 266/2004 in which the Tribunal directed the respondents to consider the case of the respondents in accordance with the observations made in the order and in accordance with the provisions of the rules providing relaxation of age within a period of three months. The Hon'ble Tribunal has taken the pains to even quote the provision 11 relevant to the case under sub-clause (vi) of which the applicant is entitled to relaxation beyond the age of 40 years [A-3]. The respondents challenge the order before the Hon'ble High Court vide writ petition No.395/2003, but the same was dismissed vide the order dated 04.05.2011. Thereafter, the respondents filed an MA before this Tribunal seeking further time for making compliance, which was rejected vide the order dated 08.08.2011 [A-4]. The applicant moved a contempt petition No.03/2012, which continued to linger on account of the stay order from the Hon'ble High Court. On 22.10.2011, the applicant was informed that her case had been rejected vide the impugned order. This has given rise to the instant OA.

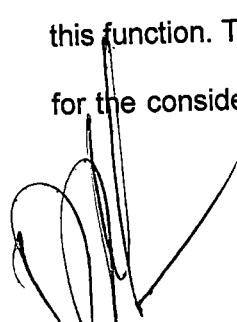
4. The main ground adopted by the applicant is that the case had been rejected with reference to her application dated 26.09.2006 and the documents received on 02.07.2011. The applicant contends that: "**Neither the applicant had submitted any application on 26.09.2006 nor submitted documents on 02.07.2011. She had submitted application for being appointed on compassionate grounds on 09.04.2003 as has been mentioned in Ann.A-2. It is thus obvious that the case has not been considered with reference to her application. This procedure is quite illegal and the entire proceedings therefore stands vitiated.**" [Para 5(b)]. The applicant has further submitted that one of the ground for rejection is that the case has become more than 3 years old from the date of death of the deceased. The applicant claims to have submitted the application for appointment on compassionate grounds immediately following the death of the deceased employee. The respondents did not consider the case for all these years for which no reasons have been assigned. It was considered for the first time in October, 2011. Further, the case of the applicant has been rejected on the ground that the applicant received only 83 marks, and therefore, her name stood at Serial No.13. The



applicant argues that while the case was being considered with reference to the date of the death of the applicant on 09.04.2003 the statistics were recorded with reference to 01.04.2011. For instance, the number of minor children has been mentioned as one and the scoring has been done accordingly, whereas at the time of the death of the deceased employee there were four minor children and the applicant should have been given 15 marks. Likewise, the family pension and terminal benefits have been taken into account even though there were granted in the year 2008. The family income has been incorrectly mentioned as Rs.1500 whereas there is no monthly income at all. In the case of liabilities of the family no marks have been given, though it should have been given according to the conditions prevailing at the time of the death of the deceased employee. The applicant affirms that she should have been given 95 marks instead of 83 and she would have been placed much higher than the 13th place that she has been assigned. The applicant further alleges discrimination. No appointments were made in the year 2003 as there were no vacancies. However, perusal of the list of selected candidates reveals that person lower in merit have been appointed for that year e.g. one Chattar Singh and Sunita were appointed in GE and CWE offices at Jodhpur though their wards had died much after the deceased employee. Moreover, the case has been wrongly rejected as it has to be considered for consecutive three years. Though, the years only be counted as the years in which vacancies were available and appointments made.

Case of the respondents.

5. The respondents have strongly contested the OA. Earlier, the case of the applicant had been rejected on grounds that she was not within the age relaxation. The respondents filed a D.B. Writ Petition before the Hon'ble High Court at Jodhpur, and the same was dismissed as on 04.05.2011. Thereafter the case of the applicant has been considered within the strict frame of circular and laws and rejected. The respondents in their CA reject the submission of the applicant in para 4.7. The case of the applicant was considered by the Board of Officers at Higher Level, but the candidates could not be appointed due to lower merit. The respondents further submit that the application was process by a Welfare Officer especially interested with this function. The principle argument of the respondents is that the direction of the Tribunal was for the consideration of the case, which has been complied with a speaking order. During the



course of the arguments, the learned counsel for respondents vehemently submitted that it is beyond the powers of the Tribunal to direct appointment. As such, the OA may be dismissed as the earlier directions of the Tribunal have been fully complied with.

Facts-in- issue

6. Having gone through the pleadings of both the parties in form of OA, CA, RA and Additional Affidavit on behalf of respondents, the following facts-in-issue emerge:-

- i. *Whether the claim of the applicant for compassionate appointment is time barred and cannot be further considered?*
- ii. *Whether the claim of the applicant should have been considered with the reference date of 09.04.2003 or 01.04.2011?*
- iii. *Whether the marks assigned to the applicant have been correctly computed?*
- iv. *What relief, if any, can be granted to the applicant?*

Whether the claim of the applicant for compassionate appointment is time barred and cannot be further considered?

7. In so far as the first of the issues is concerned any examination of the issue has to be pre-qualified with the statement that each organisation has evolved its own methodology for dealing with such cases within the guidelines of the Department of Personnel & Training, referred hereafter as the DoPT, under the Ministry of Personnel, Pensions and Grievance Redressal, Government of India vide its Memo 14014/6/94-Estt(D) dated 09 Oct 1998. On the basis of this the Directorate General of Ordinance Services, Master General of Ordnance Branch has, Integrated Headquarters of MoD(Army) has issued detailed circular vide its Memo dated A/23802/1/Policy/OS-8C(i) dated 1.11.2007. Before I take up the system in the Army one has to go into the objective of the Scheme for Compassionate Appointment. The very object of the Scheme is to grant appointment on compassionate ground to a dependent family member of a Government Servant die in harness or thereby leaving his family in penury and without means of livelihood. This is to relieve the family of the Government servant concerned from financial destitution and to help it to get over the emergency. This doctrine of '***Immediate Emergency***' under lies the Scheme for Compassionate Appointment. This Scheme is applicable to the dependent family member of a person who dies while in service or to a Government Servant who retires on medical ground under Rule 2 of the CCS (Medical Examination) Rules 1957 or under Rule 38 of the CCS (Pension) Rules 1972 with corresponding provision or corresponding provisions of Central Civil Service Regulation in last two cases. Member of Armed Forces killed

in action or dying in service and medically boarded out and unfit for civil employment are covered in this Scheme. The term '**Dependent Family Member**' means and includes spouse, son including adopted son, daughter including adopted daughter, brother sister in case of unmarried Government servants or a member of Armed Forces fully dependent on the Government servant at the time of death in harness or retirement on medical ground as the case may be. The term Government servant here would mean a Government servant on regular basis and does not include one working on daily wages or casual, apprentice, or adhoc or contract or reemployment basis. However, confirmed worked charge employee would be covered by the term Government servant. Service includes extension in service but not re-employment after attaining retirement on a civil post. Reemployment does not include employment of ex-service man before the normal age of retirement in a civil post.

8. Compassionate appointment can only be made on regular basis against regular vacancy to the extent of maximum of 5% of vacancies under the DR Quota on any Group 'C' or Group 'D' posts to be held back from regular recruitment in relaxation of normal rules which will be distributed by the to the units by the Army HQ(OS-8). Section 5 of the circular provides that no direct release of vacancies from the AG Branch will be sought by units. Requests for compassionate appointments will be generally considered up to 5 years from the date of death/retirement on medical grounds of the Government employee. Requests for employment assistance after a lapse of 5 years may be considered only in exceptional cases and after obtaining the approval of AG's Branch/MoDA statement of cases along with proforma Part 'A' and 'B' and connected documents enumerated earlier vide the letter dated March 22, 2000 duly recommended by the Commandant is to be submitted to this HQ through respective Command HQs for obtaining the necessary approval of the AG Branch /MoD. Where any member of the family is earning/employed the case for compassionate employment for other member of the family will not normally be entertained. Cases where the other earning member of the family is not supporting the family or living separately is also requires a sanction from the AG's Branch/MoD **[para 12]**.

9. The very circular also provides procedures of Pre-Annual Board Proceedings. At the first stage as soon as an employee dies in harness the claim is registered and the registration

number is given. This followed by enquires regarding the number of dependents, ownership of land etc. All Command HQs/CODs hold pre-Annual Board of Compassionate Appointment in every year August/September in which all applications received up to the end of the financial year ie 31st March are considered. The Merit List in a prescribed proforma and along with the Board Proceedings, duly countersigned by the MGs AOCs/Commandants are forwarded to HQ without making any recommendation on the basis of which a combined merit list is prepared on All India basis for the Group C and Group D posts depending upon the vacancies to be determined is drawn up. An Annual Board is convened every year in Nov/Dec at the Army HQs. Thereafter, a copy of the Annual Board Proceedings is forwarded to the concerned Command HQs/CODs who call the selected candidates, scrutinise their documents and proceed to appoint them on the basis of their character verification and medical examination. A person selected for appointment is adjusted in the post based roster against the appropriate category i.e. SC/ST/OBC/Gen depending upon the category to which he or she may belong.

10. For an objective and balanced examination a 100 point scaling system has been introduced as provided in the MoD ID No.19(4)/824-99/1998-D(Lab) dated 9th march 2001 the salient features of which are being given below. The weightages fixed in this scoring matrix are followed strictly while assessing the comparative merit using an all India yardstick.

(a) Family pension (only basic family pension be taken in account).

(i)	Upto Rs.1300	-	20
(ii)	1301 to 1500	-	18
(iii)	1501 to 1700	-	16
(iv)	1701 to 1900	-	14
(v)	1901 to 2100	-	12
(vi)	2101 to 2300	-	10
(vii)	2301 to 2500	-	8
(viii)	Above Rs.2500	-	6

(b) Terminal Benefits (This Excludes amount of monthly family pension).

(i)	Upto Rs.100000	-	10
(ii)	100001 to 120000	-	9
(iii)	120001 to 140000	-	8
(iv)	140001 to 160000	-	7
(v)	160001 to 180000	-	6
(vi)	180001 to 200000	-	5
(vii)	200001 to 220000	-	4
(viii)	220001 to 240000	-	3
(ix)	240001 to 260000	-	2
(x)	260001 to 300000	-	1
(xi)	Above Rs.300000	-	Nil

(c) Monthly income of earning member(s) and income from property (monthly income earned by the applicant and other dependents of the deceased including income from property

i.e. agriculture income and income from rent etc. excluding family pension at para 10 (a) above but including any other pension).

(i)	No Income	-	5	
(ii)	Rs.1000 or less	-	4	
(iii)	Rs.1001 to 2000	-	3	
(iv)	Rs.2001 to 3000	-	2	
(v)	Rs.3001 to 4000	-	1	
(vi)	Rs.4001 and above	-	Nil	

- (d) Movable/immovable property (In this parameter, certificate in respect of the whole family of the deceased (not only of the applicant) with present market value & income therefrom, duly certified by the Civil Authorities (Tehsildar/Block Development Officer of the concerned District) be obtained frm the applicant.

(i)	Nil	-	10	
(ii)	Upto 50000	-	8	
(iii)	Rs.50000 to 100000	-	6	
(iv)	Rs.100001 to 200000	-	3	
(v)	Rs.200001 and above	-	1	

- (e) No. of Dependents (This parameter includes only the immediate dependents of the deceased. Employed son (both staying together, married or livin separately), employed daughter(s) and married daughter(s) are not to be included. Widow, all minor children, unemployed major children and dependent, widowed daughter(s) living together are to be included in this category for allocation of points).

(i)	3 and above	-	15	
(ii)	2	-	10	
(iii)	1	-	5	

- (f) No. of unmarried daughters (since the marriage of a daughter is major liability of the family, this category has been addressed separately. The unmarried daughters will include the minor daughters also fo allotment of points).

(i)	3 and above	-	15	
(ii)	2	-	10	
(iii)	1	-	5	
(iv)	None	-	0	

- (g) No. of Minor Children (This will include minor sons as well as minor daughters since minor children are the immediate liability of the family in comparison to other less deserving cases).

(i)	3 and above	-	15	
(ii)	2	-	10	
(iii)	1	-	5	
(iv)	None	-	0	

Note: If there are three minor daughters, te family will get full 45 points.

- (h) Left Over Service (In this parameter the left over service of deceased should be shown in terms of year and month basis).

(i)	0 to 5 years	-	2	
(ii)	Over 5 & upto 10 years	-	4	
(iii)	Over 10 & upto 15 years	-	6	
(iv)	Over 15 & upto 20 years	-	8	
(v)	Over 20 years	-	10	

11. Persons below 18 years of age are not considered for compassionate appointment. Age eligibility is determined with reference to the date of application and not the date of appointment. Cases selected beyond age require relaxation of the DGOS for relaxation of the age limit. Prescribed age limits in respect of different categories are as provided under:

- (a) 25 years for son/daughter of General Category.
- (b) 28 years for son/daughter belonging to OBC Category.
- (c) 30 years for son/daughter belonging to ST/SC Category.
- (d) 35 years for widow of General Category.
- (e) 38 years for widow belonging to OBC Category.
- (f) 40 years for widow belonging to SC/ST Category.

12. Obviously, the case of the applicant is that at the time of the demise of the deceased employee on 04.12.2002, the son of the applicant was only a year old and hence not eligible for appointment. Still, immediately after the death of the deceased employee the applicant applied for appointment on compassionate grounds, which was rejected on the ground that she was overaged. This fact was contested by the applicant and this Tribunal directed the respondents to consider the case of the applicant for appointment on compassionate grounds vide its order dated 31.08.2006 in OA No.266/2004. The Tribunal while considering the claim of the applicant held that the competent authority had sufficient powers for relaxation of age limit under Provision 11 of the Scheme. The same very order of this Tribunal records that as per the instructions a widow from SC category is eligible for appointment on compassionate grounds up to the age of 40 years and beyond this upper age limit there is requirement of sanction for relaxation of age from error. The judgment further holds that the question of relaxation in age would only arise after a candidate has been selected for such appointment. These instructions were based on the sound principles inasmuch as if one were not selected for appointment the relaxation in his/her age would be an exercise in futility. Finding that the candidature of the applicant had not been considered at all, the Tribunal directed the competent authority to do the same as per the provisions of relaxation vide Para 11 of the Scheme. The respondents approached the Hon'ble High Court, which rejected their writ petition No.395/2006. When the respondents failed to consider the case of the applicant, she approached the Hon'ble High Court which vide order dated 19.07.2011 ordered to revive the CP No.03/2007. It was during the pendency of the Contempt Petition that the respondent No.2 intimated the applicant vide its order dated 22.10.2011 that her application had been rejected and her case closed. The

respondents have submitted that as per the order of the Tribunal, the case has been considered and rejected vide a speaking order, and that there is no Rule or Policy in vogue to consider her case based on an anti-dated period [Para 4.7 page (6&7) of the CA]. The question is now that whether another consideration can take place or that the impugned order has attained finality.

13. The CA filed by the respondents in Para 4 averse that as per the relevant provisions of the OM dated 05.05.2003 cases of compassionate appointment can only be considered for the vacancies arising in three years to meet the aims and object of the Scheme. In the instant case, the period of three years has expired and hence the case of the applicant cannot be considered for a fresh look. In this regard, It is to be considered that on whose account the delay has taken place. The application was filed within time and the respondents rejected it on grounds of age, ~~the~~ plea not sustained by this Tribunal. Thereafter, the respondents went in a writ application. From the afore narration of events a certain noticeable facts emerge from the chain of transactions- one that the applicant had applied within time for compassionate appointment; two that the delay has not been on her account but rather on account of the respondent to appreciate the law; and three that the case of the applicant has been considered three times. It needs to be clarified here that the consideration should not merely be spread over three years but should cover three appointment years i.e. three years over which appointment is made. In Smt. Sushma Gosain and Ors. v. Union of India and Ors. MANU/SC/0519/1989 : (1990)ILLJ169SC , it was observed that in all claims of appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread-earner in the family. Such appointments should, therefore, be provided immediately to redeem the family in distress. The fact that the ward was a minor at the time of death of his father is no ground, unless the scheme itself envisage specifically otherwise, to state that as and when such minor becomes a major he can be appointed without any time consciousness or limit. The above view was reiterated in Phoolwati (Smt.) v. Union of India and Ors. MANU/SC/0123/1991 : AIR1991SC469 and Union of India and Ors. v. Bhagwan Singh MANU/SC/0817/1995 : (1996)ILLJ1127SC . In Director of Education (Secondary) and Anr. v. Pushpendra Kumar and Ors. MANU/SC/0373/1998 : [1998]3SCR432 . In the present instance by not interpreting the rules in proper perspective the applicant is being made to pay for the inaptitude of the respondents. It

was none of her fault that the provisions of the Scheme were not subjected to correct interpretation, something that has been proved by the order of this Tribunal dated 31.08.2006 and from the orders of the Hon'ble High Court. Having committed this error the respondents are stopped from taking a plea that the case is barred by delay.

Whether the claim of the applicant should have been considered with the reference date of 09.04.2003 or 01.04.2011?

14. The system of marking as has been devised and put in place by the MoD is, agreeably, able to comprehensively assess the case of applicants for compassionate appointment. It is, however, dependent upon a number of externalities-the accuracy and integrity in filling up part-A [Appendix 'A' to Army HQ letter No.A/23802/1/Policy,OS-8C (i) dt. 01st Nov., 2007] of the Memo dated 01st Nov., 2007 of the Directorate General of Ordnance Service, Master General of Ordnance Branch, Integrated HQ of MoD (Army), New Delhi. Where the assessment is not correct and inaccuracies are allowed to creep in, the result will, invariably, be distorted. In the second place, the year of consideration is critical. Based upon the assessment of the Pre-Annual Board of compassionate appointment a combined list is prepared on all India basis. Cut-off marks are determined as per the number of vacancies. The Annual Board at the Army HQ considers this and the list of selected candidates are forwarded to the Command HQs/CODs. The process is highly sensitive to the number of vacancies and the cut off marks will differ from year-to-year as will the number of vacancies. In the third place, the process of assessment is also highly sensitive to the stage at which the assessment is being made. The entire system is so calibrated so that factors like the number of minor children, the number of years of service left, the size of the post-retiral benefits etc. bring higher points. It stands to reason that if the assessment is made in the year of death of the deceased employee who lives behind four minor children these points is scored will be higher. On the other hand, if it is made six years hence the points will be lower as some of the children will attain majority. Admittedly, the assessment has been made with respect to 01st April, 2011 when only one child was a minor. Had the assessment being made in the year 2003 then all the four children would have been minors and the points scored would have been higher.

Whether the marks assigned to the applicant have been correctly computed?

15. This fact has already been considered in respect to issue No.2. Since, a quota of 5 % of the DR has been determined for this class of appointment there is competition within this limited zone as the number of posts are small and the takers happen to be larger. It may so happen that in some years the number of takers may be less and the number of posts more leading to lowering the cut-off marks.

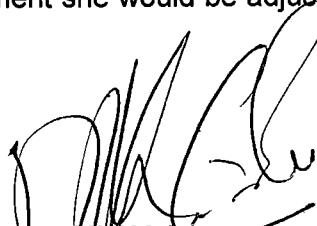
What relief, if any, can be granted to the applicant?

16. On the basis of the resolution provided to the afore issues raised it is clear that there was mistake ab initio in the appreciation of Rules by the respondent-organisation. Their efforts to have judicial validation of their interpretation further delayed. The question is that who is to bear the cost of litigation. In the present case, if this OA were to be rejected as one delayed it is the applicant who would be made to bear the cost of justice. While conceding that the instant Scheme of compassionate appointments cannot be claimed as a matter of right but is a special dispensation of the Government to a particular category of its employees. However, within the structure there are still rights e.g. to be considered equitably, and as per the Rules. Wherever there is failure in this it gives rise to approach this Tribunal. It is well established that the applicant cannot be penalised for his inefficiencies of the respondent organisation otherwise she would be subject to double jeopardy arising from the death of the bread winner and the deprivation in terms of employment.

17. In view of the above discussion, the following relief is allowed:

- i. the impugned order of the respondent [A-1] is being hereby quashed as being bad in the eyes of law.
- ii. it is directed that the respondents will consider the case of the applicant as it would have been considered in the year 2003 for all purposes and dispose it of by means of a reasoned order.
- iii. in the case the applicant is considered fit for appointment she would be adjusted against the vacancies arising in the year 2012.
- iv. there will be no order as to costs.

18. The O.A. is partly allowed.


(B K SINHA)
ADMINISTRATIVE MEMBER

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