

CENTRAL ADMINISTRATIVE TRIBUNAL JODHPUR BENCH

Original Application No. 270 / 2012

Jodhpur, this the 1st February, 2013

[Reserved on 01.02.2013]

CORAM

Hon'ble Mr.Justice Kailash Chandra Joshi, Member (J)

Bhagirath S/o Late Shri Laxman aged 30 years Resident of 57, Indira Colony, Panchbati, Ratanada, Jodhpur; Shri Laxman S/o Shri Banshi Lal, deceased – Cosmetic Attendant, in Defence Laboratory, Jodhpur.

..Applicant

(Through Adv. Mr. Vijay Mehta)

Versus

1. Union of India through the Secretary to the Government of India, Ministry of Defence, Raksha Bhawan, New Delhi.
- 2 Director, Defence Laboratory, Ratanada Palace, Jodhpur.

..Respondents

(Through Adv. Mr. Vineet Mathur along with Mr. Mrigraj Singh)

ORDER

The brief facts of the case are that the applicant Bhagirath S/o Late Shri Laxman, has challenged the order Annex.A/1 dated 17th May, 2012 passed by the Director, Defence Research and Development Organization, Defence Laboratory, Jodhpur, alleging that his father Laxman was a permanent employee working as a Cosmetic Attendant in the Defence Laboratory, Jodhpur, and he died on 6th June, 2011 leaving behind the applicant, widow and other family members. The family has no means to sustain and has virtually no earnings, therefore, the applicant was in urgent need of appointment. It has been further averred that the family of the deceased does not own any immovable or movable property. The grand father of the applicant had suffered with a paralytic attack . The

applicant, after the death of his father immediately applied for compassionate appointment which was rejected by the impugned order dated 17th May, 2012 passed by the respondent No. 2 on the ground that there are more deserving cases who were required to be accommodated.

2. It has been further averred in the Application that the Union of India has made elaborate provisions for giving appointment on compassionate grounds and copy of the Scheme dated 09th October, 1998 has been annexed as Annex.A/2 with the Application and further, he has annexed the Instructions dated 09th March, 2011 as Annex.A/3. As per the Instructions dated 5th May, 2003 (Annex.A/4) of the Union of India, the cases for compassionate appointment are required to be considered for at least three times in a period of three years. The respondents without following the procedure prescribed in Annexs. -A-2, A-3 and A-4 and without any reasonable ground, rejected the application of the applicant even without considering the applicant's case for three times. The applicant, therefore, sought 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. In alternative it is prayed that the respondents may kindly be directed to consider the case of the applicant. Any other order, as deemed fit, in the fact and circumstances of the case, may kindly be also passed and the cost be also awarded to the applicant."

3. The respondents while denying the facts averred in the Application, defended the order Annex.A/1 passed by the competent authority on the ground that applicant's case was considered vis-à-vis other eligible candidates and after adjudging the case of the applicant as per merit and circumstances of the case and keeping in view the number of vacancies

available for filling on the compassionate ground and the fact that more deserving cases under consideration, were required to be accommodated, it has not been found possible for the competent authority to accede to the request of Shri Bhagirath, applicant, for compassionate appointment. It has been averred in the reply that compassionate appointment cases are decided on comparative merit keeping in view the inter se merit of the applicant vis-à-vis other candidates and the competent authority passed a reasoned and speaking order at Annex.A/1 while not acceding to the request of the applicant.

4. Heard the learned counsel for the parties.

5. The counsel for the applicant contended that the respondents in their reply have not filed any document which shows that the respondents have considered the case of the applicant on comparative merit keeping in view the inter se merit of the applicant vis-à-vis other cases which were required to be considered and how many marks have been awarded to the applicant vis-à-vis the other candidates. He further contended that how the more acute cases have been accommodated within the offer of limit of 5% vacancies. He further contended that although the Ministry of Defence has devised 100% scale on the basis of which the cases are evaluated but, how many marks have been awarded to the applicant on the eight factors narrated in Annex.A/3. The counsel for the applicant vehemently also contended that the Office Memorandum of the Department of Personnel & Training dated 5th May, 2003, has not been followed because the case of the applicant has never been considered up to 3 years because the applicant's father died on 6th June, 2011 and on 17th May, 2012 (Annex.A/1), order was passed by the competent authority. Thus, the Instructions contained in Annex.A/3 have not been followed.

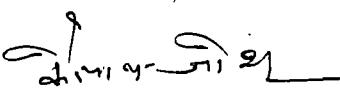
6. Per contra, the learned counsel for the respondents while defending the order Annex.A/1 vehemently argued that the contentions raised by the counsel for the applicant are without any basis and the applicant's candidature for compassionate appointment was considered in accordance with Annexs A/2, A-3 and A-4 and as his case vis-à-vis other candidates was less meritorious, therefore, he could not be accommodated against the 5% available vacancies and, therefore, by a speaking and reasoned order, the application of the applicant was rejected vide Annex.A/1.

7. I have considered the rival contentions and perused the Annex. A/2, A/3 and A/4 respectively.

8. It appears that in the reply the respondents have not filed any document showing that how many marks have been awarded to the applicant vis-à-vis other applicants while keeping in view the eight factors mentioned in Annex.A/3. How the other persons competing with the applicant have been awarded more marks and further number of vacancies have not been shown and it is more pertinent that the case of the applicant has never been considered thrice because Annex.A/1 does not contain any fact that the case of the applicant has been considered thrice.

9. In view of the discussions made hereinabove, it is clear that the respondents have not followed the Guidelines and Instructions issued vide Annexs. A/2, A/3 and A/4 respectively because they have not produced any document in support of their reply and the case of the applicant for compassionate appointment has been considered thrice, is totally without any evidence because the Annex.A/1 does not contain this fact.

10. Accordingly, the order Annex.A/1 cannot be sustained and the Original Application is allowed and the order at Annex.A/1 dated 17th May, 2012 is hereby quashed with the directions that the respondents shall re-consider the case of the applicant thrice in accordance with the Instructions contained in Annexs. A/2, A/3 and A/4. Accordingly, the O.A. is allowed with no order as to costs.



(JUSTICE K.C. JOSHI)
JUDICIAL MEMBER

Mehta