

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH AT JODHPUR

Original Application No.308/2012

Jodhpur, this the 12th day of May, 2014

CORAM

HON'BLE MR. JUSTICE KAILASH CHANDRA JOSHI, JUDIL. MEMBER

Vinay Kumar Sharma s/o Shri Narayan Ram Sharma, aged about 31 years r/o Behind Hariram Ji Temple, Nokha Road, New Line, Gangashahar, Bikaner (Raj.) Ward of late Shri Narayan Ram Sharma Ref. Mechanic in the office of GE (N), 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. The Chief Engineer Bathinda Zone, Bathinda Military Station, Punjab.
3. Garrison Engineer (North), Bikaner, Rajasthan

...Respondents

By Advocate : Mr. Aditya Singh on behalf of Ms. K.Parveen

ORDER (ORAL)

The present Original Application u/s 19 of the Administrative Tribunals Act, 1985 is made against the impugned order dated 06.08.2011 (Ann.A/1) by which the applicant has been denied appointment on compassionate grounds, therefore, the applicant has prayed that the impugned order dated 06.08.2011 may be declared illegal by quashing and setting aside the same and the respondents

may be directed to consider the applicant for compassionate appointment on any Group 'C' or 'D' post with all consequential benefits.

2. Brief facts of the case are that applicant's father was working on the post of Ref. Mechanic and he died on 23.05.2008 due to heart attack. After demise of the father of the applicant, his mother moved an application for compassionate appointment to the applicant. Accordingly, respondents in the month of August, 2008 got filled in proforma regarding employment of dependent of Government servant from the applicant and also prepared statement of the case. Thereafter the respondents prepared proforma regarding employment of dependant of Government servant dying while in service vide proforma dated 21.10.2008 and recommended the case of the applicant for the post of Mazdoor, Group-D, and forwarded the same to respondent No.2 for taking necessary action. The applicant also made various representations requesting to consider his case for compassionate appointment. Lastly, the respondents vide impugned order dated 06.08.2011 rejected the case of the applicant due to non-availability of sufficient vacancies within 5% quota and also holding that the case does not fall within the parameters of compassionate employment to tide over the emergency and crisis as the death of Government servant was on 23.05.2008 i.e. 18 years, 2 months before his normal retirement. Therefore, aggrieved with the action of the respondents, the applicant has filed this OA.

3. The respondents by way of filing reply to the OA have submitted that case of the applicant has been given 03 considerations

for compassionate appointment for the vacancy year 2009-2010, 2010-11 and 2011-12 namely first look, second look and third look and speaking orders dated 22.12.2012, 29.12.2012 and 15.03.2013 have been passed and communicated to the applicant by the appropriate authority i.e. HQ CE Bathinda Zone, but appointment could not be offered due to more deserving cases in relative merit and no vacancies available within 5% prescribed quota. The applicant has been informed vide Ann.R/1, R/2 and R/3 that his case was considered by the Board of Officers and he was not found in merit for appointment on compassionate ground in 5% Direct Recruitment vacancies. Therefore, the OA is not sustainable on any ground.

4. Heard both the parties. Counsel for the applicant contended that father of the applicant died on 23.5.2008 and applicant applied to the competent authority for appointment on compassionate grounds immediately thereafter but the competent authority vide Ann.A/1 informed the applicant regarding rejection of his application, which does not mention any date of the meeting of the Committee constituted for considering cases of appointment on compassionate grounds. After filing of the OA, the respondent department filed reply and along with reply, they have enclosed three documents, Ann.R/1, R/2 and R/3 dated 22.12.2012, 29.12.2012 and 15.03.2013 respectively stating these letters to be speaking orders of different dates of the meeting of the Board of Officers constituted for the purpose of considering appointment on compassionate grounds. The counsel for the applicant further contended that the respondent department in their reply averred that the case of the applicant was

considered thrice and even after he was not found fit for appointment.

Counsel for the applicant contended that Ann.A/1 is another look of consideration of the applicant's case for compassionate appointment but it does not refer any date of the meeting of the Board of Officers.

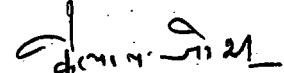
He further contended that after informing the applicant vide Ann.A/1, three letters were prepared by the respondents after filing of the OA and this is somewhat a concocted story of the respondent department regarding considering case of the applicant thrice for the vacancies of the year 2009-10, 2010-11 and 2011-12 but the applicant's case ought to have been considered for the vacancies of the year 2008-2009, 2009-10 and 2010-11 as per the policy in vogue in the year 2008 itself and in support of his contention he relied upon the judgment of the Hon'ble Madhya Pradesh High Court in the case of T.Swamy Das vs. Union of India decided on 10.1.2002 reported in 2003 (1) ATJ 367.

5. Counsel for the respondents, during the course of arguments, could not show on what basis Ann.A/1 has been passed and whether it has been passed in pursuance to the meeting of the Board of Officers for considering cases of appointment on compassionate grounds or simply it is a letter written by the respondent department on the ground of rejection of the applicant's application in the office. Counsel for the respondents contended that the applicant has filed this OA only for quashing order Ann.A/1 whereas Ann.R/1, R/2 and R/3 have been passed, which are speaking orders.

6. I have considered the rival contention of both the parties. The speaking orders passed by the respondents as Ann.R/1, R/2 and R/3 cannot be said to be proper consideration of the case of the applicant

on compassionate grounds when the applicant has filed application for appointment on compassionate grounds in the year 2008 itself and his candidature must be considered in the light of the policy or the rules applicable in the year 2008 as held by the Hon'ble Madhya Pradesh High Court in the case of T.Swamy Das (supra), cited by the counsel for the applicant. It is evident that Ann.R/1, R/2 and R/3 are subsequent letters, which are issued even after filing of the OA. The impugned order Ann.A/1 challenged in the OA does not refer any date of the meeting of the Board of officers. Therefore, in my considered view, Ann.A/1 cannot be sustained and there is no necessity to challenge Ann.R/1, R/2 and R/3 which appear to be creations of the respondent department after filing of the OA.

7. Accordingly, the OA is allowed and Ann.A/1 is quashed. The respondents are directed to consider the case of the applicant for appointment on compassionate grounds against the vacancies arose in the year 2008-09, 2009-2010 and 2010-11 that too according to the policy or rules in force in the year 2008. The respondents are further directed to consider candidature of the applicant within four months from the date of receipt of a copy of this order and communicate the same to the applicant accordingly. No order as to costs.


(JUSTICE K.C.JOSHI)
Judicial Member

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