IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH AT JODHPUR

O.A..No.105 of 2011

Reserved on: 6.7.2012 Date of order: 31.7.2012

CORAM

Hon'ble Mr. B K Sinha, Administrative Member

Sunil Bhati S/o late Shri Lal Chand
R/o Qr.No.3/3 Lal Kamal Kunj,
Ram Baag Kaga Scheme,
Jodhpur (Rajasthan).
(Dependent son of Ex-Conservancy Safaiwala Smt.Kamla
Wife of late Lal Chand, Army Station HQ, Jodhpur. ..Applicant

(By Advocate Mr. S.P. Sharma)

Vs.

1. Union of India through the Secretary
Ministry of Defence, Govt. of India,
Sena Bhawan, New Delhi.

2. The Addl.Directorate General of Staff Duties
SD0-7 (Adm.Civs) General Staff Branch,
Army Headquarters, DHQ PO
New Delhi-110 011.

3. The Adm.Commandant,
Army Station Headquarter,HQ Jodhpur
Rajasthan .....Respondents

(By Advocate Mr. Vinit Mathur ASGI with Adv.Mr.Ankur Mathur)

ORDER

The instant OA is directed against the Office Order No. 8581/3/KL/EST. dated 9.11.2011[A1] of the Adm.Commandant, Army Station Headquarters, Jodhpur rejecting the request of the applicant for appointment on compassionate grounds on the basis of Circular dated 20.9.2005 [A2].

Reliefs sought

(i) By an appropriate order or direction of this Hon'ble Tribunal, the impugned order dated 9.11.2011 (Annexure.A/1) passed by the respondent No.3 and so also impugned circular dated 20.9.2005 issued by the 2nd respondent may very kindly be declared

unsustainable in the eye of law and consequently the same may very kindly be quashed and set aside.

(ii) The respondents may very kindly be directed to immediately provide regular appointment to the applicant, to the post of Group D or conservancy safaiwala, on compassionate grounds in any unit of Respondent No.3 in lieu of death of her mother Smt. Kamla, conservancy safaiwala who passed away on 15.09.2011, while in service.

(iii) Any other appropriate relief which this Hon'ble Tribunal deem just and proper in the facts and circumstances of the case may be passed in favour of applicant.

(iv) The original application of the applicant may be allowed with the cost.

Case of the applicant

2. The case of the applicant, in brief, is that he is the only surviving dependent son of late Smt. Kamla W/o Shri Lal Chand, who expired on 15.9.2011 while working as permanent Conservancy Safaiwala in the office of the third respondent. The applicant also submits that he has one brother and two sisters. The applicant has produced the death certificate issued by Jodhpur Municipal Corporation [A6]. The Respondents have released some retirement dues of his mother, the details of such dues have not been informed. On 24.10.2011 [A7] applicant submitted an application for compassionate appointment before R3. Applicant met R3, who informed him that his case has been sent to higher authorities for consideration. However vide Annexure.A1 order dated 9.11.2011 it was intimated by the respondents that his case cannot be considered as the Conservancy Posts have been declared dying cadre in the department and his application has been rejected. It is averred that the rejection of the applicant's request for compassionate appointment on the basis of Annexure.A2 Circular of the department is arbitrary, illegal and unjustified on the face of it, because the respondents have simply avoided offering compassionate appointment to the applicant. He has stated that Scheme for compassionate appointment has been made for giving appointment to the dependents identifying the family to be indigent, so as to provide immediate relief to the family in harness. Since the respondents have not forwarded the application for compassionate appointment to higher authorities, the request was not properly considered and orders passed by the higher authorities.

Case of the respondents

3. The respondents filed counter affidavit opposing the original application. They submit that the impugned order has been passed by the R3 on the basis of Army Headquarters letter dated 20.9.2005, which states:

> ***"1. Ref.DOPT Om No.2/8/2001-PIC dated 16 May 2001.***
>
> ***2. As per Para 2.45 of DOPT OM ibid, vacancies under 5% quota for compassionate appointments are to be worked out from the vacancies approved by the Govt. for direct recruitment under annual direct recruitment plan. MOD has pointed out that the consy estt has been sanctioned by the local army authorities and not by the MOD and consequently has stopped recruitment. The consy staff has thus become a dying cadre.***
>
> ***3. The proposal was taken up with DOPT to allow to utilize 5% of annual wastage vacancies of consy staff for making compassionate appointment as strength of other categories under SD Dte is very meager and consequently does not have any vacancies under 5% quota from them for compassionate appointments. DOPT has not agreed to the proposal for the reason that compassionate appointments cannot be allowed in the dying cadre.***
>
> ***4. In view of the foregoing, it is requested that the Stn HQs under your command be advised not to forward the applications of the dependents of the consy staff dying in harness to Army HQ (SD-7). The applicants may be explained the Govt. decisions given in paras 2 and 3 above and the applications returned to them."***

They have further stated that all the dues of the deceased employee has been paid to the applicant. The contents of the above letter has been explained to the applicant who appeared before R3 in person and that no assurance was given to him, as averred in the original application that assurance has been given to him that he will be granted appointment on compassionate grounds. No fresh recruitment to the post of Conservancy Safaiwala is being made and the existing employees in this cadre are required to be continued till their superannuation. Moreover the sister of the applicant and daughter of Shri Lal Chand has already been appointed as a Conservancy Safaiwala. Hence they prayed that the O A may be dismissed.

Facts in issue:

4. The only issue for consideration here is that whether the right to compassionate appointment is available to the conservancy Safaiwala. The case of the respondents is solely based upon the instructions of the Army HQs communicated by the Memo dated 20.09.2005 as cited in para 3 of this order. For sake of ready reference, the afore order of the Army HQs is being reproduced below for easy reference:-

> ***"1. Ref.DOPT Om No.2/8/2001-PIC dated 16 May 2001.***
> ***2. As per Para 2.45 of DOPT OM ibid, vacancies under 5% quota for compassionate appointments are to be worked out from the vacancies approved by the Govt. for direct recruitment under annual direct recruitment plan. MOD has pointed out that the consy estt has been sanctioned by the local army authorities and not by the MOD and consequently has stopped recruitment. The consy staff has thus become a dying cadre.***
> ***3. The proposal was taken up with DOPT to allow to utilize 5% of annual wastage vacancies of consy staff for making compassionate appointment as strength of other categories under SD Dte is very meager and consequently does not have any vacancies under 5% quota from them for compassionate appointments. DOPT has not agreed to the proposal for the reason that compassionate appointments cannot be allowed in the dying cadre.***
> ***4. In view of the foregoing, it is requested that the Stn HQs under your command be advised not to forward the applications of the dependents of the consy staff dying in harness to Army HQ (SD-7). The applicants may be explained the Govt. decisions given in paras 2 and 3 above and the applications returned to them."***

5. It is evident from the above facts that the conservancy Safaiwala cadre being a dying cadre, the benefit of compassionate appointment is not given to his members. The very fact that this cadre has been declared a dying cadre indicates that it is not to perpetuate itself. As and when the members of this cadre superannuate, the post held by him is declared a dead post and no fresh recruitment is made in its lieu. Hence, the logic is that the cadre should come to an end truly and meaningfully as oppose to this, there is

the view that the appointments need not be made against the post of conservancy Safaiwala but against any posts in Group 'C' &' D'. Further, that there is no specific bar to stop recruitment in place of personnel in a dying cadre being given compassionate appointments. Here, it would be proper to go into the definition of the Government servant here. Note II defines 'Government servant' ***"for the purpose of these instructions means a Government servant appointed on regular basis and not one working on daily wage or casual or apprentice or adhoc or contract or re-employment basis."*** Note III provides that: ***"'Confirmed work charges staff' will also covered by the term 'Government servant' mentioned in Note II above.*** Note V provides that: ***"'Re-employment' does not include employment of ex-serviceman before the normal age of retirement in a civil post."*** This implies that a certain classes have been excluded from this programme on the basis of a reasonable differential. The view of the DoPT is also understandable that since the vacancies are confined to just 5% of the total vacancies arising for Direct Recruitment, the atmosphere is become rarified and exclusion has to be made so that the really deserving get it. This appears to be necessary in the interest of the deserving.

6. The respondents have relied upon certain decided cases namely: (i) **Smt. Amrawati Devi & Anr Vs. UOI & Ors** : OA No.243/2008, **Mukesh Kumar Vs. UOI & Ors** : (2007) 8 SCC 398, **Smt. Santra Devi vs. U.C.O Bank & Anr :** 2010 (4) CDR 2143 (Raj.), **Trilok Chand Kawad vs. Javari Lal Marlecha & Anr :** 2010 (4) CDR 2146 (DB), **Bhawani Prasad Sonkar vs. UOI & Ors :** (2011) 4 SCC 209. The case of **Smt. Amrawati Devi & Anr Vs. UOI & Ors** (supra) deals with a different issue that where the applicant was working on a continuing post, compassionate appointment could be given. In **Mukesh Kumar Vs. UOI** (supra) the ratio is completely different as being one of indigence. In **Smt. Santra Devi vs. U.C.O Bank & Anr** (Supra) the question was that whether the compassionate appointment could be given when the deceased employee has been facing charges during his service period. **Bhawani Prasad Sonkar vs. UOI & Ors** (supra), deals with the medically decategorised employee.

7. It has been held by this very Tribunal that compassionate appointment is not a matter of right but of dispensation and a weak dispensation at that too. In a decided case, this very Tribunal has held that the claim of the compassionate appointment is moderated by four doctrines- (i) the doctrine of competitive indigence, (ii) the doctrine of immediacy, (iii) the doctrine of eligibility, and (iv) the doctrine of regular service, as has been cited above in the definition of 'Government servant'. In Smt. Kamla vs. UOI & Ors, : OA No.129/2012, this Tribunal has held:

> ***"It emerges from above that compassionate appointment being a special dispensation from the Government to a particular class of employees is limited in character. Even if a person were eligible it does not imply that he will be appointed. The impugned order also mentions that no cases are considered individually at the Unit/Office level at the level of the Army Headquarters for the entire country by a Board of Officers to find the most deserving cases in acute financial distress/more indigent in comparison to other similar cases. This amounts to a competitive eligibility in hardship. A person may remain eligible and yet not appointed while the dependants of an employee dying at a later date may on account of more severe hardship. Merely dying in harness does not bestow eligibility. This brings us to the next issue."***

8. It is well appreciated that in absence of statutory provisions, the directives of the DoPT will have effect of sub-ordinate legislation and will be good and binding. In the instant case also, I see no reason whatsoever to quash the impugned orders, which is based upon the directives of the DoPT.

9. The OA is, hence, disallowed without costs.

(B.K. SINHA)
Administrative Member

pps/rss