

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.244/2013

Jodhpur, this the 27th day of April, 2015

CORAM

Hon'ble Ms. Meenakshi Hooja, Administrative Member

Raghuveer Singh S/o Shri Kushal Singh, aged 22 years, R/o village Madhopura (Sankda), District Jaisalmer; deceased ex-Chowkidar in the office of respondent No.2 at Jassai, District Barmer.

.....Applicant

By Advocate: Mr. Vijay Mehta.

Versus

1. Union of India, through the Secretary to the Government of India, Ministry of Defence, Raksha Bhawan, New Delhi.
2. Officer Commanding, 41 (Independent) Supply Platoon, ASC, Jassai, District Barmer.
3. Sub Area Commander, Army Sub Area Hdq., Jodhpur.

.....Respondents

By Advocate : Smt. K. Parveen.

ORDER (Oral)

This OA has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 challenging the order No.414477/Gen/ST-12 (Civ) dated 20.05.2013 (Annexure-A/1) issued by respondent No.2 rejecting the case of the applicant for compassionate appointment being the low in merit, and praying for the following reliefs: -

"That on the basis of facts and grounds mentioned herewith, the applicant prays that the impugned order Annexure-A/1 dated 20.05.2013 may kindly be quashed and the respondents may kindly be directed to give appointment on compassionate grounds to the applicant with all consequential benefits forthwith. Any other order as deemed fit in the facts and circumstances of the case may kindly be also passed and the costs be also awarded to the applicant."

2. Brief facts of the case as averred by the applicant are that the applicant is son of Shri Kushal Singh, who was permanent employee working on the post of Chowkidar in the office of respondent No.2 at Jassai, District Barmer and who died while in service on 10.06.1991.

The deceased left behind him his widow and two sons including the applicant and the applicant was one year old while his younger brother was only a few days at the time of death of Shri Kushal Singh. It has been averred that the mother of the applicant was granted family pension of Rs.375/- per month in the year 1992 and terminal benefits to the tune of Rs.26,972/- were paid to the mother of the applicant and except family pension the family has no income to sustain itself. The family has a heavy liability of loans and further the applicant has passed 12th class. It has been further averred that immediately after the death of his father the mother of the applicant met respondent No.2 for giving appointment to the applicant on compassionate grounds on the post of Mazdoor or on any other post. The respondent No.2 assured the mother of the applicant that the applicant will be given appointment on attaining majority. Immediately after attaining majority by the applicant mother of the applicant submitted an

application in the month of May 2009 to the respondent No.2 for giving appointment to the applicant on compassionate grounds and respondent No.2 recommended his case. But, despite personal requests and repeated assurances and lapse of more than two years the respondents did not pass any order, the applicant filed an OA No.381/2011 before this Tribunal and this Tribunal vide its order dated 24.04.2012 while holding that the applicant has a right to file OA upon attaining age of majority directed the respondent No.3 to consider and pass a speaking order clearly mentioning the scores of the applicant and primary information adopted for filling up the first form. The copy of the order dated 24.04.2012 has been placed at Annexure-A/2. It has been further averred that Union of India has made Scheme vide notification dated 09.10.1998 for making appointment on compassionate grounds wherein elaborate provisions for giving appointment on compassionate grounds have been provided and thereafter the Ministry of Defence issued instructions dated 09.03.2011 making provisions for giving merit points and the instructions provide for giving five marks for one minor child. The respondent No.2 vide his order dated 20.05.2013 (Annexure-A/1) declined to grant appointment on compassionate grounds since the case of the applicant does not fall within the definition of really deserving cases. It has been further averred that the Hon'ble Tribunal



vide its order Annexure-A/2 directed the respondents to consider the case of the applicant on the basis of primary information adopted for filling up the first form and this Tribunal in a number of cases has held that marks are required to be given on the basis of the factual position prevailing at the time of filing of the application and amount of family pension, age of children at the time of filing of the application is to be taken into consideration and not the situation prevailing at the time of consideration by the Board of Officers. It has been further averred that a perusal of order Annexure-A/1 would reveal that the same has been addressed to Shri Vineet Kumar Mathur and copy thereof has been forwarded to the applicant and the order appears to have been issued by respondent No.2 and not by respondent No.3. It has been mentioned therein that copies of certain documents have been enclosed for ready reference of Shri Mathur but the same have not been enclosed with the copy of order sent to the applicant. It has been submitted that from perusal of the order it also appear that the same has been passed on the basis of factual position prevailing on the day of consideration and has not been passed on the basis of position as it was on the death of the deceased and/or on the date of making application. It has been specially mentioned that the family pension of Rs.3500/- plus R.2520/- as dearness relief is being received by the mother of the applicant whereas the mother of the applicant was

Yer

receiving Rs.375/- as family pension at the time of making application. It has further been mentioned that there is no minor and school going children in the family and therefore marks against the column of number of minor children has been mentioned as '0'. It is apparent that younger brother of applicant Rajendra Singh was minor who was of a few days old at the time of death of his father and thus the applicant was entitled to be given five marks for one minor child in the family and thus the total of marks of the applicant will be 73, which are much more than the cut of marks of 71. It is thus apparent that though candidates receiving 71 marks have been given appointment, the applicant who is entitled to receive 73 marks has been denied appointment. No details have been given in the impugned order as with whom the case of the applicant was clubbed together and how the marks were given to all the 120 candidates and no date of meeting of the Board of officers has been given in the impugned order. It is only after submission of the Board proceedings it shall be known whether the marks were correctly given to all the applicant and whether the case was considered in accordance with the Scheme and the Instructions or not. It has been averred that it is apparent from perusal of order Annexure-A/1 that the case has not been considered objectively in accordance with the Scheme and the instructions. It has been submitted that the respondents have wrongly rejected the case of

the applicant and the impugned order has not been passed by the respondent No.3 but has been passed by respondent No.2 and the case of the applicant has been closed as considered after the first time and without considering the same for three times and on the said grounds, the applicant has prayed for quashing of order Annexure-A/1 dated 20.05.2013 and providing the reliefs prayed for and directing the respondents to give appointment on compassionate grounds to the applicant with all consequential benefits.

3. By way of reply, in preliminary objection the respondents have stated that the applicant bitterly failed to establish violation of any legal right much less the constitutional right of the applicant by the answering respondents and it has been further averred that the applicant has not come to the Tribunal with clean hands by presenting the facts as per his convenience while concealing material facts. In parawise reply, it has been averred that late Shri Kushal Singh was a permanent employee working as Civil/Chowkidar in the Unit of the answering respondents and expired on 10th June, 1991 while on service and he was survived by his wife, Smt. Nakhso Kanwar and two sons Shri Raghuveer Singh and Shri Rajendra Singh and the family received Rs.26,972/- as terminal benefits and presently the mother of the applicant is receiving a monthly pension of Rs.5589/- plus

dearness allowance of Rs.2889/- . The family is staying in owned house in their village. It has also been submitted th no record held with this office regarding meeting of the mot applicant with the then officer commanding of this unit im after the death of Shri Kushal Singh and there is also no rec written assurance given to the mother of the applicant appointment of the applicant on attaining majority. Ho November, 2009, the mother of the applicant was advised son registered in the employment exchange. It has been sub speaking order in compliance with the CAT Jodhpur Be dated 24.04.2012 passed in OA No.381/2011 filed by Shri I Singh was forwarded to Mr. Vinit Kumar Mathur, Assistant General of India, Rajasthan High Court, Jodhpur, Rajasthan in the CAT. It has been submitted that the application for ap on compassionate grounds was a belated application processed as per Government of India, Department of Pers Training OM No.14014/6/94 Estt. (D) dated 09th Octo (Annexure-R/1). Further as per Merit list prepared by the B assessing the economic conditions of all 121 candidates, criteria laid down by the Department of Personnel and Tr Ministry of Defence, the name of the applicant was place No.18 of the merit list and the applicant secured 68 points



points. In all 121 candidates were considered by the Board against 5% quota vacancies for the year 2012-13 and in whose case death of Government servants has taken place between 1980 and 2012. The oldest cases pertaining to the year 1980-1991 (of the applicant) was considered by the Board of Officer on express orders of Hon'ble Court. The score of the last competing successful candidate was 71 and those who have not qualified have got less than 71 points and in the instant case the applicant has scored 68 points only and was not given appointment. It has been further averred that the application for appointment on compassionate grounds was a belated application and was processed as per the Government of India, DoPT OM No.14014/694/Estt(D)/ dated 09.10.1998 with special reference given to para 8 of the OM. In this instant case, the death of Shri Kushal Singh has occurred on 10.06.1991 and the application for compassionate appointment was submitted in May 2009 after 18 years.

Shri Raghuvir Singh the applicant was one year old at the time of demise of the father and the family including the applicant has survived 18 years which warrants due consideration. With reference to para No.4.10, 4.11, and 4.12 of the OA it has been submitted that Directorate General of Supply and Transportation vide their letter No.79702/5592/Q/ST dated 03.07.2014 has intimated that the competent authority has approved in relaxation of the normal

procedure of recruitment through employment exchange in favour of Shri Raghuveer Singh s/o late Shri Kushal Singh for employment on compassionate grounds against the post of Labour in 494 Coy (Sup) Type 'E' Suratgarh against 5% quota earmarked for the purpose out of the vacancies arisen during the financial year 2012-2013 subject to verification of his character and antecedents and medical fitness. It has been submitted that the marks have been awarded by considering all aspects of the rules and instructions in this regard and as has been held by the Hon'ble Supreme Court, the appointment on compassionate grounds is not a matter of right and the applicant is not entitled to get any relief and the respondents have thus prayed for the dismissal of the OA.

4. Heard. In this matter, counsel for the respondents herself submitted that though in the reply, the issues raised by the applicant have been denied but presently the case of the applicant is under reconsideration of the respondent department. In this context, counsel for the applicant submitted that direction may be given to the respondent department to decide his case at the earliest and the OA may also be treated as an additional representation. In view of the above submissions as made by the counsels it is proposed to dispose of this OA with certain directions.

[Handwritten signature]

5. Accordingly, the respondents are directed to decide the case of the applicant for appointment on compassionate ground which is under consideration before them, within a period of four months from the date of receipt of a copy of this order, and further that the OA may be treated as an additional representation.

The OA is thus disposed of as stated above with no order as to costs.


(MEENAKSHI HOOJA)
Administrative Member

Rss