

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

Original Application No.341/2013

Jodhpur this the 07th day of April, 2014.

CORAM

Hon'ble Mr.Justice Kailash Chandra Joshi, Judicial Member
Hon'ble Ms. Meenakshi Hooja, Administrative Member

Bhanwar Manohar Singh S/o Shri Mangu Singh aged about 30 years resident of C/o Bhojraj Singh, Plot No. 6/31, DDP Nagar, Madhuban, Basni 1st Phase, Jodhpur, presently working on the post of Trainee Technician – A in the office of Director of DMRC, Jodhpur.

.....Applicant

(Through Advocate Mr. S.K.Malik)

Versus

1. Union of India through Director General, Indian Council of Medical Research, Ansari Nagar, New Delhi.
2. The Director Desert Medical Research Centre (DMRC), New Pali Road, Jodhpur.

(Through Advocate Mr. D.P.Dhaka on behalf of Mr. Vinit Mathur)

..... Respondents

ORDER (ORAL)

Per Justice Kailash Chandra Joshi, Member (J)

The applicant has approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, praying for the following relief (s):-

"(i) By an appropriate writ, order or direction the Respondents may kindly be directed to regularize the services of the applicant on the post of Technician – A and grant him regular pay Band and Grade pay w.e.f. 16.08.12 along with arrears of pay and allowances with all consequential benefits.

(ii) Any other relief which is found just and proper in the fact and circumstances of the case may kindly be passed in the interest of justice."

2. Brief facts of the case, as stated by the applicant, are that after demise of his father, the applicant filed application for compassionate appointment, but the same was rejected vide order dated 17.4.2009. The applicant challenged the order dated 17.4.2009 by filing OA 141/2009 which was decided by this Tribunal on 25th May, 2010, and the respondents were directed to consider the case of applicant for compassionate appointment subject to condition mentioned in DOP&T OM dated 05.05.2013. It was further directed that in case of any difficulty/legal problem the name of younger son i.e. Tej Singh could equally be considered within four months period from the date of receipt of the order. The DOP&T vide its OM dated 11th December, 2009 (Annex.A/2) reviewed the Scheme for grant of compassionate appointments in the light of VI Pay Commission providing that in exceptional circumstances for appointment on compassionate grounds, the Government may consider recruiting persons not immediately meeting the minimum educational standard and the Government may engage them as trainees carrying regular pay Band and Grade Pay subject to acquiring the minimum educational qualifications prescribed under the Recruitment

Rules. The applicant was possessing Senior Secondary Examination certificate with Science subjects i.e. Physics, Chemistry and Biology, but did not have certificate in Medical Lab Technician which is essentially required for appointment as Technician-A. Accordingly, he was given appointment as trainee Technician-A on compassionate grounds in the 1-S Pay Band of Rs. 4440-7440 with no grade pay vide OM dated 28th January, 2011 (Annex.A/3) which he joined on 28th January, 2011. Thereafter, on 31st March, 2011 the applicant moved an application for taking permission to undergo for certificate course of Lab Technician. The applicant underwent the course of Medical Lab Technician from the EIILM University, Sikkim by distance learning course and submitted the mark-sheet to the respondents vide letter dated 16th August, 2012 requesting therein to regularize his services on the post of Technician – A, being a fully eligible candidate as per the provisions on the subject. The applicant has been granted increments from July 2012 and from July 2013 but no step has been taken for regularizing his services as a regular Technician-A despite submitting reminders supported with the concerned O.M. of the DOP&T. Being aggrieved with the inaction on the part of the respondent-department, the applicant has moved this OA claiming the reliefs as mentioned above.

3. The respondents by way of reply submitted that a sum of Rs. 3,23,442/- was paid to the family of the deceased against the

terminal benefits viz. DCRG and a monthly pension of Rs. 12,675/- with applicable allowances are being paid to the family. The respondents have further submitted that on receiving directions from this Tribunal, the applicant was accommodated on compassionate grounds and was accordingly, appointed as Trainee on 28th January, 2011 as per his qualifications. The respondent – department has also submitted that the applicant has undergone the desired course of one year Diploma in Medical Laboratory Techniques and acquired one year experience as required for Technician-A and submitted the certificate to this effect on 16th August, 2012. The respondents have specifically averred in their reply that the applicant, despite knowing that his case is being considered as per the scheme on the subject approached this Tribunal prematurely because as per the scheme on the subject only 5% vacancies are reserved for consideration of compensatory appointments against the direct recruitment vacancies arising during the year under Group 'C' quota and it is also apparent that no vacancies were occurred under direct recruitment of 5% quota due to which he could not be regularized. The applicant's case is still under process of consideration for giving him the benefit from the date of acquiring the qualification i.e. 16th August, 2012 but that depend upon the availability of vacancies. The respondents have, therefore, prayed that this application is premature and it should be dismissed in view of the above submissions.

4. Heard both the parties. Counsel for the applicant contended that the applicant was appointed in compliance to the order passed by this Tribunal in OA No.141/2009 on compassionate ground on the post of Trainee Technician-A on pay of Rs.4440/- in the 1-S, pay band of Rs.4440-7440 without any Grade Pay plus all applicable allowances like Dearness Allowance, HRA & Transport Allowance etc. vide Annexure-A/3. At the time of the appointment, the applicant was not qualified for that post on account of lack of essential qualification prescribed for the post of Lab Technician and later on he acquired the essential qualification prescribed under the recruitment rules on 16.08.2012. Counsel for the applicant further contended that in spite of acquiring the qualification and completion of the training, the respondent department did not regularize the service of the applicant on the post of Lab Technician and has not granted the regular pay band w.e.f. 16.08.2012 along with the arrears of pay and allowances with all consequential benefits. Counsel for the applicant further contended that the respondent department is again and again taking the shelter that 5% posts reserved for compassionate appointment are not vacant and, therefore, the applicant's services could not be regularized on the post Lab Technician-A. Counsel for the applicant also contended that in view of Annexure-A/2 OM dated 11.12.2009 & OM dated 03.04.2012 (Ann.A/8), the vacancy for the post of Lab Technician-A is not relevant for paying the regular salary of the Lab Technician because from the date of the completion of

training i.e. on 16.08.2012, the applicant is entitled to have the regular salary and allowances but the respondent department is not paying the same.

5. Per contra, counsel for the respondents contended that the process of regularizing of the services of the applicant is in active process and therefore the OA filed by the applicant is premature and it is within the knowledge of the applicant that the process of the regularization of his services is under active consideration.

6. We have considered the rival contentions of both the parties and perused the record. So far as Annexure-A/2, the OM dated 11.12.2009, and the OM dated 03.04.2012 are concerned, there is no rebuttal on the part of the respondents. Therefore, in our considered view the applicant is entitled to get the regular salary w.e.f. 16.08.2012 i.e. from the date of completion of Lab Technician course and acquiring the essential qualification for the post of Lab Technician –A.

7. In view of the discussions made hereinabove, the OA is allowed and the respondent department is directed to consider the case of the applicant for regularization of his services within four months from the date of receipt of a copy of this order, in accordance with the office memorandum dated 11.12.2009 & 03.04.2012, and further to pay the applicant salary w.e.f.

16.08.2012 along with arrears of pay and allowances as per
Rules. There shall be no order as to costs.

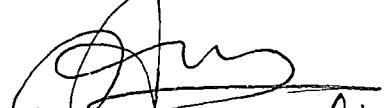


(MEENAKSHI HOOJA)
ADMINISTRATIVE MEMBER



(JUSTICE K.C.JOSHI)
JUDICIAL MEMBER

R/Rss

Reg

S. K. Malile
15/4/14 ^{Adv}

Received

D. P. Dancer
15/4
for V.K. Malile