

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.290/00387/2014

Reserved on 05.10.2016

Jodhpur, this the 7th day of October, 2016

CORAM

Hon'ble Ms. Praveen Mahajan, Administrative Member

Puran Mal s/o Late Shri Madan Lal, aged about 28 years, b/c Shakya (OBC), R/o VIII+ Po-Sadhuwali, Ward No.2, Near Ramdev Mandir, District Sri Ganganagar. (Late Shri Madan Lal was posted as FGM in MES at Sriganganagar)

.....Applicant

By Advocate: Mr. S.P.Singh

Versus

1. Union of India through the Secretary, Ministry of Defence, Raksha Bhawan, New Delhi.
2. Garrison Engineer, Sri Ganganagar, Rajasthan.
3. Chief Engineer, Bathinda Zone, Bathinda Military Station, Bathinda.

.....respondents

By Advocate: Mr. Rameshwar Dave

ORDER

In this OA, the applicant requested the respondent department for compassionate appointment on the death of his father. This request was purportedly rejected by the respondents on 10.11.2007. The applicant avers that it was communicated to

him, through impugned orders dated 05.11.2013 (Ann.A/1) and 12th July, 2014 (Ann.A/2) respectively.

2. The applicant's father late Shri Madan Lal, who was working as Fitter General Mechanic (FGM, for short) under the respondents, expired during the course of employment on 01.05.2002, leaving behind his family in great financial distress. The applicant requested for compassionate appointment to the respondents and forwarded all the relevant documents for consideration to the competent authority. However, the respondents issued order dated 10.11.2007 whereby the applicant was not considered for compassionate appointment. This fact was made available to him only through an application filed by him under the Right to Information Act. Vide letter dated 05.11.2013 (Ann.A/1), the respondents have informed the applicant that his case has been considered and rejected on 10th November, 2007 by the Board of Officers, due to more deserving cases and also because no vacancies were available. The applicant has referred to policy circular of the DOPT (Ann.A/7), which envisages that it is mandatory to consider the case for compassionate appointment atleast thrice. Finally, he has relied upon the judgment of the Hon'ble Supreme Court in the case of **Govind Prakash Verma vs. Life Insurance Corporation of India & Ors.**, 2005 SCC (L&S) 590, wherein the Hon'ble Apex Court has held that for considering compassionate appointment,

service benefits received on death of an employee are not relevant. This judgment was also referred to, during the course of arguments on 05.10.2016 by the learned counsel for the applicant, emphasizing that paltry sum, which came in the form of retiral benefits to the family of the deceased was totally inadequate to sustain their livelihood, and, in any case, should not be made a factor for non-grant of compassionate appointment.

2. In reply, the respondents have submitted that request of the applicant for seeking appointment on compassionate grounds was considered on 4 occasions. He was, accordingly, informed of the outcome vide letters dated 29.05.2003, 30.06.2003, 10.03.2007 and 27.05.2007. Finally, speaking order was passed on 10th November, 2007 which was also communicated to the applicant. The respondents submit that the applicant approached the Tribunal 7 years after the final order was passed. The applicant, according to them, has tried to cover his delay in filing the OA under the garb of having received the information not directly from the respondents, but through his application under the RTI Act. Since the OA suffers from gross delay and latches, on this ground alone, no relief can be granted to the applicant. The respondents further submit that the scheme for compassionate appointment came into existence with a view to provide immediate assistance, to the family of the deceased employee. In the instant case, the family has survived for more than a decade

after the death of the employee. Hence, it would be correct to infer that the family has overcome the financial crisis, which they faced after death of Shri Madan Lal. It is not possible for the respondents to offer compassionate appointment to the dependent of each and every deceased employee, since the quota prescribed for the purpose is only 5% of the total direct recruit vacancies occurring in a year. In any case, the respondents have already adhered to the spirit of the policy and after considering his case found, that it is not a deserving case when the Board of Officers met to consider his case. In view of the reasons explained above and the delay and latches, the order dated 10th November, 2007 need to be upheld and the OA is liable to be dismissed.

3. Heard the pleadings of both the counsels and perused the record.

4. I find that the reply of the respondents as well as communication dated 05.11.2013 (Ann.A/1) is full of anomalies.

To take a few examples – the respondents in para-2 have mentioned that the case of the applicant was considered on 4 occasions and he was informed accordingly vide letters dated 29.05.2003 and 30.06.2003. It is not understood as to how his case could have been considered in 2003, when the applicant's date of birth, as per School Leaving Certificate, has been mentioned as 4th July, 1987. According to this, he was not even 16 years' old

when his case was considered, and rejected, by the respondents! In para-4.5 of the reply, the respondents have stated that Department awarded 74 marks to the applicant and his merit was '01' (Ann.R/5). There were total 7 applications, which were considered but nobody was selected due to non-availability of vacancies in the category of Mazdoor, Peon and Chowkidar. I fail to understand as to why the Board of Officers met at all to consider the cases of compassionate appointment, if no vacancies were available ? The letter dated 05.11.2013, which makes a reference to the rejection letter dated 10.11.2007 states that "due to more deserving cases and no vacancies available, your case has not been recommended by the Board of appointment on compassionate ground". Here again, the non-application and mechanical processing of papers is evident because if the candidate was No.1 in merit and secured 74 marks, then obviously his case was the most deserving. The respondents themselves have stated in the reply that no vacancies were available, which stands contradicted by this communication, mentioning that there were more deserving cases available- hence the candidature of the applicant was not considered.

5. In view of these facts, it would appear that the consideration of applicant's request for compassionate appointment was merely a paper exercise with no intent to provide relief to the families of the deceased employees. The policy of compassionate

appointment has not been followed by the respondents in letter or in spirit.

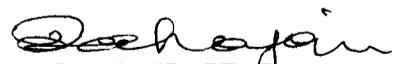
6. The respondents submit, that the case of the applicant was considered few times in 2006 and 2007, but each time there were no vacancies against which he could have been appointed. This action of the respondents cannot strictly come under the definition of "**Consideration**", because this was apparently an exercise undertaken in futility. There having been no vacancies, there was no question of granting relief to any of the applicants, including the applicant in the current OA.

Vide communication dated 12th July, 2014 in reply to the applicant's representation for information unde RTI Act, he has been informed that his case for compassionate appointment was considered against vacancies for the years 2006 and 2007 (4 times altogether) but he could not be selected since no vacancies were available. Of course, a patent language has been used again "due to more deserving cases and no vacancies available, your name was not in the merit and after serving final and fourth speaking order, the case was finally closed."

7. This is a case where request of the applicant for compassionate appointment has been considered by the Committee of Officers, 4 times, merely as a formality, knowing fully well what the result would be (in the negative), since no vacancies were available for appointment on all the 4 occasions, when the

Committee met. As per guidelines of the DOPT (mentioned by the respondents in para 4.7), the case of compassionate appointment can now be considered beyond 3 years. This would, of course, depend upon merit of each case. As far as aspect of delay is concerned, the applicant claims that he got to know about rejection only on 05.11.2013 (Ann.A/1) which was communicated to him on account of his RTI application. So, there is no delay on his part in approaching the Tribunal. This has been labelled a bluff by the respondents. However, the aspect of delay takes a back seat in view of the peculiar facts and circumstances of the case, when I see that the applicant's case till today, virtually, has never been considered against the available vacancies of 5% quota of compassionate appointment. Seeing the way in which this case has been dealt with by the respondent department, I am inclined to accept the plea of the applicant, and delay, if any, stands condoned.

7. Accordingly, the OA is disposed of with direction to the respondents to consider the case of the applicant for compassionate appointment (on a post according to his eligibility) as Mazdoor, Peon or Chowkidar by the next Board of Officers meeting, when such a vacancy is "available" in the organisation.


(PRAVEEN MAHAJAN)
Administrative Member

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