

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

(Reserved on 26.09.2016)

OA No. 290/00422/2014 Date of decision- 30.9.2016

**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)
HON'BLE MS. PRAVEEN MAHAJAN, MEMBER (A)**

Aarif Khan S/o Sh. Rafiq Ahmed Khan, aged about 29 years, R/o Guljarpura, Uparla Bas, Behind Teliyon ke Madarsa, Jodhpur.

...APPLICANT

BY ADVOCATE : Mr. K.N. Prajapati.

VERSUS

1. Union of India through the Secretary, Ministry of Information and Broadcasting, Govt. of India, New Delhi.
2. The Deputy Director General (E), Prasar Bharti, Broadcasting Corporation of India, All India Radio, Rajkot-360001.
3. The Director, Prasar Bharti, (Broadcasting Corporation of India), Akashwani, Pandit Sitaram Marg, Near Race Course, Rajkot-360001.

RESPONDENTS

BY ADVOCATE : Mr. Babu Lal Bishnoi

ORDER

HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J):-

The present O.A under section 19 of the Administrative Tribunals Act, 1985 is directed against the order dated 02.08.2013, letter dated 03.09.2013 and letter dated 07.11.2013 whereby the applicant has been informed that the screening committee constituted for this purpose, has not recommended his case for appointment on compassionate ground. He further sought issuance of direction from this Tribunal to the respondents to comply with the direction of this court passed in O.A No. 394/2012 decided on 03.07.2013 in his earlier petition.

2. The facts which led to filing of the present O.A are that late Sh. Rafiq Ahmed Khan, father of the applicant, was working as Daftari

with respondent department. Unfortunately, he died while in service on 12.06.2011. Immediately thereafter, the applicant submitted an application for appointment under Ex-Gratia Scheme and also for release of admissible benefit on demise of his father. When the applicant did not hear anything from the respondents, he approached this Tribunal along with his mother by filing O.A No. 394/2012 wherein they prayed that the respondents be directed to consider the case of the applicant no. 1 for appointment on compassionate ground and also release the retiral and family pension in favour of applicant no. 2 i.e. Smt. Sharifan, mother of the applicant. They also impleaded, Smt. Kaushar Banu Khan, who is second wife of deceased, as respondent no. 4. The said O.A was disposed of vide order dated 03.07.2013 with a direction to the respondents to consider the case of applicant no. 1 for appointment on compassionate ground by deciding the pending representation within a period of six months from the date of receipt of copy of the order. It is, thereafter, in furtherance of order of this court, the respondents have considered the case of the applicant and have rejected by passing the impugned order. Hence, the present O.A.

3. In support of above plea, Mr. K.N. Prajapat, learned counsel for the applicant vehemently argued that action of the respondents in rejecting the case of the applicant for compassionate appointment on the ground that he does not have requisite qualification is illegal, arbitrary and, thus, their action be quashed and set aside and a direction be issued to the respondents to offer him appointment.

4. The respondents resisted the claim of the applicant by filing detailed written statement wherein they have submitted that the applicant has not disclosed this fact that father of the applicant, deceased employee had taken divorce from his first wife i.e. mother of the applicant on 15.06.1991 and subsequently, got married with Smt.

Kaushar Banu on 24.11.1991 in accordance with Muslim rites and rituals. Not only this, the deceased employee had also changed the nomination in service record in favour of his second wife on 16.11.2010 for all admissible benefits arising out of service. It is also submitted that the applicant as well as Mr. Zulfikar R. Khan, second son from with Smt. Kaushar Banu, had applied for appointment under Ex-gratia scheme. The competent authority after considering both the applications, recommended the case of Mr. Zulfikar R. Khan for appointment on compassionate ground, accordingly, he was offered appointment on 05.12.2014. The case of the applicant was rejected being devoid of merit.

5. In support of above submission, Sh. Babu Lal Bishnoi, learned counsel for the respondents vehemently opposed the prayer of the applicant by submitting that once the authorities have already offered appointment to one of the family member of the deceased employee, then they cannot offer appointment in favour of the applicant, therefore, he prayed that the present O.A be dismissed being devoid of merit.

6. We have given our thoughtful consideration to the entire matter and have perused the pleadings as available on record with the able assistance of the learned counsel for the respective parties.

7. Conjunctive perusal of the pleadings makes it clear that father of the applicant i.e. late Sh. Rafiq Ahmed, had already taken divorce from his first wife i.e. mother of the applicant, Smt. Sharifan Khan on 15.06.1991, thereafter, he got married to Smt. Kaushar Banu on 24.11.1991 in accordance with Muslim rites and rituals. During his lifetime, he changed the nomination in favour of Smt. Kaushar Banu for release of all benefits. The case of the applicant as well as case of second son of deceased employee was considered by the competent authority for appointment under Ex-gratia scheme and the case of Mr.

Zulfikar Khan was recommended for appointment as such he was offered appointment under the said scheme. It is now well settled that the appointment on compassionate grounds is not a source of recruitment. It is an exception to the general rule that recruitment to public services should be on the basis of merit, by an open invitation providing equal opportunity to all eligible persons to participate in the selection process. The dependents of employees, who die in harness, do not have any special claim or right to employment, except by way of the concession that may be extended by the employer under the Rules or by a scheme, to enable the family of the deceased to get over the sudden financial crisis. The claim for compassionate appointment is therefore traceable only to the scheme framed by the employer for such employment and there is no right whatsoever outside such scheme.

Therefore, the applicant cannot seek any direction from this court to consider his case for appointment on compassionate ground, once the respondents have already considered and offered appointment to Mr. Zulfikar Khan under Ex-gratia scheme in terms of relevant instructions at that time. The applicant had a right of consideration which has been done. Accordingly, the present O.A is dismissed being devoid of merit.

8. No costs.

Rahay
(PRAVEEN MAHAJAN)
MEMBER (A)

Sanjeev
(SANJEEV KAUSHIK)
MEMBER (J)

Dated: 30.9.2016

Place: Jodhpur

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