

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No. 290/00165/14

Reserved on : 29.08.2016

Jodhpur, this the 7th day of September, 2016

CORAM

Hon'ble Ms Praveen Mahajan, Admn. Member

Adesh Kumar S/o Late Sh. Kalu Ram, aged about 32 years, R/o Village and Post – Banar, District Jodhpur Rajasthan. Ward of late Sh. Kalu Ram Majdoor in the office of Commandant 19 FAC C/o 56 APO.

.....Applicant

By Advocate: Mr S.K. Malik.

Versus

1. Union of India through the Secretary, Ministry of Defence, Raksha Bhawan, New Delhi.
2. The Commandant, 19 Field Ammunition Depot, C/o 56 APO Jodhpur.
3. The Personnel Officer, 19 Field Ammunition Depot, C/o 56 APO Jodhpur

.....Respondents

By Advocate : Mr K.S. Yadav.

ORDER

The present Original Application has been filed U/s 19 of the Administrative Tribunals Act, 1985 seeking following reliefs:

- (i) By an appropriate writ, order or direction the Respondents may kindly be directed to produce the entire Board proceedings for the year 2005 for compassionate appointment.
- (ii) By an order or direction respondents may be directed to consider the case of the applicant for compassionate

appointment by comparing the position of the ward of deceased employees of 2005 and accord appointment to the applicant on any Group 'D' post alongwith all consequential benefits.

- (iii) Exemplary cost be imposed on respondents for causing undue harassment.
- (iv) 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. The facts, in brief, giving rise to the present OA are that Shri Adesh Kumar (Applicant) is son of Late Shri Kalu Ram who died of prolonged disease while working on the post of Mazdoor under respondent No. 2. Late Shri Kalu Ram was survived by his wife, three sons and one daughter. On being asked by the respondents vide letter dated 24.02.2005 for compassionate appointment for any of the family members of deceased employee, the applicant being eldest son, applied for compassionate appointment vide application dated March, 2005 (Annex. A/2). The application was accompanied by affidavits from his mother, brothers and sister giving consent/NOC for the same. The details of family pension, death benefits, movable and immovable property are available with the respondents. The applicant states that the respondents did not consider his case despite giving him assurance many times, that his case will be considered shortly, when he met them in their office. The respondent No. 3 vide letter dated 14.07.2011 (Annex. A/3) informed the applicant that his case has been returned from the Headquarter Pune for want of details of family

pension on the basis of 6th CPC which is to be sent back after giving details of movable and immovable property. The respondents directed the applicant to furnish the said documents within 15 days. The applicant furnished necessary documents vide application dated 05.08.2011 (Annex. A/4). Vide letter dated 20.03.2012 (Annex. A/5), the respondent No. 3 informed the applicant that his case was considered for the first time by the Board. He got 44 marks out of 100 marks whilst other candidates got more marks than him. He was informed that his case will be considered for second and third time and he will be informed about the result of the same. The applicant states that the respondents did not disclose as to how he got 44 marks. His father expired in the year February, 2005 and his case was required to be considered with the candidates/wards of the employees who expired between February 2005 to December, 2005 as per the Scheme which was in existence, in the year 2005 for compassionate appointment. Whereas, the case of the applicant has been considered only in 2012. The applicant moved applications dated 12.09.2012, 23.05.2013 and 08.04.2014 (Annex. A/6 to A/8) but no response has been received from the respondents. Therefore, aggrieved of the action of the respondents, not considering the merit of the applicant's claim with respect to ward of deceased employee of the year 2005 and



not providing compassionate appointment, the applicant has preferred the instant OA.

2. The respondents in their reply have inter-alia stated that all the documents as per existing orders for employment under Relaxation to Normal Rules were forwarded to HQ Southern Command vide letter dated 10.06.2006. The Southern Command in turn, intimated vide letter dated 27.06.2006, that the documents may be submitted as and when called for. Later on, vide letter dated 29.12.2006 the HQ Southern Command asked the Depot to submit all the relevant documents and the same were sent vide letter dated 06.01.2007. A courier was detailed with a DO letter dated 20.06.2011 from the respondent Unit asking present status of the case. The HQ Southern Command (Ord) vide letter dated 24.06.2011 returned the case with the direction to resubmit the case duly prepared as per revised family pension as per the recommendations 6th Central Pay Commission, with movable/immovable property certificates, in the revised format. Accordingly, the details were asked, and received, from the applicant vide letter dated 14.07.2011. These were duly submitted to the HQ Southern Command vide Depot signal dated 03.10.2011 (Annex. R/3). The HQ Southern Command vide letter dated 07.03.2012 intimated that applicant's name has been considered in the Annual Board 2009-10 but was not recommended for

appointment, since other deserving candidates got more marks and he secured only 44 marks. A fresh Board was constituted as per RPR-2006, where the applicant secured 51 marks. The applicant's case has again been submitted to HQ Southern Command (Ord) vide letter dated 11.07.2012, and the current position of the case is awaited. In reply to para 4.5 & 4.6 of the OA, the respondents while giving details of the marks allotted to the applicant, have stated that the name of the applicant has not been considered for employment as he had less marks than other deserving candidates against the vacancy available for compassionate appointment. The applicant has been informed vide letter dated 20.03.2012 that he will be reconsidered in the next two Annual Boards for employment, in Relaxation to Normal Rules to be held at IHQ of MoD (Army). This exercise has not yet been completed. The name of the applicant will be considered in three Annual Boards to be held at IHQ of MoD (Army) level. Thus, the respondents have not denied the claim of the applicant for compassionate appointment.

3. In rejoinder, the applicant has reiterated that the request of the applicant for compassionate appointment should have been processed in the year 2005. But, the applicant was considered as per policy of the year 2010 which is not applicable in the present case. The applicant has further stated that the respondent No. 2,

while processing the case of the applicant, has taken into account the amount of Rs 7929 as basic pension whereas the basic family pension of mother of the applicant is Rs 3375/- which will be reduced to Rs 2,025/- after 06.02.2012 as per PPO issued by the office of the Principal CDA (Pension), Allahabad (Annex. A/9).

5. The respondents have filed additional affidavit. In the additional affidavit the respondents while reiterating some contents of reply, have averred that the family pension of the mother of the applicant has correctly been mentioned as Rs 7,979/- calculated with basic pension plus DA and fixed medical allowance as applicable. The same has also been mentioned in the PPO. The respondents annexed copy of the Bank Statement showing pension amount as Annex. R/5.

6. Heard both the counsels.

7. The main contention of the Ld. counsel for applicant was twofold. He contended that the case of the applicant should have been considered under the norms and Scheme prevailing in the year 2005, whereas, his case was considered with the ward of deceased employees of the year 2012 as per norms and scheme applicable, which came into existence subsequently. In support of his argument, he referred to the following judgments :

- (i) Hon'ble Supreme Court judgment passed in the case of Canara Bank v. M. Mahesh Kumar reported in (2015) 7 SCC 412;
- (ii) Hon'ble M.P. High Court judgment passed in the case of Prabir Kumar Biswas v. Union of India & Ors reported in 2003(1) ATJ Vol 39 p. 367

While referring to para 4.5 & 4.6 of the reply, he contended that the marks based on the family pension have wrongly been awarded to the applicant. The respondents have taken into account Rs 7,929/- as basic family pension for awarding the marks, whereas, the family pension of the mother of the applicant is Rs 3,375/- which would be further reduced to Rs 2025 after 06.02.2012 as per Annexure A/9 PPO. Thus, the action of the respondents is illegal and arbitrary.

8. Countering the arguments advanced by Ld. counsel for applicant, Ld. counsel for respondents placed on record copy of Scheme for compassionate appointment circulated vide letter dated 07.06.2001 and which was in existence at the relevant time. He contended that the same Scheme has been in vogue till now with very minor modifications, if any. He further argued that the respondents have rightly mentioned the amount of family pension, as is apparent from the bank statement (Annex. R/5). The pension has rightfully been worked out at Rs 7,979/-. This

figure includes basic pension, DA and fixed Medical Allowance. While further extending the arguments, he contended that assuming but not admitting, that the contention of the applicant is correct, even then the applicant would have got only 54 marks instead of 44 i.e. if the marks awarded for family pension were to be increased from 10 to 20. It is clear from the minutes of Board's meeting, that the cut off marks for recommending compassionate appointment for selected candidates were 64 and 74 respectively in Grade Pay of Rs 1900/- and Rs 1800/-. Thus, there is no force in the argument advanced by the applicant that his case was considered under a Scheme which came subsequently. More so, when the case of the applicant is going to be considered in the 2nd and 3rd Annual Board meeting for selection of candidates for compassionate appointment.

9. I have considered the rival contentions and perused the record.

10. Ld. counsel for the respondents has submitted a copy of the Scheme of Compassionate appointment which was circulated in the year 2001. It appears, that the cases for compassionate appointment were considered by the respondents, in the year 2005 as well as in the year 2012, under the same Scheme. 'Vide letter No. F.No. 19(3)/2009/D(Lab) dated 22.01.2010 (Annex. R/1), the respondents have only revised points on account of enhanced pension, gratuity and other terminal benefits in pursuance of

implementation of recommendations of 6th CPC by the Government. Therefore, judgment cited by the Ld. counsel for applicant does not apply in the instant case, since principles of both the Schemes during the entire period of considering the compassionate appointment cases were alike principally.

11. As far as issue of marks allotted on account of family pension are concerned, even if full marks had been granted to the applicant, taking into account the lower pension, as contended by the applicant, it still would not help the case of the applicant who was far below the merit list compared to the selected candidates. The respondents are directed to maintain uniformity while taking into account the correct pension and other parameters at the time of the meeting of the next Annual Boards. It must be ensured that no one gets any undue advantage or is placed at a disadvantageous position because of different formula being adopted, by the PAOs of different field formation giving rise to avoidable anomalies. The competent authority must decide whether, for the purpose of computation of marks, only basic pension is to be considered, or, whether the Basic Pension would include DA and other allowances etc also. The respondents shall ensure that the policy/principal for taking into account family pension of the candidates is carved in stone, allowing no discrimination or deviation whatsoever not only in the current case but for all such future selection too. I am not inclined to

intervene in the matter since the 2nd & 3rd Annual Board meetings are yet to be convened where the case of the applicant will be considered.

12. In terms of above directions and observations, OA is disposed of with no order as to costs.


[Praveen Mahajan]
Administrative Member

Ss/-

RIC
12/9/16

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