

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.290/00002/2014

Reserved on 08.11.2016

Jodhpur, this the 11th day of November, 2016

CORAM

Hon'ble Ms. Praveen Mahajan, Administrative Member

1. Parmeshwari Devi wife of Late Shri Ram Krishan Ji, aged about 50 years, resident of Kalal Colony, Gali No.6, Fort Road, Nagori Gate, Jodhpur.
2. Pukh Raj son of Shri Ram Krishan, aged about 28 years resident of Kalal Colony, Gali No.6, Fort Road, Nagori Gate, Jodhpur.

.....Applicants

By Advocate: Mr.Rajesh Shah

Versus

1. The Union of India through the Secretary, Ministry of Agriculture, Department of Agriculture and Co-operation, Krishi Bhawan, New Delhi.
2. The Deputy Secretary and Chief Administrative Officer, Directorate of Plant Protection Quarantine and Storage, N.H. 4, Faridabad (Haryana).
3. The Plant Protection Advisor, Directorate of Plant Protection, Quarantine and Storage, N.H. IV, Faridabad (Haryana).
4. The Plant Protection Officer, Locust Warning Organisation, Bikaner.

.....Respondents

By Advocate : Mr. B.L.Bishnoi

ORDER

Heard Shri Rajesh Shah, learned counsel for the applicant and Shri B.L.Bishoi, learned counsel for the respondents and also perused the record.

2. Shri Rajesh Shah, the learned counsel for the applicant reiterated the averments already made in the OA. While taking the bench through the facts of the case, he submitted that husband of the applicant No.1, Smt. Parmeshwari Devi, died while in service on 20.11.1999. Thereafter, she applied to the respondents for appointment on compassionate grounds for herself on 30th January, 2000. The respondents informed her vide letter dated 10.2.2000 (Ann.A/3) that her case is under consideration for compassionate appointment, but the appointment cannot be given on account of non-availability of vacancy. After a long silence by the respondents, the applicant submitted representations dated 27.3.2010 and 31.3.2010 (Ann.A/4 and A/5 respectively) for redressal of her pending grievance. One year down without any response from the respondents, the applicant again represented on 14.11.2011 praying for compassionate appointment for her son instead of herself. This was followed by series of representations dated 14.4.2012 and 2.7.2012 (Ann.A/8 and A/9 respectively), yielding no result.

Shri Rajesh Shah submitted that the respondents have considered the claim of other candidates for compassionate appointment whereas his case has not been considered in correct perspective. Quoting from Ann.R/1 of the reply, he stated that the internal instructions regarding compassionate appointment lay

down very strict guidelines regarding marks to be allotted for considering cases of compassionate appointment. The respondents in para-11 have stated that the committee on compassionate appointment, which met on 31.8.2012 awarded grade points on various attributes to different candidates. Based on this, top 10 candidates in order of merit were selected. The name of the applicant No.1 Smt. Parmeshwari Devi does not figure amongst these. The learned counsel stated that the highest marks awarded to the candidate by this selection process are 78 i.e. Shri Rakesh Kumar Gundi s/o late Shri Bhanwar Lal, who figured at Sl.No.1 in the chart given by the respondents. He submits that if the case of the applicant had been considered, as per the laid down norms, then she was likely to have scored highest marks than all the selected candidates totalling to about 85 marks, due to her indigent condition. He then proceeded to compute the marks, (likely to be scored by the applicant), column-wise. He stated that family pension given to the applicant coupled with terminal benefits and monthly income as well as income from property in case of the applicant was such that had the respondents gone through the documents submitted by her to the department carefully (after due attestation by the Tehsildar), then she would have secured not less than 84 to 85 grade points. Thus, making her the first contender for grant of compassionate appointment. He, therefore, prayed that the respondents may be asked to

inform the basis of non-consideration of the claim of the applicant No.1 (or that of her son) for non grant of compassionate appointment. He also requested that the respondents may be asked to intimate the marks awarded to the applicant/her son.

3. Per contra, the learned counsel for the respondents Shri B.L.Bishnoi submitted that all the points raised by the learned counsel for the applicant at the time of hearing have not been raised in the OA. The relief sought by the applicants was that the respondents may be directed to "CONSIDER" the case of the applicant No.2 in a positive manner and provide him appointment on compassionate grounds in place of his father, who died while in service. Shri Bishnoi stated that case of the applicant has already been considered by the respondents. He also submitted that it is a well settled law that no new points can be raised at the time of hearing than those which have been raised in the OA.

4. I have gone through the pleadings of the parties. I observe that late Shri Ram Krishan, husband of the applicant No.1 Smt. Parmeshawari Devi and father of applicant No.2 – Pukh Raj, died while in service 17 years ago. The applicant No1. applied for compassionate appointment in time, which is not disputed. The respondents, while acknowledging her representation for appointment on compassionate grounds informed her that her case will be considered as and when vacancy for the said quota is

available. It was only as late as in the year 2012 i.e. after more than a decade had passed, that the case of the applicant was even deigned to be considered for appointment, by the respondents. From reply of the respondents, I observe that case of the applicant No.2 was not included in the first and second consideration list of pending cases for compassionate appointment. (Para-7 of reply).

✓ The only excuse given by the respondents is that case of applicant No.2 was received by them in the second week of April, 2010 and earlier application of the wife of the deceased is not traceable in the record of the Directorate. In the third committee, case of Shri Pukh Raj was considered but not approved due to their being other more deserving candidates available.

5. The counter advanced by the learned counsel of the respondents, Shri B.L.Bishnoi is that the points being raised by the learned counsel for the applicants had never been raised at the time of filing of OA. The relief sought by the applicants is only for consideration, which has been done by the respondents. So legally, their fresh request for wanting to know the parameters based on which other candidates were granted higher marks etc. cannot be raised at this point of time. He also cited the case of Hon'ble Supreme Court in Civil Appeal No (s) 5353/2009 decided on 15.10.2015, Chief Engineer (Naval Works) & Anr. Vs. A.P.Asha.

○ Hence, the respondents have correctly 'considered' and rejected

the case of the applicants. Other prayer in this regard made belatedly is neither tenable or admissible and needs to be rejected. Therefore, the OA lacks merit and liable to be dismissed.

I find that the case cited by the learned counsel for the respondents is not relevant in the present context. In that case, the Hon'ble Supreme Court had observed that **"respondent had already been considered thrice but every time the persons who were more deserving were appointed on compassionate ground.....It is clear from the record that the policy of the appellants has been strictly adhered to in the matter of giving appointment on compassionate ground."** Both these parameters have clearly not been followed in the present case. Hence, this citation does not help the respondents. Rather, it strengthens the claim of the applicant that the policy on compassionate appointment has not been strictly adhered to while considering her/his case. The learned counsel for the applicant has painstakingly explained how correct computation of the policy parameters would have placed the applicant at a clear advantageous position, qua the selected candidates.

6. I cannot help but observe that the attitude of the respondents in the instant case leaves much to be desired. First of all, the case of the applicant No.1 was conveniently given a go-

by the first and second consideration committee which met, on the plea, that her application was not available in the record. To say this, when a widow has been living in a situation of penury for 11 years in the hope that the respondent department, which her husband served for decades sincerely, would keep their words, by considering her case for compassionate appoint at the relevant time, is, to say the least, rather unfortunate. The argument of the learned counsel for the respondents that relief sought is merely for 'consideration' is stretching the definition of 'consideration' a little too far. If after consideration, the applicant gets a reply in negative, then apparently, the applicant has right to know as to why his/her case has been overlooked or why his/her candidature has not been found to be wanting for compassionate appointment. A legal technicality (of not having made this specific prayer in the OA) cannot take away her right to know the basis of rejection of her candidature, or, that of her son. The respondents are duty bound to clarify their stand, firstly whether the case of Smt. Parmeshwari Devi or that of Shri Pukh Raj was considered for compassionate appointment by the third committee. The gradation in each case would obviously vary. Secondly, it must be informed whether the marks accorded to the applicant were done by strictly adhering to the laid down norms.

7. I, therefore, direct the respondents to reconsider the case of the applicant No.2 as requested by the applicant No.1, on the basis of the instructions/guidelines on the subject and inform the same to the applicant by way of a reasoned and speaking order within a period of three months from the date of receipt of a copy of this order.

8. The OA stands disposed of as above with no order as to costs.


(PRAVEEN MAHAJAN)
Administrative Member

R/

John
for 8075511
96004.
15/11/16

Received
~~PAID~~
15/11/16