

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No. 290/00487/15

Jodhpur, this the 3rd October, 2016

CORAM

Hon'ble Ms Praveen Mahajan, Admn. Member

Avtar Kishan S/o Late Sh. Udai Kishan aged about 32 years, R/o Killi Khana, Kille-Ki-Ghati, Jodhpur. Ward of late Shri Udai Kishan Watchman from 33 SU Air Force Jodhpur.

.....Applicant

By Advocate: Mr S.K. Malik.

Versus

1. Union of India through the Secretary, Ministry of Defence, Raksha Bhawan, New Delhi.
2. AOC-IN-C Southern Western Command, Gandhi Nagar – 382010, Gujarat.
3. Station Commander, 33 SU Air Force Station, Jodhpur.

.....Respondents

By Advocate : Mr K.S. Yadav.

ORDER (Oral)

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, impugned order dated 31.07.2015 at Annex. A/1 be declared illegal and be quashed and set aside as if the same was never issued against the applicant.
- (ii) By an order or direction respondents may be directed to consider the case of applicant and provide appointment against any group C or D post with all consequential benefits.

(iii) Any other relief which is found just and proper be passed in favour of the applicant in the interest of justice.

2. The facts, in brief, of the case are that the applicant's father late Shri Udai Kishan while working on the post of Watchman in the respondent-department, died on 06.10.2011. He was survived by his wife, two sons and one daughter. After the demise of his father, the applicant moved an application (Annex. A/2) dated Nil in July 2012 for compassionate appointment. Since nothing was heard by the applicant for some time, hence a registered legal notice dated 14.06.2013 (Annex. A/3) was served upon the respondents, for knowing the status of his case for compassionate appointment. The applicant was asked by the respondents vide letter dated 19.07.2013 (Annex. A/4) to submit relevant documents in support of his case, which he did, on 03.08.2013 (Annex. A/5). After some correspondence, the respondents rejected the case of the applicant on 23.09.2013 (Annex. A/8), on the ground that a married son is not a dependent of a government servant. Aggrieved by the said order, the applicant filed OA No. 290/00287/14 before this Tribunal. The Tribunal vide order dated 09.04.2015 (Annex. A/9), disposed of the OA with direction to the respondents to reconsider the case of the applicant for appointment on compassionate grounds in the light of clarification dated 25.02.2015 issued by DoPT. Subsequently, again on 31.07.2015, the respondents rejected the case of the applicant on

the ground that he has secured only 39 points compared to the selected candidates who had higher merit points. The applicant has filed the current OA against the impugned order dated 31.07.2015 (Annex. A/1).

3. The respondents in their reply have stated that there is no illegality in the order impugned and the same does not require any interference. Thus, the respondents have prayed to dismiss the OA. The applicant has also filed rejoinder to the reply filed by the respondents.

4. During the course of arguments, Mr Malik, Ld. counsel for applicant submitted that the respondents have wrongly awarded the marks to the applicant and have overlooked certain facts. For instance, he explained that the certificate issued by the Tehsildar at Jodhpur, Annex. R/1, shows the market value of the ancestral house of the applicant as Rs 13,50,000/-. The respondents have failed to appreciate that the applicant's share in the property, is only $1/17$ th. Which, to be in precise, comes to a value of Rs 79,412/- only. If this factual position had been kept in mind while doing the calculation, then the applicant would have secured 08 more merit marks instead of 01 mark awarded to him, by the respondents, while evaluating/computing his claim for compassionate appointment. Ld. Counsel for applicant also

brought to the notice of the court that the deceased employee had three dependents and not two, as averred by the respondents. Due to this fact again, the applicant should have been given 15 marks, against 5, awarded to him. The 39 marks awarded to the applicant are thus, based on non-appreciation of these very important factors and contrary to the factual position. Carrying forward the argument, he submitted that since the deceased underwent a prolonged illness, a sizable amount of money had been taken as loan from the market and the Banks, by him and his family. In support of his contention, he referred to Annex. A/10 and A/12 where the Punjab National Bank and HDFC Bank have deducted the outstanding amount of loan taken by the deceased from the terminal benefits received by the applicant. As per the DoPT's instructions, the cases of compassionate appointment should be considered three times whereas the case of the applicant has been considered only once based on erroneous calculation of merit marks. In view thereof, he prayed that the respondents may be directed to reconsider the case of the applicant.

5. Countering the arguments, Mr Yadav, Ld. counsel for respondents submitted that no illegality has been committed by the respondents in calculating the points awarded to the applicant. He further submitted that the issue regarding loan

taken by the deceased from different banks etc. has undoubtedly been raised in the OA but the supporting documents had not been submitted by the applicant to the respondents, for consideration. These have been produced now for the first time, during the course of arguments. He added, that private loans taken by the deceased, as claimed by the applicant, however, cannot be taken into account. Only loan taken from Banks and Financial Institutions can be taken cognizance of for arriving at actual terminal benefits received by the applicant and his family. He stated that dispute regarding points awarded to the applicant, if any, is of their own making by not submitting proof or proper documents in support of their contentions.

6. In view of arguments advanced by both the counsels, I feel it would be in the interest of justice, if the respondents reconsider the case of the applicant. The respondents are directed to take into account documents now produced by the Ld. counsel for applicant, in proof of the deceased having taken a loan from PNB as well as HDFC Bank for arriving at correct picture of the financial/terminal benefits received by the family of the deceased. Since the share of the applicant in the property of the ancestral house is clearly only $1/17^{\text{th}}$, the same is also required to be reconsidered, while judging and preparing his computation of marks for appointment on compassionate grounds.

7. Therefore, the respondents are directed to reconsider the case of the applicant for compassionate appointment in view of the facts brought on record and discussed above. Accordingly, OA is disposed of with no order as to costs.


[Praveen Mahajan]
Administrative Member

Ss/-

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