

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.290/00076/2015

Jodhpur, this the 14th day of December, 2016

Reserved on 07.12.2016

CORAM

Hon'ble Ms. Praveen Mahajan, Administrative Member

Mahesh Khichi S/o Prithvi Raj Khichi, by caste Khatik, age 23 years, R/o Street No.10, Kalal Colony, Inside Nagori Gate, Jodhpur. (Applicant father late Prithviraj Fireman token No.154 working in respondent No.2, C/o 56 APO Pin 909224).

.....Applicant

Mr.Rakesh Arora, counsel for applicant.

Versus

1. Union of India through the Directorate General of Ordnance Services, Master General of Ordnance Branch, Integrated Headquarters of SOD (Army), New Delhi 110 105.
2. The Commandant, 224, Advance Base Ordnance Depot, Pin 909224 C/o 56 APO.
3. The OOC (Administration), Personnel Officer (Civ), 224, Advance Base Ordnance Depot Pin 900224 C/o 56 APO.
4. The Major Administrative Officer for Commandant 224, Advance Base Ordnance Depot, Pin 909224 C/o 56 APO.

.....Respondents

Mr. K.S. Yadav, counsel for respondents.

ORDER

This Original Application has been filed by the applicant against the impugned order dated 18.06.2014 (Annexure-A/1), whereby the case of the applicant for granting compassionate appointment has been rejected.

2. Brief facts of the case are that the applicant's father Shri Prithvi Raj while working on the post of Fireman (Token No.154) died on 10.05.2009. After the death of the deceased employee, the respondents asked her wife Smt. Kanta Devi to apply for compassionate appointment vide letter dated 14.05.2009 (Annexure-A/3). The applicant, Mahesh Khichi (son of the deceased employee) applied for the same with requisite documents. In the family members list, names of Smt. Kanta (Widow), Anil (Son), Mahesh (Son), Ajay (Son) and Khushbu (Daughter) were mentioned. The respondents vide letters dated 16.06.2009 (Annexure-A/4), 02.02.2011 (Annexure-A/5), 21.03.2012 (Annexure-A/6), 19.04.2012 (Annexure-A/8) and 25.04.2013 (Annexure-A/11) asked the applicant to produce some documents, which were duly submitted by the applicant. However, vide letter dated 07.10.2013 (Annexure-A/12), the applicant was informed that after scrutiny of documents by IHQ of Mod, dated 29th August 2013 disparities about adoption by widow after demise of Government servant and variation in Ration Card about address were found and the documents were returned. Vide Annexure-A/1 order dated 18.06.2014, the respondents rejected the claim of the applicant stating that after the death of employee, adoption of daughter, Khushbu, cannot be considered for grant of compassionate appointment. Disparities with regard to residential address and property were also found. The adoption deed of adopting Khushbu executed as per social rites and customs is not permissible and adopted daughter cannot be considered as a dependent of the deceased employee. It is also stated that earlier the respondents gave five marks for unmarried

daughter and five marks for minor son and accordingly total 77 marks were given. But later on, these 10 marks (5+5) were reduced and accordingly the marks came to 67. As a result of this the applicant could not rank in the merit as the last candidate in the year 2009-10 got 74 marks and there were 41 candidates, who were given appointment in that year. Applicant's case was again considered in next two years i.e. 2010-2011 and 2011-12 with 67 marks but in those years the last candidates got 76 and 72 marks and accordingly the applicant did not rank in the merit and his case for compassionate appointment was rejected.

3. It is submitted that the adoption of Khushbu took place as per prevalent customs and rites in the society in her childhood and soon after her birth she was brought up by Shri Prithvi Raj. She was admitted in Samrathal Shikshan Sansthan Secondary School, Banar, Jodhpur, wherein name of her father was mentioned as Shri Prithvi Raj. In Ration Card also the name of Khushbu has been shown as a daughter of deceased employee. Therefore, five marks for the same should have been awarded by the respondents on this count. Secondly, as proof of date of birth of Ajay, his mark sheet of Secondary School Examination is annexed as Annexure-A/16. Hence, the applicant alleges that he was rightly awarded 77 marks and his case should have been considered with this gradation. The last candidate in the Board's meeting for the year 2009-2010 got 74 marks. Had the applicant's marks been taken as 77, the applicant would have been given appointment on compassionate ground as per his merit in the Board meeting for the year 2009-2010. However, due to wrong computation of his

marks, he has been denied his rightful appointment. In view of this unfair treatment, the applicant is aggrieved and approached the Tribunal.

4. In reply, the respondents averred that a registered adoption deed of Ms. Khushbu has been submitted by the family of deceased employee registered at Sub Registrar No.IV, Jodhpur on 19.05.2013, whereas the deceased employee expired on 07.12.2009. The same is not acceptable as per norms, being executed, after the death of the deceased employee. As per existing instructions, an adopted child, after demise of the Government servant, cannot be treated as a dependent family member of the Government servant. The case of the applicant has been considered thrice for the years 2009-2010, 2010-11 and 2011-12. However, the applicant could not be selected as the last selected candidate in these three Boards secured 74, 76 and 72 points respectively which are, admittedly, higher points than that of the applicant.

5. In rejoinder, the applicant while reiterating the facts as averred in the OA stated that there is no such circular, notification or provision of law or order of the respondent department which require that the registered deed/document should have been executed before the death of deceased employee. From the education testimonial of applicant's sister Khushbu, as well as the Ration Card, it is clear that as per customs and rites prevailing in the society she was adopted by late Shri Prithvi Raj in her childhood. So far as submitting of application by applicant's mother is concerned, it is averred that by submitting such application by the mother, the rights of the

applicant's cannot be taken away. Besides this, it is a known phenomena that such kind of applications are submitted as per advice of the officers of the department. Being an illiterate in compelling circumstances the mother of the applicant signed it without realising or checking the veracity of the contents.

6. Heard both the parties.

7. Learned counsel for the applicant, Shri Rakesh Arora, submitted that the applicant's request for appointment on compassionate grounds has been rejected by the respondents on 18.05.2014 (Annexure-A/1) mainly on two grounds. Firstly, after the death of the deceased employee, adoption of daughter cannot be considered for computing the marks of the applicant for compassionate appointment, and secondly that due to variation in the date of birth of the son of the deceased (minor brother of the applicant), the marks have further been reduced by 5 points, by the respondents. Earlier five marks given by the respondents for unmarried adopted daughter, and, another five marks for minor son were given making a total of 77 marks. However, later on, these 10 [5+5] marks were reduced for the reasons stated above and accordingly the total came to 67. As a result of this reduction, the applicant could not rank in the merit list of the candidates selected in the year 2009-2010. Taking Bench through the facts of the case, he submitted that Khushbu had been adopted by late Shri Prithvi Raj in his lifetime. This can be seen from the fact that her name figures in Ration Card as well as in the school records of the Samrathal Shikshan Sansthan Secondary School, Banar, Jodhpur. While admitting her in the school, the

name of her father has been mentioned as Shri Prithvi Raj. Both these facts go to confirm the fact that Khushbu has been living like a daughter, with the family of the deceased, during his lifetime. He conceded that no registered adoption deed was executed during the lifetime of the deceased. Formal adoption deed was executed only after the death of deceased employee, when the respondents demanded a proof of adoption (Annexure-A/15). But the fact remains, he emphasised that Khushbu is the adopted daughter of Shri Prithvi Raj as per the customary law. Accordingly, the applicant should have been awarded 5 marks by the respondents on this head (as rightly done earlier), while considering his case for compassionate appointment.

8. The learned counsel further contended, that the actual date of birth of Ajay (son of the deceased employee) is 11.09.1993 and at the time of the meeting of 2009-2010, when the case of the applicant was considered, he was a minor. So, reducing 5 marks in his case was wrongly done by the respondents. The wife of the deceased has clarified this discrepancy. Earlier, while applying for the post of compassionate appointment, she had mistakenly written the date of birth of Ajay (son of the deceased) as being 11.09.1991. The counsel stated that family of the deceased belongs to Scheduled Caste and being not much educated- they made an error while applying for the post of compassionate appointment. Birth certificate in respect of Ajay as per the school record, clearly shows that his date of birth is 11.09.1993. In view of this, the marks of the applicant have wrongly been reduced from 77 to 67. He also emphasized that the family is going

through difficult times and the case of the applicant case needs to be considered urgently and sympathetically by the respondents, after giving him correct marks. Had this been done, then the applicant would have got the appointment in the year 2009-2010, as the last candidates who was selected for compassionate appointment, only had 74 marks. On these grounds, he prayed that OA be allowed.

9. Learned counsel for the respondents, Shri K.S. Yadav, stated that the submissions of the learned counsel for the applicant lack merit. As far as the case of the adoption of Khushbu, the alleged adopted unmarried daughter of Late Shri Prithvi Raj is concerned, no valid legal documents were given by the applicant to show that she was adopted illegally, during the lifetime of Shri Prithvi Raj. The adoption deed submitted by the family of deceased employee was registered at Sub Registrar No.IV, Jodhpur on 19.05.2013 whereas the deceased employee expired on 07.12.2009. As per the acceptable norms, the same cannot be treated as a valid legal document, the benefit of which the applicant now seeks. Hence, the marks have rightly been reduced from 10 to 5, by the respondents, to ensure that no injustice is done to other similarly placed candidates, who are facing similar penurious circumstances. Shri Yadav stated that the deceased employee never informed the respondent department about adoption of Miss Khusbu in his lifetime as he should have done.

10. Regarding deduction of five marks due to the second son, brother of the applicant Mr. Ajay Khichi, the learned counsel stated that the widow of the deceased, Smt. Kanta, at Annexure-R/1 has given the date of birth of her children in which against the name of Ajay, date of birth is shown as 11.09.1991 clearly making him, not, a minor. In view of these facts, the case of the applicant has been considered taking his marks as 67 instead of 77. Since other more deserving candidates than the applicant were there, therefore his case could not be recommended by the Selection Committee for compassionate appointment. Hence, the OA needs to be set aside.

11. I have considered the rival contentions of both the parties and perused the record. After going through the facts of the case, I am in an agreement with the submissions made by the learned counsel for the respondents that sufficient legal proof does not exist to show that Miss Khushbu is a dependent by virtue of being the legally adopted daughter of Late Shri Prithvi Raj. While the ration card and school records might shows that she has been living with the family of the deceased, but the respondents are bound by the legalities and the norms which have to be followed while computing the marks, to ensure that equitable treatment is given to all the candidates. If the department starts relaxing the laid down strict parameters, going by different set of facts, in each case then an element of subjectivity is likely to creep in, which is bound to be questioned by those, who may not qualify in the selection process. I, therefore, cannot fault the respondents for following the rules and procedure in this regard, and feel that the five marks have rightly been

reduced in the case of Miss Khushbu for not being considered a minor adopted daughter of the deceased employee.

12. On the second point, however, I agree with the submission of the learned counsel for the applicant that the mother of the applicant, being a widow and illiterate had, merely signed on the documents without really realising the consequences or even checking the veracity of what she was made to sign. It is seen from Annexure R/1 documents that no date has been mentioned on it and the same appears to be the case in the year 2012, after consideration of the case of the applicant. Therefore, the respondents have to go by the official school records which show that the date of birth of younger brother of the applicant, Ajay Khichi, was 11.09.1993 (as per 10th Marksheet) making him a minor at the time when the case was considered by the selection committee. The respondents have thus erred in reducing five marks here. I, therefore, direct the respondents to re-compute the marks given to the applicant by taking into consideration the date of birth of Ajay Khichi by retaining it as 11.09.1993 (minor, at the time of consideration).

13. It is seen from the record that the case of the applicant has been considered thrice in the year 2009-10, 2010-2011 and 2011-12. In these considerations, the last selected candidates got 74, 76 and 72 marks respectively. If the respondents re-compute his marks as 72 instead of 67 (+5 marks for minor son) then also the case of the applicant may not come under the zone of consideration. I am not inclined to disturb the earlier

selection process already made by the respondents. However, looking to the facts and circumstances of the case I feel that the case of the applicant may be considered again against a future vacancy, because as per the revised instructions issued by Government of India, Department of Personnel & Training OM No.F/No.14014/3/2011-Estt.(D), dated 26.07.2012, the issue of review of three years' time limit for making compassionate appointment has been re-examined in consultation with Ministry of law, in which it has been decided to withdraw the instructions contained in the OM dated 05.05.2003. Therefore, there is no bar in considering the case of the applicant more than thrice. The case may be considered wherever the circumstances so warrant, looking to the penurious condition of the dependent family.

14. In view of the discussions made hereinabove, I direct the respondents to consider the case of the applicant again, sympathetically for compassionate appointment keeping in mind the observations made in this order, in the next future vacancy. Accordingly, the Annexure-A/1 is quashed.

15. The OA is disposed of as stated above. No order as to costs.


[PRAVEEN MAHAJAN]
ADMINISTRATIVE MEMBER

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RLC
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