

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 210 OF 2008

Friday, this the 7th day of August, 2009.

CORAM:

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

Sreejith S.
Residing at Puthjiyedath House
Chingapuram P.O
Thikkodi Via
Calicut - 673 529

... Applicant

(By Advocate Mr.G.Sasidharan Chempazhanthiyil)

versus

1. Assistant Defence Estate Officer
Office of the Assistant Defence Estate Officer
Burma House, Ravipuram Road
Kochi - 16
2. The Defence Estate Officer
Office of Defence Estate Office
Madras Circle, 306 Annasalai
Teynampet, Chennai - 18
3. Union of India represented by Director General
Defence Estate Office
New Delhi ... Respondents

(By Advocate Mr.TPM Ibrahim Khan, SCGSC)

The application having been heard on 07.08.2009, the Tribunal on the same day delivered the following:

ORDER

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

This is the second round of litigation. Earlier vide order dated 21.06.2007 in OA 717/2006 the Tribunal issued the following directions to the respondents :-

" In my considered view, the inaction and apathy on the part of the competent authority of the respondents in considering the request of the applicant for compassionate

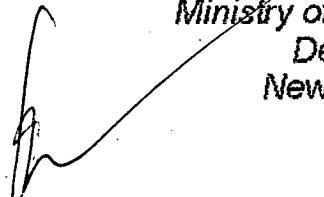


ground appointment for nearly 6 ½ years is absolutely unacceptable. Right of consideration is a fundamental right and the same cannot be denied to anyone. The respondents 2&3 are, therefore, directed to consider the Annexure A1 application for compassionate ground appointment made by the applicant positively within two months from the date of receipt of this order in accordance with the "Scheme for Compassionate Appointment" and communicate the decision to the applicant. Elapse of more than 5 ½ years from the date of death of the applicant's father on 4.11.2001 shall not be held against him as an objection to consider his case for appointment on compassionate ground as he was not at all responsible for the same.

In the above facts and circumstances of the case, the respondents shall pay Rs. 2000/- (Rupees two thousand) as costs to the applicant within the aforesaid period of two months."

2. In pursuance of the above, the impugned order has been passed vide Annexure A-9. As according to the applicant, the order was more in the nature of sitting in appeal over the order of this Tribunal, the applicant has moved this OA. In their reply the respondents have stated that notwithstanding the impugned order, the case of the applicant had been considered by the Circle Relaxation Committee for a Group 'C' post but in view of limited number of vacancies for direct recruitment, no vacancy was available under 5% compassionate appointment quota.
3. The applicant has filed rejoinder / additional rejoinder stating that the calculation of vacancy by the respondents is without considering the liberalised provisions as contained in order dated 14.06.2006 of the DOPT which reads as under :-

No. 14014/3/2005-Estt.(D)
Government of India
Ministry of Personnel, Public Grievances & Pension
Department of Personnel & Training
New Delhi, dated the 14th June, 2006



Subject: Scheme for compassionate appointment under the Central Government- Determination of vacancies for.

The undersigned is directed to say that the existing Scheme for Compassionate Appointment is contained in this Department's O.M. No. 14014/6/94-Estt.(D) dated the 9th October, 1998 as amended from time to time. Para 7 (b) of this O.M. provides that compassionate appointment can be made upto a maximum of 5% of vacancies under Direct Recruitment quota in any Group 'C' or 'D' post.

2. After coming into effect of DOP&T instructions No. 2/8/2001-PIC, dated the 15th May, 2001 on optimization of direct recruitment to civilian posts, the direct recruitment would be limited to 1/3rd of the direct recruitment vacancies arising in the year subject to a further ceiling that this does not exceed 1% of the total sanctioned strength of the Department. As a result of these instructions, there has been a continuous reduction in the number of vacancies for direct recruitment, consequently resulting in availability of very few vacancies or no vacancy under 5% quota for compassionate appointment. Because of this, the various Ministries have been facing difficulty in implementing the Scheme for Compassionate Appointment even in the most deserving cases.

3. On a demand raised by Staff Side in the Standing Committee of the National Council (JCM) for review of the compassionate appointment policy, the matter has been carefully examined and taking into account the fact that the reduction in the number of vacancies for compassionate appointment is being caused due to operation of the orders on optimization of Direct Recruitment vacancies, the following decisions have been taken:-

While the existing ceiling of 5% for compassionate appointment may not be modified but the 5% ceiling may be calculated on the basis of total direct recruitment vacancies for Group 'C' and 'D' posts (excluding technical posts) that have arisen in the year. Total vacancies available for making direct recruitment would be calculated by deducting the vacancies to be filled on the basis of compassionate appointment from the vacancies available for direct recruitment in terms of existing orders on optimization.

4. That instructions contained in the O.M. No. 14014/6/94-Estt.(D) dated 9th October, 1998, as amended from time to time stand modified to the extent mentioned above.

5. The above decision may be brought to the notice of all concerned for information, guidance and necessary action.

6. Hindi version will follow."

Sd/-
(Smita Kumar)
Director (E.I)

4. In addition to the above, the applicant has claimed that the applicant's request was not merely for a Group 'C' post, but for a Group 'D' post in case vacancy is not available in Group 'C'. Yet another contention made by the applicant is that as early as 2002 as one unit was closed, surpluses were adjusted against other vacancies without any regard to stipulation of 16 (F) Scheme for compassionate appointment which provides for priority to be accorded to compassionate appointment before adjusting all surpluses and regularisation of casual labour employees and temporary status employees.

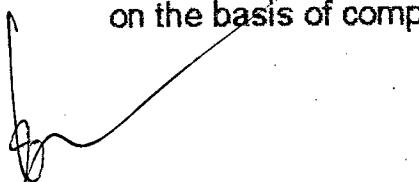
5. Counsel for applicant reiterated the following three points :-

- (a) That order dated 14.06.2006 has not been taken into account while arriving at the number of vacancies in Group 'C' / 'D' posts.
- (b) The applicant's request is for compassionate appointment without restricting the same to Group 'C' post only. As such, he could have been considered for a Group 'D' post.
- (c) Adjustment of surpluses without considering the case of the applicant is also against the provisions of the Scheme.

6. Counsel for respondents submitted that in so far as compassionate appointment is concerned the qualification of the applicants

are duly considered and comparative merit has been taken into consideration amongst those who are eligible for Group 'C' post and decision arrived at. Similarly consideration is made in respect of Group 'D' post depending upon the qualification of the applicant. In the instant case, as the applicant had qualification suitable for Group 'C' post, he was accordingly considered and in view of non availability of vacancies he could not be given the compassionate appointment.

7. Arguments were heard and documents perused. If the respondents have not taken into account the Annexures A-11 and A-12 order relating to calculation of vacancy without any truncation on account of optimization scheme in filling up direct recruitment vacancies, the respondents are expected to conduct a review in order to ensure that vacancies under the 5% quota for compassionate appointment get filled up, more so, when many applicants are in the waiting list. In the case of the applicant that his case deserves for compassionate appointment is fully appreciated by the respondents but their constraint was only non availability of vacancies in Group 'C' post. On considering Annexures A-11 and A-12 order of the DOPT, vacancies may be available in Group 'C' to be filled up under compassionate appointment scheme and on the basis of comparative merit with other aspirants, the case of the applicant can be considered and decision arrived at. If that could not be possible due to non availability of vacancies, attempt may be made to ascertain whether the applicant could be accommodated against any of the Group 'D' vacancies, on the basis of comparative merit with reference to other aspirants.



8. The respondents are therefore directed to act on the above lines, and arrive at a judicious conclusion within a period of three months from the date of communication of a c copy of this order. No costs.

Dated, the 7th August, 2009.



Dr. K.B.S. RAJAN
JUDICIAL MEMBER

vs