

CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH

O.A.No. 31/2004

Lucknow this the 26th day of Oct., 2004.

HON. SHRI M.L. SAHNI, MEMBER(J)

Shiv Kumar, aged about 20 years, son of late Sri Jukhu Ram, r/o Vill. Jogihawa, Post Imiliya, Tulsipur, District Balrampur.

Applicant.

By Advocate Shri A.P. Singh.

Versus

1. Union of India through the Secretary, Ministry of Defence, New Delhi.
2. Secretary, Deptt. of Personnel and Training New Delhi.
3. Army Headquarters Adjutant General's Branch M.P.-5 (Civil) (B) Section D.H.Q. P.O. New Delhi, through Addl. Director General.
4. Provost Masrhal, Adjutant General's Branch, Army Headquarter, New Delhi.
5. Commanding Officer, Central Command Provost Unit, Lucknow.

Respondents.

By Advocate Shri S. Lavaniya.

O R D E R

This O.A. is directed against the order dated 21.4.2003 (Annexure A-5) whereby the request of the applicant ^{for appointment} on compassionate grounds has been turned down on the ground that the case of the applicant does not fall within the ceiling of 5% quota of total vacancies occurring in a calendar year for direct recruitment in any group C or D posts. Accordingly, it is prayed by the applicant for quashing of the impugned order (Annexure A-5) and directing the respondents to appoint the applicant on compassionate grounds on a group D post within two months, in view of the fact that his case has already been considered by the respondents.

2. The admitted facts of the case, precisely, are that Shri Jukhu Ram, father of the applicant died on 2.11.2002 while in service working on the post of Sweeper in the Central Command Unit Lucknow, leaving behind his heirs including the applicant (his son), widow and another unmarried son and one unmarried daughter ^{respectively} aged ^{TSE 215} about 13 ²¹⁵ years. Regarding another daughter aged about 9 years, the respondents have stated that her name does not figure in the record, but the same is not disputed. The applicant allegedly submitted his application for appointment on compassionate grounds in November, 2002, and again his mother filed an application for the purpose in January, 2003, copy of which is placed at Annexure -4. Her application was forwarded by respondent No. 5 to the competent authority for consideration who passed the impugned order (Annexure 5) expressing inability to consider the request of the applicant in view of the ceiling of 5% quota of total vacancies.

3. I have heard the learned counsel for the applicant ~~for the applicant~~ as well as the learned counsel for the respondents and have also gone-through the pleadings alongwith Annexures placed on record by the parties.

4. ~~Since~~ The facts are not disputed, and both the parties rely upon the government instructions, and guidelines issued from time to time for making appointment on compassionate grounds.

5. Vide Annexure C.R. 1 dated 3.12.99, it has been clearly made out that the committee prescribed for considering the request for appointment on compassionate grounds should take into account the position regarding availability of vacancies for such appointment and it should recommend appointment on compassionate grounds only in a really deserving case and only ^{at} vacancy meant for appointment on compassionate grounds, will be available within a year

that too within the ceiling of 5%, so as to ensure that compassionate appointment is granted within a year. It is further stated in this letter that in respect of other really deserving cases, the committee should only recommend taking-up the matter with other Ministries, Departments, Offices of the Govt. of India, to consider those cases for appointment as already provided. Relying upon this letter dated 3.12.99, it has been contended by the learned counsel for the applicant that in case no vacancy within the ceiling was available with the respondents, they could have taken up the matter with other Ministries, Departments and offices of the Govt. of India so as to provide the appointment on compassionate grounds to the applicant whose entitlements being deserving case is not at all in question as is indicated in the impugned order. He has also referred to Annexure A-2; para 4 of which provides as follows:

"The weightage fixed above is to be strictly followed for assessing comparative merit keeping in view the instructions issued by the DOP&T from time to time. Further, all applications may be acknowledged immediately on receipt and decision of the Board of Officers (BOO) be communicated to the applicants after every sitting. The system of WAITING LISTS have already been discarded (Ref DOPT OM F No. 14014/23/98 Estt. (D) dated 3.12.1999). The candidates are required to apply only once and the applications not recommended in the list BOO for want of vacancy, is to be considered afresh alongwith the fresh applicants by the BOO on those occasions consecutively and the final decision is communicated to the applicant by a detailed speaking order."

6. On behalf of respondents, it is reiterated that since the case of the applicant has been considered keeping in view overall category-wise strength of vacancies as on 28.2.2003 when the applicant applied for compassionate appointment and that the respondent received 16 applications for appointment on compassionate grounds and out of which no case could

fall within the prescribed limit of 5% of total vacancies as per the table given in para 3(iii) of the Counter, therefore, it is not feasible to appoint any of those who applied for the same because no vacancy has to occur especially in the Corpse of Military Police Unit and hence no appointment could be offered to the applicant, as The respondents have also referred to the instructions as contained in Annexure CR-1 which is letter dated 3.12.99 already discussed.

7. The learned counsel for the applicant, in order to counter the contention of the respondents, has placed reliance on office Memo dated 5.5.03 copy of which has been annexed with the Rejoinder and which provides, inter alia, that maximum time a person's name can be kept under consideration for offering the compassionate appointment, will be 3 years subject to the condition that the prescribed committee has reviewed and certified that penurious condition of the applicant at the end of the first and second year. After 3 years, compassionate appointment is not possible to offer to the applicant, his case will be finally closed and will not be considered again.

8. Considering the claim of the applicant in the light of Office Memo dated 5th May, 2003, I find that since the impugned order Annexure A-5 has been passed without taking into consideration the office Memo dated 5.5.03 prescribing 3 years limit for considering the case for compassionate appointment, therefore, it shall be in the interest of justice, if the respondents re-consider the case of the applicant for subsequent vacancies likely to occur with them because the impugned order nowhere disputes penurious condition of the applicant while the liability of the family of the deceased as stated in the O.A. is not at all ^{question} disputed. The applicant is 20 years of age, while his younger brother is 13 years of age besides his two sisters of 15 years and 9 years of age respectively. The widow of the deceased employee has herself applied for

appointment of the applicant on compassionate ground vide Annexure A-4.

9. Giving thoughtful consideration to the facts of the case, especially, the instructions as contained in Office Memo dated 5th May, 2003, I feel satisfied that the applicant deserves to be ^{re-}considered for appointment on compassionate grounds within the ceiling of 5% as already prescribed, hence allowing the O.A. it is directed that the respondents shall re-consider the ^{case} of the applicant for compassionate appointment in the light of Office memo dated 5.5.03 within 3 months from the ^{date of} communication of this order.


(M.L.SAHNI)

Member(J)

S.A.