

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No. 62 of 2006

29/5/07
This the day of May, 2007

Hon'ble Sri A.K. Singh, Member (A)

Hari Prakash Dubey, aged about 37 years son of late Sri O.P. Dubey, resident of House No. B-12, Sector H, Aliganj, Lucknow.

Applicant

By Advocate; Sri Deepak Shukla and Sri Pankaj Agnihotri

Versus

1. Union of India through Secretary, Ministry of Defence, Govt. of India, New Delhi.
2. The Director General (Personnel), Military Engineering Service, Engineer-in-Chief's Branch, Army Head Quarters, Kashmir House, New Delhi-11.
3. The Chief Engineer (HQ), Central Command, Lucknow.

Respondents

By Advocate: Sri Rajendra Singh

ORDER

By Hon'ble Shri A.K. Singh, Member (A)

O.A. 62 of 2006 has been filed by the applicant Sri Hari Prakash Dubey (of the address given in the notice) against order dated 22.11.2005 passed by respondent No. 3, communicated vide letter No. 120424/h.P. Dubey/17/E/C(1) dated 14.1.2006, rejecting the case of the applicant for compassionate appointment.

2. Brief facts of the case are that father of the applicant who was serving as S.O. Grade III in the office of the Garrison Engineer (B/R), suddenly passed away on 10.5.1995. The mother of the applicant immediately applied for compassionate appointment of her son on 7.8.1995 with the respondents. The respondents vide their letter dated 25.8.95 advised her to submit a fresh application on completion of B.E.

(Civil) Degree by her son. Accordingly, a fresh application was submitted by the applicant on 13.4.99. As there was no communication regarding the action taken by the respondents on the aforesaid application, they were periodically reminded by the applicant. The applicant received a communication dated 17.6.2000 from the respondents, directing him to submit the application with supportive documents as directed by them in the earlier letter. The applicant again submitted the required documents on 13.7.2000. A call letter for interview and for written test was received by the applicant. In the call letter, the applicant was directed to appear in the written test and interview on 6.2.2001. These tests, were, however, postponed, again and again, and ultimately the examination/ interview tests were conducted on 30.6.2001. Even though the applicant has cleared the test in question but due to sudden transfer of the presiding Officer of the Board namely Col. A.K. Chaturvedi, the minutes of the proceedings of the examination/interview tests could not be signed. As such a fresh board was constituted on 15.7.2003 and the examinations were conducted on 3.9.2003. The applicant cleared the test again on 18.9.2003, and the Board approved the appointment of the applicant on the post of J.E. (Civil) , a post in Group 'C' cadre. Respondents on 17.8.2004, directed the applicant to submit certain documents. The applicant submitted these documents on the same date i.e. on 17.8.2004. As the applicant fulfilled all the requirement and was adjudged suitable for the post of J.E. (Civil), a Group 'C' post and the appointment in question was to be made on compassionate ground, there was absolutely no question of any age relaxation in the matter but the respondents unnecessarily delayed the matter by referring the same to the Director General (Personal) MES , Engineer-in-Chief Branch,

Army Head Quarters, Kashmir House, New Delhi-110011, for relaxation of age. When there no communication was received from him the applicant preferred a representation dated 13.8.2005 to respondent No. 3 to ascertain the progress in the matter. Respondent No. 3 accordingly, inquired about the status of the case of the applicant from respondent No.2. Respondent No. 2 directed closure of all pre December, 2000 claims of compassionate appointment on the basis of DOP&T O.M. No. 14014/19/2002-Estt (D) dated 5.5.2003, which provides that the maximum time a person's name can be kept under consideration for offering compassionate appointment will be three years..... subject to the condition that the prescribed committee has reviewed and certified the penurious condition of the applicant at the end of the first and the second year. After three years, if compassionate appointment is not possible to be offered to the applicant, his case will be finally closed and will not be considered again. Being aggrieved by this, decision the applicant has filed the present Original Application before us ,on the following important grounds:-

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- i) That the impugned order has been passed in a routine manner;
- ii) That the application for compassionate appointment has been filed by the applicant way back in August, 1995 and delay , if any, has been caused, in compliance to the directions of the respondents, as well as due to their lackadaisical attitude in the matter.
- iii) That in case of compassionate appointments age relaxation, etc is not required. Hence reference to respondent No. 2 is clearly unwarranted in the matter.

- iv) That the suitability of the applicant for the post of J.E.(Civil) had been tested as early as on 30.6.2001 and hence his case should not be rejected;
- v) That the suitability of the applicant for the job has already been assessed as on 30.6.2001 and hence the O.M. of DOP&T dated 5.5.2003 is not at all applicable to the case of the applicant.

On the basis of the above, applicant seeks the following reliefs:-

- a) to quash the impugned order dated 22.11.2005 passed by respondent No. 3 , whereby the request of the applicant for appointment on compassionate ground has been rejected;
- b) to direct the respondents to appoint the applicant on compassionate ground as his case has been duly considered and found suitable by the Board, constituted for the same;
- c) to pass such orders which this Tribunal may deem fit to protect the interest of the applicant;
- d) to allow the application with costs.

3. Respondents on their part have opposed the O.A on the following grounds:-

- i) They submit that the case of the applicant was received by them in October, 2003. Hence the same was returned on the ground that it was ~~an~~ prior to 2000 and the death of the deceased Govt. employee took place as early as in May, 1995 hence the applicant's case could be considered after a lapse of 8 years.
- ii) The case of the applicant was included in the Board for the Q.E. June 2004 and he was selected for the post of J.E. (Civil) subject to obtaining age relaxation/ time dispensation sanction from the ministry of Defence.

iii) The case of the applicant was turned down by the higher Head Quarters as it was a prior to 2000 case.

iv) The applicant has deliberately not taken interest to submit his application along with requisite documents in time.

v) The say of the applicant that he applied initially during April, 1999 and thereafter he was advised by the authorities to submit various documents , and that thereafter, his BE (Civil) degree got verified by them from the concerned authorities. Respondents submits that this is a false allegation. The applicant himself was responsible for the delay as he wanted to complete B.E. (Civil) degree so that he could apply for the post of J.E. (Civil), a 'C' cadre post straightway.

vi) The family of the deceased was able to manage up to April 1999 i.e. more than 3-1/2 years and hence the case did not fall within the category of a "dying in harness" case.

On the basis of the above, respondents submit that the O.A. is devoid of merit and hence deserves to be dismissed.

4. Opportunity of personal hearing was granted to the applicant as well as respondents on 11.5.2007 through their respective counsels. Shri Deepak Shukla and Sri Pankaj Agnihotri appeared for the applicant and Sri Rajendra Singh appeared for the respondents. In their oral submissions, learned counsels reiterated their submissions as above.

5. I have carefully considered the submissions made by learned counsels on both sides and have also perused the records of the case. I find that a gross injustice has been meted out to the applicant Sri Hari Prakash Dubey, in regard to his claim for appointment on

compassionate grounds. It is on record that the applicant's father died on 10.5.95 and the mother of the applicant applied for compassionate appointment of her son Shri Hari Prakash Dubey immediately thereafter on 7.8.95. Therefore, the question of making any delayed claim for compassionate appointment does not arise. It is also on record that the respondents vide their letter No. 915110/2/44/E10B (Admn.) dated 25th August, 1995, advised the mother of the applicant to resubmit a fresh application on completion of B.E. (Civil) Degree by her son. The abstract of the aforesaid communication is reproduced below:-

"Madam,

1. Reference your application dated 07 August, 1995.
2. You have requested for employment of your second son Shri Hari Prasad Dubey who is completing his BE civil degree by end of Dec 1995 on compassionate grounds.
3. You are requested to please submit a fresh application after Dec 1995 when your second son completes his BE degree to this Headquarters for consideration for the post of Supdt. B/R Grade II and not B/R Gde-I for employment on compassionate grounds.

Thanking you,

Yours faithfully

(SS) Abdul Kader

Capt.

SO 3 (Adm)

For Chief Engineer"

6. Accordingly, as per above direction of the respondents, the applicant submitted a fresh application on 30.4.99 in the office of the respondent No. 3. The respondents slept over the whole matter till the applicant reminded them of action on his application. On 17.6.2000, the respondents directed the applicant to submit certain documents which was immediately complied with by the applicant, that too, on

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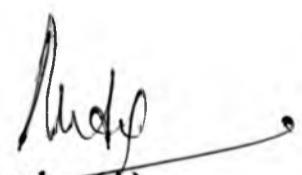
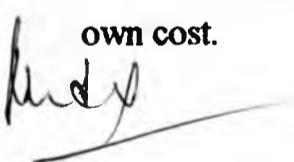
the same date. The applicant had been called for an interview and written test on 6.2.2001 itself which was postponed again and again for no fault on his part. The process of written examination and interview test, however, completed on 30.6.2001 which the applicant cleared successfully but as Col. A.K.Chaturvedi who was Presiding Officer of the Board, was transferred immediately after the written and interview tests, he could not sign the minutes of the proceedings of the aforesaid examination / interview tests. The respondents again constituted a fresh board on 15.7.2003 and the examination was again conducted on 3.9.2003. The Board approved the name of the applicant for the post of J.E. (Civil), a 'C' cadre post. Since the entire delay in the matter can be attributed to the indifferent and lackadaisical attitude of the respondents, the applicant, cannot be held guilty for any delay on his part. In the matters relating to compassionate appointment, the condition relating to age relaxation etc is never insisted upon. As the applicant had already cleared the aforesaid test on 30.6.2001, the DOP&T circular dated 5.5.2003 should not have been applied to in his case for rejecting his just and fair claim for appointment on compassionate grounds. The case, in question, therefore merits a favorable consideration on the basis of above specially the following grounds:-

- i) That the father of the applicant died while in service of the respondents;
- ii) The applicant is highly qualified and has passed B.E.(Civil). There is doubt that he will be an asset to any, organization which employs him, on the post of J.E. (Civil). The appointment of the applicant will thus be mutually beneficial to both the applicant as well as respondents

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iii) As regards delay, I have already discussed above that entire delay in the matter can be attributed principally to the indifferent and lackadaisical attitude of the respondents. In this case, I also find that the applicant has been made to suffer for no fault on his part. In the case of **Bhoop Vs. Matadin Bhardwaj** [Reported in (1991) 2 SCC 128, the Hon'ble Apex Court has held that a party cannot be made to suffer for no fault of his own. In the case of **Rekha Mukherji Vs. Ashish Kumar Das** [Reported in (2005) 3 SCC 427, the Apex Court has further observed that a party cannot take advantage of ones own mistake.]

7. If I test the case of the applicant on the touch stone of the above mentioned principles, there is ~~hereby~~ ^{to no be left to} any option for me as a judge except set aside the impugned orders dated 22.11.2005 and 14.1.2006. ^{In consequence of A.G. 2 of 2006 is allowed the} order accordingly. In consequence, thereof, respondents are hereby directed to re-consider the case of the applicant for appointment on compassionate ground as per assessments made by the Boards, which were duly constituted for the purpose on 30.6.2001 and 15.7.2003. The entire exercise should be completed within a period of 3 months from the date of receipt of a certified copy of this order. Parties to bear their own cost.



Member (A)

HLS/-