

Central Administrative Tribunal, Lucknow Bench,

Lucknow

Original Application No. 524/2007

This the 13th day of November, 2009

Hon'ble Ms.Sadhna Srivastava, Member (J)

Mohd.Riyaz aged about 37 years son of late Mohd. Ishaq r/o 58/113, Hussainganj, Bagh, Aniabibi, Lucknow.

Applicant

By Advocate: Sri A.Moin

Versus

1. Union of India through Secretary, Ministry of Defence, Kashmiri House, New Delhi.
2. Chief Engineer, Engineers Branch, Central Command, Lucknow.

Respondents

By Advocate: Sri K.K.Shukla for Dr. Neelam Shukla

ORDER

Hon'ble Ms. Sadhna Srivastava, Member (J)

The applicant seeks quashing of order dated 1.10.2005 as contained in Annexure No. A-7 whereby the respondent No.2 has finally closed the case of applicant for appointment on compassionate ground.

2. The facts, in brief, are that the applicant's father, namely Mohd. Ishaq died in harness on 8.9.1993. The applicant soon after the death of his father made an application for appointment on compassionate grounds. His application was rejected vide an order dated 29.3.94 as contained in Annexure No.2. Thereafter, the applicant filed O.A.No. 670/94 decided on 30.5.97 and O.A. 367/2000 decided on 20.2.2003. In between contempt petitions were also filed. The case of the applicant, in view of orders passed by this Tribunal in OAs and contempt petitions was considered time and again. In all, it was considered four times and finally rejected by the impugned order dated 1.10.2005. The applicant has approached the Tribunal by means

of the present O.A. alleging that subsequently six vacancies were released and appointment provided to 6 candidates on compassionate grounds. Therefore, he seeks quashing of order dated 1.10.2005.

3. The respondents have filed reply supporting the impugned order. They have alleged that the case of applicant was considered in a fair manner in the light of instructions issued by nodal ministry. In regard to the letter dated 20.9.2007, indicating the marks obtained by six candidates approved for appointment on compassionate grounds in Group 'D' category they have alleged that it was a subsequent selection. They have denied the allegation that those six vacancies existed in the year 2005 or the selection for those posts was postponed with the object to exclude the applicant.

4. The learned counsel for the parties have been heard.

5. The facts as they appear on record clearly indicate that the applicant was considered by the Board of Officers four times at intervals in between 1993 and 2005. It is also evident from record that all the relevant factors were taken into account on each of four occasions when the case of the applicant along with others was considered. The procedure adopted was the same i.e. no case was considered individually or unit wise, but all the cases received from various units were considered by the Board of Officers constituted at Head quarters as per the Govt. policy to find out the most deserving cases against 5% quota allotted for such appointment. The respondents have also disclosed the percentage of marks secured by the applicant. As chance would have it, the applicant did not make up in the merit list. It is a matter of common knowledge that the percentage of marks of successful candidates can vary in each selection depending on the candidates' situation and the number of vacancies. It does



not stand to logic at all to accept the argument that the applicant was discriminated only because in the subsequent years, the percentage of successful candidates was lower than the year in which the claim of applicant was rejected. It is also worthwhile to mention that the applicant accepted the impugned order dated 1.10.2005 i.e. he did not challenge till he obtained information under RTI vide letter dated 20.9.2007 wherein he found that the percentage obtained in the subsequent years by the successful candidate was lower than the year in which the claim of the applicant was rejected. In fact, the instant O.A. has been filed on the ground that in the subsequent year of selection, the successful candidates have obtained lower percentage of marks. This ground can hardly be allowed to prevail.

6. The factual situation is that the applicant was born on 10.6.69. He is now over 40 years. It is also relevant to mention that the proceedings of the Board of Officers filed on record (Ann. A/5) mentions that the applicant at the time of interview has disclosed that he was living with his maternal uncle and assisting him in his business which is his source of livelihood. The question is whether it is appropriate for this Tribunal to pass any favourable order in such circumstances at this stage only because he is unemployed.

7. The other important aspect of the matter is that the applicant's father died on 8.9.2009, just before one year, 3 months and 20 days before his actual superannuation. Thus, the deceased employee was on the verge of superannuation.

8. In ***Minerals and Metals Trading Corporation of India Ltd. V. Pramoda Dei, (1997) 11 SCC 390***, the Apex Court has held that mere death of the employee does not entitle his family to claim compassionate appointment. The Apex Court has further



laid down that rehabilitation appointment has not to be given in all cases where it become due because of death of an employee in harness or by his permanent disability. The object of compassionate appointment is to enable the penurious family of the deceased employee to tide over the sudden financial crisis.

9. In **Sanjay Kumar Vs. State of Bihar, (2000) 7 SCC 192** the Apex Court has laid down that compassionate appointment is intended to enable the family of the deceased employee to "tide over sudden crisis" resulting due to death of the bread earner who had left the family in penury and without any means of livelihood.

10 In **S. Mohan V. Govt. of Tamil Nadu, (1998) 9 SCC 485**, the Apex Court has laid down that the object of the compassionate appointment is to get over the financial crisis which it faces at the time of the death of the sole breadwinner. The compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over.

11. In **Jagdish Prasad Vs. State of Bihar, (1996) 1 SCC 301**, the Apex Court has laid down that the very object of appointment of a dependent of the deceased employees who dies in harness is to relieve unexpected "immediate hardship and distress" cause to the family by sudden demise of the earning member of the family.

12. In **Umesh Kumar Nagpal Vs. State of Haryana, (1994) 4 SCC 138 (supra)**, the Apex Court has held that compassionate appointment "cannot be granted after a lapse of a reasonable period. The consideration for such employment is not a vested right which can be exercised at anytime in future". The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the



compassionate appointment cannot be claimed and offered whatever the lapse of time and after the crisis is over. The Apex Court has further laid down that it must be remembered in the matter of compassionate appointment as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs of the family engendered by the erstwhile employment which are suddenly upturned.”

13. In the facts of the case, deceased employee has utilized service to the maximum, was due to retire just after one year, 3 months and 20 days. In totality of circumstances, refusal to appointment on compassionate ground to the applicant cannot be said to be illegal or arbitrary.

14. In view of the above, I find no ground to make interference in the O.A., the same is dismissed without any order as to costs.


(Ms. Sadhna Srivastava)
Member (J)

HLS/-