

Central Administrative Tribunal Lucknow Bench Lucknow

Original Application No. 88/2008

This, the 6th day of October, 2009

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

Manish Pal aged about 28 years son of late Sri Ram Sanehi Pal resident of 551-J/30, Ram Prasad Kheda, Alambagh, Lucknow.

Applicants

By Advocate: Sri S.P. Singh

VERSUS

1. Union of India through the Secretary, Ministry of Defence, Govt. of India, New Delhi.
2. Chief Engineer, Headquarters, Bareilly Zone, Military Engineering Services, Bareilly -900496.
3. SO-I, Military Engineering Services, HQ, Bareilly Zone, Bareilly.
4. SE, Director (P&L), Military Engineering Services, HQ Bareilly Zone, Bareilly.

Respondents

By Advocate: None

ORDER

By Hon'ble Ms. Sadhna Srivastava, Member (I)

The applicant is aggrieved by order dated 28th July, 2006 (Annexure No.1) and order dated 13.8.2007 (Annexure No.2) passed by Chief Engineer, Headquarter, Bareilly Zone i.e. respondent No.2, whereby, the request of the applicant for appointment on compassionate ground has been rejected.

2. The facts, in brief, are that the applicant's father while working as Supervisor, B/S-II in Military Engineering Services died in harness on 6.2.2001, leaving behind his widow, one daughter, and two major sons. After the death of his father, the applicant applied for appointment on compassionate ground, which was rejected by the respondents by the impugned order.

3. The grievance of the applicant is that respondents have rejected the claim of the applicant without applying their mind to the fact that the family of the deceased employee did not have any other source of income and they were wholly dependent on the deceased employee. None of son was

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employed and the family is in indigent condition. It is also submitted by the applicant counsel that the order passed by the respondents are totally baseless and unsustainable and the prayer made in this application is to set aside the impugned order and direct the respondents to provide appointment to the applicant on compassionate ground.

4. I have heard the learned counsel for applicant and perused the pleadings on record.

5. It is well settled by now by the Hon'ble Supreme Court that compassionate appointment can neither be sought as a matter of right nor as a line of succession. In fact, the Govt. of India has issued instruction to all the Departments to consider the cases of those persons who seek compassionate appointment and in case it is found that the family of the deceased employee is in total destitute condition and are financially distressed and they need immediate assistance to tide over the crises on account of the sudden death of the employee, only in such circumstances, compassionate appointment should be given that too subject to ceiling of 5% vacancy in direct recruitment. In the instant case, it is seen that the respondents have already considered the case of the applicant and it is recorded in the impugned order that the case of the applicant is not fit for grant of compassionate appointment because before the Department, there are number of cases seeking compassionate appointment, therefore, they have to consider the relative merits of all the candidates. In the instant case, the case of the applicant for appointment on compassionate ground for LDC was screened by a Board of Officers quarterly for 4 times (i.e. one year) and the applicant secured only 37 marks after taking into account all the liabilities left by the deceased employee. Since the applicant secured only 37 marks, therefore, he did not come up in the

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merit list for appointment as LDC due to non-availability of sufficient vacancies under 5% quota for such recruitment. The speaking order as Annexure No.2 gives out all the facts and circumstances under which the applicant was not provided appointment. Broadly speaking the reason for not providing the appointment was that the applicant was not placed in indigent condition. Secondly, that others placed in indigent conditions were accommodated in the limited number of vacancies of 5% earmarked for such appointment. The applicant has failed to point out that other candidates who have been offered appointment were less deserving than the applicant. The family of the deceased received 2.954 lakh as terminal benefit and family pension Rs. 3175 + D.A. The family owns property worth Rs. 0.20 lakh. In the present case, it is seen that the applicant's father died just one year before his actual superannuation and now all the sons are major. Therefore, it is not the case where the deceased has died at young age leaving the widow and small children in destitute condition or in indigent condition. Simply because the sons of the deceased were unemployed, it does not mean that they are entitled to be given compassionate appointment. Since, the respondents are bound by the 5% ceiling and they found that there were more deserving cases than the applicant for grant of compassionate appointment, I do not see any illegality in the order passed by the respondents.

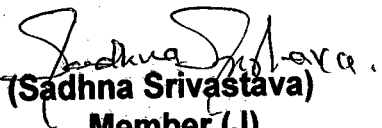
6. Before the pronouncement of judgment, the learned Counsel for applicant has submitted a photo copy of judgment in the case of ***Hari Ram Vs. Food Corporation of India, 2009 (3) UPLBEC, 2212***, wherein O.M. dated 5.5.2003 of DOP&T fixing time limit of 3 years for offering compassionate appointment has been held violative of Articles 14 and 16 of Constitution of India. It would mean that if the family of deceased has been found in indigent



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condition, then the case for such appointment can not be rejected merely on the ground that 3 years have elapsed. However, in the instant case the family of the deceased has not been held to be in financial distress after having taken into consideration all the factors. Therefore, , I am of the view that the aforesaid decision is not applicable in set of facts in this case. Even if the observation of competent authority regarding 3 years period is deleted as one of the grounds for rejection of claim, the applicant will not be entitled to relief on other grounds as discussed above.

7. Accordingly, the O.A. is dismissed without any order as to costs.


(Sadhna Srivastava)
Member (J)

HLS/-