

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No. 12/2007

This the 31st day of August, 2010

Hon'ble Dr. A.K. Mishra, Member(A)

Smt. Seema Gupta, Aged about 35 years, W/o late Shri Vinod Kumar, R/o Gali No. 6, Kartar Nagar, Rasoolpur, District Firozabad (presently residing at Bari Jungauli, Kursi Road, Lucknow)

.....Applicant.

By Advocate: Sri Prashant Kumar

Versus

1. Union of India through the Secretary, Ministry of Defence, New Delhi.
2. Engineer-in-Chief, Army Headquarters, DHQ PO New Delhi.
3. Chief Engineer, Headquarters, Central Command, Lucknow.
4. Chief Engineer, Lucknow Zone, Lucknow.
5. Commander Works Engineer, Agra Cantt.
6. Garrison Engineer (West), Agra Cantt.

.....Respondents

By Advocate: Sri K.K. Shukla.

ORDER

The applicant is challenging the order communicated in letter dated 7.4.2008 on behalf of respondent no.3 in which her application for compassionate appointment was finally rejected. Rival submissions of counsel for both the parties have been summarized in the order dated 26.8.2010.

2. Brief facts of the case are as follows :

The husband of the applicant, who was working as Mazdoor with Garrison Engineer (West), Agra Cantt died on 24.6.2000, leaving behind the applicant (widow) and three minor daughters. Originally, the applicant requested for appointment on Group 'C' post. As she did not have the requisite qualification for Group 'C' post, she was asked on 11.6.2001 to apply for any Group 'D' post. She requested that her case may be considered in relaxation of the prescribed educational qualification. She was asked on 8.9.2003 to resubmit the application after rendering compliance to some of the observations made by higher authorities. The application was resubmitted

on 17.11.2003. Subsequently, she was informed on 3.8.2005 that her case had been reviewed and would be put up to Board of Officers for consideration. She was intimated on 7.2.2006 that her case was again referred to Board of Officers and it has been decided to take it up once more. Finally, her case was again considered by the Board of Officers on 24.8.2007 in which she was placed at sl. No.1 in the relative merit list prepared based on the matrix of weightage to be applied for compassionate cases as per the directives of Ministry of Defence. But, two others from the same list were given appointment: one at Bareilly and the other at Lucknow ignoring her claim. The O.A. which was filed prior to the rejection order was amended seeking a direction to set-aside the impugned order dated 7.4.2008 and for reconsideration of her case according to merit.

3. The grounds taken by the respondent-authorities in rejecting her claim as seen from the impugned order is that her case was not recommended by the Board of Officers as there were more deserving cases to fill up the limited available vacancies (paragraph 6 of the impugned order) and further that her case was considered in the light of the guidelines of DOP&T and various judgments of Hon'ble Supreme Court and on balance of objective assessment of the totality of the circumstances, the competent authority could not accept her application (paragraph 7 of the impugned order).

4. The respondents have filed letter dated 2.8.2010 further clarifying the stand in respect of the claim of the applicant. This letter says that the case of the applicant was considered 11 times, but due to non-availability of vacancy, no appointment could be offered. On the last occasion i.e. on 24.8.2007 the Board of Officers again considered her case, but did not find her eligible as per DOP&T OM dated 5.5.2003 and recommended that her case should be finally closed after issuing a speaking order. Accordingly, the impugned order has been issued. It further says that the case of Smt. Chanda Rani was considered by the same Board of Officers and she was found eligible and recommended for appointment. Since all the candidates scoring marks higher than her were not eligible as per the aforesaid DOP&T circular, Smt. Chanda Rai was given appointment.

5. Learned counsel for the respondents also argued more or less on the same lines: that she was considered as many as 11 times and could not be recommended for appointment due to non-availability of vacancy; that she had applied for the post of Mazdoor in the industrial cadre and no such vacancy in this category was available even on the last occasion when she

was considered by the Board of Officers; that as per DOP&T circular dated 5.5.2003 a candidate could be considered only for three years and thereafter his case should be closed as the urgency for compassionate appointment could not be appreciated after lapse of more than three years; that Smt. Chanda Rani was appointed against a vacancy at Bareilly to which the applicant could not have any valid claim

6. The appointment letter dated 7.12.2007 in respect of Smt. Chanda Rani filed as Annexure-1 to the Supplementary Counter Affidavit of the respondents says very clearly that the policy of the respondents is to treat Mazdoor/ Chowkidar/Safaiwala as belonging to a common category. Further, it is seen that the appointment letter dated 19.5.2008 issued in favour of Sri Tirath Kumar was in respect of Mazdoor post in Group 'D' category; therefore, the argument that the applicant applied for the post of Mazdoor and there was no vacancy to accommodate her claim is not supported by facts. Moreover, the applicant was specifically asked on 8.12.2007 whether she would be interested in working on the post of Mazdoor/Chowkidar/Safaiwala (Annexure RA-1 to the Rejoinder Affidavit) to which her response dated 12.12.2007 was in the affirmative (Annexure RA-2 to the Rejoinder Affidavit). When she had given her willingness to be considered for any post, be it Mazdoor, or Chowkidar, or Safaiwala, it does not lie with the respondents to say that her case was rejected as her application was only for the post of Mazdoor. In any case, such a reasoning is not forthcoming from the impugned order, nor from the recent clarificatory letter dated 2.8.2010.

7. The decision of the respondents is now being defended by saying that the Board of Officers recommended final closure of her claim alongwith others on the ground that more than 3 years had elapsed from the date of death of her husband. The findings/recommendations of the Board of Officers made on 16.8.2007 have been enclosed to Annexure-1 to the Supplementary Counter Affidavit. For better appreciation, these are extracted below:

- "1. The Board having assembled pursuant to order, proceeded for recommending the compassionate appointment status of 33 candidates for appointment to Group 'C' and 'D' (Non-Basic Cat) based on 'Terms of Ref and as per the order on the subject.
2. Category wise merit list of 33 candidates is given as per Appces bellows:

Sl. No.	Category	Appces.	Total cases
(a)	Mazdoor	Appx 'A'	29
(b)	Chowkidar	Appx 'B'	01
(c)	Safaiwala	Appx 'C'	03

3. It is certified that the all applications of dependent of deceased Government servants for compassionate appointment (Non-Basic Category) which are received during the quarter have been considered by the BOO for the QE Jun 2007 and recommended for release of vacancies as per availability of vacancies against 5% DR quota on yearly LRS”

There is no whisper of ineligibility of the applicant and other candidates on the ground that their cases are pending for more than three years. On the other hand, a list of 33 candidates, in order of merit, has been released for appointment subject to availability of vacancies. The list contains common merit list in respect of Mazdoor/Chowkidar/Safaiwala categories. As seen from the merit list, the name of the applicant was placed at the first position having obtained 92 marks, Smt. Chanda Rani at 12th position having scored 80 marks and Sri Tirath Kumar at 34th position having scored 64 marks.

8. From the letter at Annexure-2 to the Counter Affidavit, it is seen that the applicant has been scoring relatively very high marks consistently from the year 2003 onwards as and when her case was considered and she was placed either at the first, or second position. The only reason why she was not offered appointment was non-availability of vacancy. The Board of Officers again considered her case in the year 2007 and keeping in view all relative factors regarding indigence as enumerated in the circulars of DOP&T and the matrix prescribed by the Ministry of Defence, assigned number 1 position to her by giving 92 marks. In other words, it shows that the indigent condition of the family was continuing and the Board of Officers recommended the case of the applicant for appointment. The contention of the respondents that her case was not recommended by the Board of Officers is not substantiated. The impugned order says that there were more deserving cases to fill up the limited number of vacancies and for that reason her case could not be considered. One fails to understand how there could be a more deserving case than the applicant when her

name finds place at si. No.1 on the basis of marks given by the Board of officers themselves. It is not the case of the respondents that the applicant was not considered by the Board of Officers on account of ineligibility. The delay which has occurred was not on account of any laches on her part, rather it was due to the inordinate delay in processing her application and non-availability of vacancies. Therefore, it is not justified to reject her claim on account of lapse of more than 3 years from the date of death of her husband.


As regards validity of letter dated 5.5.2003 prescribing a three year period after which pending compassionate appointment cases should be closed, the judgment of Allahabad High Court dated 8.4.2009 in Writ Petition No. 2412 of 2008 is relevant. It has struck down this prescription as violative of Articles 14 & 16 of Constitution of India. In that case, the prescribed Committee had recommended the case of the applicant for compassionate appointment on consideration of various factors as outlined in the circulars of DOP&T, but his case was rejected solely on the ground that more than 3 years had expired from the death of the employee. Such a rejection was set-aside by Allahabad High Court. The facts of the present case are more or less similar. The case of the applicant was taken up by the Board of Officers and recommended for appointment, but it has been rejected on two grounds: one that there were more deserving candidates; this aspect has already been discussed; secondly on the ground that more than 3 years have elapsed although this ground has not been specifically mentioned in the operative part of rejection order. It is worthwhile to mention that earlier the respondent-authority issued the letter dated 29.7.2007 (Annexure A-12 to Amendment Application) which makes a mention of the aforesaid DOP&T, but at the same time asks the applicant to intimate whether there was any change in the financial and family status and further informs that her case was again being projected in the next meeting of Board of Officers for consideration (Annexure-12). Even before that, the same observations were made in letter dated 31.7.2007 (Annexure-11) and it was stated that her case was again being projected for consideration in the next meeting of Board of Officers. Respondents' letter dated 3.8.2005 (Annexure-10) also made similar observations. In other words, the case of the applicant was being processed and considered even after lapse of three years on the basis of various factors relating to indigence of the family. No-where a decision was taken that since

more than 3 years had elapsed, she was treated to be ineligible. In this background, it is not permissible on the part of the respondents to take advantage of the O.M. dated 5.5.2003.

9. As regards the argument that Smt. Chanda Rani was appointed against the vacancy at Bareilly, it is clear from the stand taken by the respondents that all the vacancies together were being considered at command level and a common seniority list was prepared; as such all vacancies arising in the command region had to be filled up from the common seniority list. Since there is no separate seniority list zone wise, the argument that vacancies in a zone are to be filled up by the candidates belonging to that zone alone does not hold water. In any case, such a ground has not been taken by the respondents in the impugned order, nor in the recent clarificatory letter. The basis on which such a ground was canvassed at the time of hearing is not clear. Further, one vacancy at Lucknow on the post of Mazdoor has been filled up by a candidate who is far below in the merit list and no satisfactory argument is forthcoming to justify such action. While going through the merit list (Annexure-A-1 to the Supplementary Counter Reply), it is seen that there are candidates at si. No. 13, 30, 31 and 32 in whose cases the three year period was not over, yet they have been overlooked and a candidate at si. No.34 has been picked up for appointment. It is unfortunate that the elaborate scheme prescribed by the Ministry of Defence meant for impartial and objective assessment has not been followed faithfully.
10. In view of what has been stated above, the impugned order dated 7.4.2008 cannot be sustained, hence it is set-aside; neither the explanation offered in the letter dated 2.8.2010 can be accepted. The competent respondent-authority is directed to reconsider the case of the applicant in respect of the vacancies which have been filled up or are being filled up on the basis of recommendations of Board of Officers of 16th August, 2007. The above exercise shall be completed within a period of three months from the date of receipt of a copy of this order. For the reasons mentioned in the preceding paragraph Respondent Engineer-in-Chief at Army Headquarters and Respondent Chief Engineer at Command Headquarters are directed to conduct a probe as to how appointments could be given ignoring the recommendations of the Board of Officers and the instructions of the

Ministry of Defence laying down guidelines for objective and impartial assessment for compassionate appointment.

11. The O.A. is allowed in the aforesaid terms. There will be no order as to costs.


(Dr. A.K. Mishra)
Member-A 31/08/10

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