

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW, BENCH LUCKNOW**

ORIGINAL APPLICATION No: 456/2009
This, the 15th day of April, 2011.

HON'BLE SHRI D. C. LAKHA, MEMBER (ADMINISTRATIVE)

Hari Prakash Dubey,
Aged about 40 years,
Son of Late O.P. Dubey,
Resident of House No. B-12,
Sector-H, Aliganj, Lucknow.

Applicant

By Advocate Shri Raj Singh.

Versus

1. Union of India, through Secretary,
Ministry of Defence,
Government 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 (H.Q),
Central Command, Lucknow.
4. The Chief Engineer,
Lucknow Zone Lucknow.

Respondents

By Advocate Shri S. K. Awasthi.

ORDER

By Hon'ble Shri D. C. Lakha, Member (A):

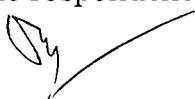
This O.A. has been instituted to seek the following relief(s):-

(A) To quash forthwith the impugned order (contained as Annexure No. 1) dated 13.12.2008 passed by respondent No. 4.

(B) To direct the respondents to appoint the applicant on compassionate grounds as his case has already approved by the competent Board, duly constituted for the said purposes.

(C) To pass any order or direction as be deemed fit and proper by this Hon'ble Tribunal to meet the ends of justice; and

(D) To allow the instant application with costs in favour of the applicant against the respondents.



2. The impugned order dated 13.12.2008 has been passed in compliance of the direction of Hon'ble CAT, Lucknow Bench in O.A. No. 62/2006 in which, order was passed on 29.5.2007 and the order dated 23rd July 2008 passed by the Hon'ble High Court in Writ Petition No. 939(SB) Of 2008 and the order dated 19th November 2008 passed by the Hon'ble CAT Lucknow Bench in C.C.P. No. 48/2007.

3. Since, the detailed facts have already been placed before the Tribunal in O.A. No. 62/2006, only the brief and relevant facts may be mentioned. After the death of the applicant's father in harness on 10.5.1995, the applicant's mother applied for compassionate appointment for her son on 7.8.1995. She was advised by the respondents vide their letter No. 915110/2/44/E 108 dated 25.8.1995 to resubmit a fresh application on completion of B.E.(Civil) Degree by the applicant. Thereupon, a fresh application on 13.4.1999 was submitted in the office of the respondents. After reminders, only the applicant was directed on 17.6.2000 to submit an application with documents for the compassionate appointment (Copy Annexure-7). On 13.7.2000, the required documents were submitted by the applicant. He was called for interview on 6.2.2001. But the same was postponed. The same was conducted on 30.6.2001, but the proceedings could not be signed by the Presiding Officer of the Board so constituted, Col. A. K. Chaturvedi due to his transfer. A fresh board was constituted on 15.7.2003 and the applicant was asked to undergo a written test on 3.9.2003. Thereupon, the Board of Officers approved the candidature of the applicant for appointment on the post of JE (Civil), a post in Group 'C' cadre. The photo copy of the appointment letter dated 23.12.2004 is annexed as Annexure 7-A. The applicant has clearly pointed out that ever since, the submission of his application, the delay has occurred either due to the completion of process or due to the inaction of the respondents

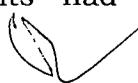
for which he cannot be blamed. Even after the approval of the Board for his appointment, the applicant was asked to submit certain documents on 17.8.2004 which he did immediately (Annexure 8 and 9). Having heard no progress in the case, the applicant again represented on 13.8.2005 to know the status of his case. Respondent No. 3 referred his query to respondent No. 2 which was not at all necessary as his case was already recommended by the Board of Officers. But on the pretext of age relaxation, the matter was sent to Respondent No. 2. Later, Respondent No. 2 has rejected the case of the applicant vide his order dated 22.11.2005 conveyed to the applicant by letter dated 17.1.2006. The reason given for rejection of the case was "cases prior to December, 2000 be treated as closed and disposed of". The applicant had to file OA No. 62/2006 in which, after considering all the facts and circumstances of the case, the Hon'ble Tribunal passed the order on 29.5.2007 directing the respondents to consider the case of applicant. The respondents had filed a Writ Petition in the Hon'ble High Court also, in which, the Hon'ble High Court has been pleased to direct (by order dated 23.7.2008) the respondents to consider the case of the applicant for compassionate appointment on the occurrence of vacancy in accordance with rules. Copy of the order dated 23.7.2008 is at Annexure 12. The present O.A. is filed against the order of the Respondent No. 3, which has been passed in compliance of the order of the Hon'ble Tribunal and the Hon'ble High Court. The main ground taken in the O.A. in support of this case is that impugned order has not been passed in accordance with law and has been passed without proper application of mind. No delay at all happened on the part of the applicant or his mother in submitting the applicant for compassionate appointment. The entire delay was caused by the respondents. The Board of Officers considered his case and found him eligible for compassionate appointment. There was no necessity to refer the case Respondent No. 2 with regard to age



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relaxation etc which was unwarranted. The point of delay and age relaxation have already been considered by the Hon'ble High Court and only after considering this point, the order dated 29.5.2007 has been passed. But in the impugned order, the case of the applicant has not been properly considered. The applicant has been pursuing his case for many years and the delay has occurred on account of the respondents only. The applicant and his family had to face acute problem of economic poverty. The applicant is still facing indigent situation as he could not get any suitable job. He does not hope to get any job even now in the open market because of his becoming over age which has occurred due to his long wait. Hoping that, since he was found eligible for compassionate appointment, he would be appointed as already recommended by the competent Board of Officers.

4. The respondents have contested the case by filing the counter affidavit. An attempt has been made to justify the impugned order dated 13.12.2008 as the same has been passed after due consideration of the direction issued by the Tribunal in O.A. No. 62/2006 disposed of vide order dated 29.5.2007, order dated 19.11.2008 in CCP 48/2007, and the direction of Hon'ble High court dated 23rd July 2008 in W.P. No. 939(SB) of 2008. It is stated that the order has been passed after considering all aspects of the case taking in view the various judgments of the Apex court as well as the rules and instructions issued by the DOP&T on the subject. It is not disputed that the applicant was called for written test and interview for suitability by the Board of Officers. The applicant was selected by the Board of Officers subject to time dispensation/ age relaxation to be obtained form the HQ. The case of the applicant has been reviewed as per DOP&T OM dated 23.5.2003. Since, the applicant could not be given appointment up to three years, so the case would be treated as closed. While passing the impugned order, the respondents had dealt with all



the points raised by the applicant as well as keeping in the mind, the direction/order by this Tribunal as well as the order of the Hon'ble High Court. The respondents have also contended in the counter affidavit that after the death of the applicant's father, the family could manage and afford the education of the applicant and even otherwise the family could sustain up to April 1999 i.e. more than 3 $\frac{1}{2}$ years. That means, since the family could sustain somehow it could not be assumed that it was living in penurious situation.

5. The rejoinder affidavit has been filed by the applicant through the counsel in which, the arguments put forth in the O.A. have largely been repeated. In addition, it is reemphasized that the family could manage its sustenance by getting personal loans from some of the relatives and well-wishers. The other paras of the counter affidavit, denying the averments of the O.A. are denied in the rejoinder affidavit.

6. Both the counsels for the parties are heard. They have put forth their detailed arguments on each point and have argued in favour of their respective points and counter points. I have perused the impugned order and other pleadings of the parties. The learned counsel for the applicant has argued that delay in this matter has been caused due to the official process and non-action by the respondents. The applicant is not at all responsible for any delay. Facing acute economic crises at the time of the death of applicant's father, the mother of the applicant put up the application for appointment on compassionate grounds which was not immediately considered. Rather, the respondents advised the mother of the applicant that her son(the applicant) may submit the application on completion of B.E. degree. Accordingly, though the family was facing indigent situation, they had to take personal loans from different quarters and the applicant submitted the



application on 13.4.1999. For about two years, the respondents took no action or decision. On 17.6.2000, the respondents asked for certain documents which were supplied immediately by the applicant. The test was conducted by the respondents on 30.6.2001 by the Board of Officers. But the Board did not give the proceedings. Fresh Board was constituted on 15.7.2003 and again written test was conducted by the Board on 18.9.2003. The applicant was selected by the Board for appointment. Certain documents accordingly were asked for on 17.7.2004. But to the utter surprise, the case of the applicant was closed on 17.6.2006. After the death of applicant's father in 1995 up to 17.7.2004, the case was being under consideration with the respondents and there was no objection on the point of delay and the overage of the applicant. Even when the Hon'ble Tribunal directed vide its order dated 29.5.2007, the respondents were expected to consider the case with desired compassion. But the order dated 13.12.2008 has been passed against the applicant mainly on those grounds which have already considered while deciding O.A. 62/2006. The learned counsel for the applicant has placed reliance on the judgment of the Hon'ble High Court in the Writ Petition No. 295 (S/B) of 2006 reported in 2010 (1) ALJ 272 Awadhes Kumar Versus CAT, Lucknow and others.

7. The learned counsel for the respondents has reiterated the point stated in the counter reply saying that the family was not in financial destitution because, after the death of applicant's father, they have been sustaining themselves without any assistance from the department. It is also argued by the respondents' counsel that after a lapse of reasonable period, the case for compassionate appointment cannot be considered and it is not the vested right which can be exercised at any time in future. In defence, he has placed reliance upon the judgment of Hon'ble Supreme Court in Umesh Kumar Nagpal Vs. State of Haryana and others (JT) 1994(3) SC-525.

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8. I have given thoughtful consideration to the pleadings and arguments of both the counsels in view of the averments in the O.A., counter reply and rejoinder reply. While passing the impugned order dated 13.12.2008, in view of the direction of the Hon'ble CAT and Hon'ble High Court, the respondent No. 3 has rejected the case of compassionate appointment for the applicant mainly because, the approval of the competent authority was disallowed. The applicant's selection by the Board of Officers was in violation of OM dated 3.12.9, 5.5.2003 issued by the DOP&T. The recommendation of the applicant was made by the Board of Officers in violation of important guidelines laid down by the Hon'ble Supreme Court in its various judgments as given in para 17 of DOP&T OM dated 9.10.98, and another ground for rejecting the claim of the applicant is that for so many years, the family could sustain some how and it means that it is not facing the situation of penury as it is one of the main conditions to consider the case for compassionate appointment. It may be noted that impugned order has been passed in compliance of the direction of the Hon'ble Tribunal and Hon'ble High Court. It is seen in the order of the Tribunal dated 29.5.2007 passed in O.A. No. 62/2006 that all the circumstances and facts before and after the recommendation of the applicant's case was the Board of Officers have been considered and every point has been appreciated. Both the parties have put up their respective case before the Tribunal and after hearing both the parties, the order has been passed. The point of delay in disposal of the case and the condition relating to age relaxation have been well considered. It is only after that the order and direction was issued by the Tribunal. This order has to become final in the absence of any appellate order in favour of the respondents. After taking into account all the points of both the parties, the following direction was given by the Tribunal vide order dated 29.5.2007; "***In consequence O.A. 62 of 2006 is allowed.***
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 three months from the date of a certified copy of this order. Parties to bear their own cost."

9. The above order has become final because the respondents have not put up any order of the competent court of law against this order. It is noted from the facts of the case that after the death of applicant's father on 10.5.1995, up to 17.7.2004, the case for appointment was under consideration. There has been delay to dispose of this matter but the same could not be attributed to the negligence or non-cooperation of the applicant. All these years, the objection on the penurious status of the family was never raised. This was the first condition to be completed and had the family not been facing the indigent situation the respondents could have very easily rejected the case of the applicant for compassionate appointment only on this ground. But the mother of the applicant and later on the applicant was asked to put up the application for compassionate appointment, complete the record and other formalities and the case has put before the Board of Officers. Board of Officers the applicant eligible and suitable. Obviously, the Board could select him only because he was fulfilling the eligibility criteria. Keeping the case under consideration for about 9 years and later on rejecting the same mainly on the ground of delay looks paradoxical. Now the applicant is said to be about 40 years of age. He has been hoping to get the appointment on compassionate ground, specially in view of the assessment of the Board of Officers in his favour. He could not look for and try out some other avenue because the development was taking place in his favour right from the submission on application up to the selection by the Board of Officers and thereafter. Now it would be almost impossible for him to get a decent job in the open market. It is settled law



that a person cannot be made to suffer for no fault on his part and that the respondents cannot take undue advantage of their own mistake. In this case, the case for compassionate appointment of the applicant could not be finalized due to the delay on the part of the respondents.

10. In view of the above facts and circumstances and also in view of the arguments of the parties and above observation, I find that the O.A. deserves to be allowed. Hence the same is allowed. The impugned order dated 13.12.2008 is not passed in compliance of the direction in O.A. No. 62/2006 passed vide order dated 29.5.2007 as well as the rules governing the claim for compassionate appointment issued by the DOP&T. Therefore, the impugned order dated 13.12.2008 is quashed and set aside with the direction that the case of the applicant be reconsidered in view of the history of the case since its inception. The competent authority shall also consider granting relaxation in age. After reconsideration, the case shall be disposed of by reasoned and speaking order within a period of 2 months from the date when the certified copy of the order is received by the competent authority/respondents.

11. Accordingly the O.A. stands disposed off. . No order as to costs.


(D. C. Lakha)
Member (A)

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