

CENTRAL ADMINISTRATIVE TRIBUNAL

LUCKNOW BENCH, LUCKNOW

Original Application No.81/2010

This the 18th day of May 2012

Hon'ble Mr. Justice Alok Kumar Singh, Member (J)

Vimlesh Kumar, aged about 20 years, son of Late Shri Ram Prakash, resident of -Uthratia, Rae-bareilly Road, Lucknow.

...Applicant.

By Advocate: Sri Praveen Kumar.

Versus.

1. Union of India though the Engineer-in-Chief (EIC14), Army Head Quarters, Kashmir House, DHQ-PQ, new Delhi
2. The Chief Engineer, (EIC2), HQ Central Command, Lucknow.
3. Assistant Chief Engineer (Wks), HQ Central Command, Lucknow.

....Respondents.

By Advocate: Sri K.K. Shukla.

ORDER (Oral)

By Hon'ble Mr. Justice Alok Kumar Singh, Member (J)

This O.A. has been filed for quashing the impugned order dated 6.11.2009 contained as Anneuxre-A-1 by means of which the case/claim of the applicant for compassionate appointment has been rejected and closed.

2. I have heard the rival submission at length and perused the material on record.

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3. The learned counsel for the applicant confines his arguments only on the following two points:-

(i). Thought the O.M. dated 5.5.2003 issued by the DOPT has been struck-down as Ultra-virus but the same has been taken into consideration and on that basis the case/claim of the applicant has been finally closed as mentioned in last line of the above impugned order.

(ii). Though, the family details i.e. 4 minor children, 3 unmarried daughters and 6 fully dependents etc. are mentioned in para-4 of the impugned order alongwith income etc., but no comparative study has been made in respect of applicant vis-à-vis other candidates.

4. As far as the first point is concerned, suffice is to mention that in the case of **Hari Ram Vs. Food Corporation of India and Others reported in (2009) 3 UPLBEC-2212** the O.M. dated 5.5.2003 has already been struck-down. This Tribunal has also followed this decision in the case of **Amar Nath Sukul Vs. Union of India & Others in O.A.No.97/2010 decided on 18.4.2011** (Annexure-A-1 to the R.A.) followed by several other judgments of this Tribunal. It appears from the reading of the impugned order that the respondents were not aware about the above decision on account of which they have relied upon this O.M. dated 5.5.2003 as mentioned in para-5 of the impugned order. As a consequence of this they have closed the case of the applicant being three years old. Therefore, this impugned order deserve to be quashed on this point alone.

5. In respect of second point also, the perusal of the impugned order shows that the details of 4 minor children, 3 unmarried daughters and 6 other fully dependents, the amount of family pension, terminal

benefits and less income are mentioned. It further transpires that the applicant could secure only 75 marks and there were total 97 applicants. Number of merit of the applicant was 7. But, in the absence of any details, which could not be brought on record, this Tribunal is not in a position to say as to whether or not proper comparative study was made by the respondents in respect of all the claimants vis-à-vis the applicant.

6. Learned counsel for the respondents says that the impugned order has been passed very rightly keeping in view the judgments of Hon'ble Apex Court. But, in the impugned order no particulars have been given of any case law of Hon'ble Supreme Court. In para-6, it is only mentioned that it is being decided in the light of the guidelines of D.O.P.T. and various judgments of the Hon'ble Supreme Court. As already said that the above O.M. dated 5.5.2003 issued by D.O.P.T. has already been struck-down and since no particulars of any cases have been mentioned of the Hon'ble Supreme Court nothing can be said in that regard. The learned counsel for the respondents submits that particulars of some judgments are mentioned in the counter affidavit. I have gone through the short details of these cases of Hon'ble Supreme Court as mentioned in the counter affidavit. Most of the cases have no relevance or any application in the present matter and there is no dispute in respect of preposition of law laid down in rest of the cases. These cases are as under:-

(i). ***State of Rajasthan Vs. Chandra Narayan Verma 1994 (2) SCC-752***--The short details..... as mentioned in the counter affidavit of this case are that according to

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the preposition of law, it is one thing to say that a family member of the deceased is entitled to appointment on compassionate grounds, but it is all together different thing to say that his appointment should be made regardless of the rules. There is no such question involved in the present case.

(ii). ***Pepsu Road Transport Corporation Vs. Satinder Kumar 1995 Supp. (4) SCC-597***---Even no short details have been given in the counter affidavit.

(iii). ***Hindustan Aeronautics Limited Vs. A. Radhika Thirumalai JT-1996 (9) SC-1997***--- Even no short details have been given in the counter affidavit.

(iv). ***Life Insurance Corporation Vs. Asha Ram Chandra Ambekar 1994 (2) SCC-718***---According to short details given in the counter affidavit, it was laid down in this case that in some cases appointment on compassionate ground have been directed by the judicial authorities. The Hon'ble High Court and Administrative Tribunal cannot confer jurisdiction impelled by sympathetic consideration----There is no such situation before us in the present case.

(v). ***Orrissa SEB Vs. Raj Kumari Panda 1999 SCC page-729***---According to the short details given in the counter affidavit, it was clarified in this case that compassionate employment is to be given to the parties satisfying the recruitment only if there are vacancies and not otherwise. It was further held that to direct the employer to create supernumerary posts is not warranted by Rules.---- There is no such matter before us.

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7. It appears that some judgments have been mentioned in a slip shod manner without ascertaining as to what preposition of law has been laid down in those cases and whether the same are applicable in the present case. Be that as it may. But, mere citing of these judgments in the counter affidavit would not justify the impugned order, which suffers from the flaws mentioned above.

8. The Principal of natural justice and fair play applies to all the three types of order i.e. judicial/quasi-judicial and administrative. Even the administrative order should indicate proper reasons showing due application of mind. Giving out the reasons, ensures application of mind, which prevents unnecessarily litigation. As discussed above these things are lacking in the impugned order.

9. Finally, therefore, the impugned order is hereby quashed with a direction to the respondents to consider the case of the applicant afresh ignoring the aforesaid O.M. dated 05.05.2003 issued by D.O.P.T. which has already been struck down expeditiously within 4 months as suggested by the learned counsel for the respondents. No order as to costs.

Alok Kumar Singh
(Justice Alok Kumar Singh) 18.5.12

Member (J)