

Central Administrative Tribunal, Lucknow Bench, Lucknow

O.A. No.325/2010

This the 3rd day of June 2011

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

1. Smt. Hardevi aged about 53 years wife of late Sri Naresh Chandra,
 2. Avinash Chandra aged about 31 years son of late Sri Naresh Chandra
- Both resident of House No. 918 Sa, Manas Nagar (Behind the Residential Colony), Krishna Nagar, Lucknow.

Applicants

By Advocate: Sri R.C.Singh

Versus

1. Union of India through the Secretary, Ministry of Defence, New Delhi.
2. Principal Controller of Defence Accounts (Central Command) Lucknow-226002.

Respondents

By Advocate: Sri Pankaj Awasthi for Rajendra Singh

ORDER (Dictated in open court)

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

This O.A. has been filed jointly by two applicants, mother and son for quashing the impugned order dated 16.9.2008 passed by respondent No.2 refusing to provide an appointment to the applicant No.2 on compassionate ground (Annexure A-1) (wrongly typed as Annexure A-9 in the relief clause of OA). It has been further requested that respondent No.2 be directed to reconsider the case of the applicant No.2 for appointment on compassionate ground keeping in view of the fact that those whose families have received more amount and are in a better position have been given appointment despite the fact that those cases were earlier closed.

2. The case of applicants is that the claim of applicant No.2 was rejected vide order dated 16.9.2008 (Annexure A-1) on the

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ground that his case does not fulfill the indigency criteria and that there is no vacancy available in the Department for appointment on compassionate grounds. Therefore, the applicant moved an application under RTI 2005. In reply thereof, certain information were furnished vide Annexure A-8. From perusal of these information, it appears that two cases of Smt. Mamta Shukla and Km. Sapna were rejected in the year 2005 but subsequently, they were appointed on compassionate ground on 27.3.2008 and 11.11.2008 respectively. The families of those applicants have received much higher amount consequence upon the death of their husband/ father. That as per another information received under the RTI, according to the relevant G.O. for family comprising upto 5 persons, an amount of Rs. 1767.20 monthly income has been considered as a norm for indigency criteria and on that basis, a person scoring 60 points out of 100 would be construed to have attained this criteria. In this relevant Annexure A-10, the case of the applicant has also been enclosed showing 46 marks achieved by him out of 100 points. According to one of the enclosure to Annexure A-8, aforesaid Km. Sapna has scored 47 points out of 100 in the year 2005 and therefore, her case was initially rejected. It is further pleaded that the mother of applicant No.2, was informed vide letter dated 31.3.2010 (Annexure A-11) that her case would be reconsidered upto 3 years before the concerned committee and the decision taken thereon shall be intimated.

3. The respondents have contested the O.A. by filing the detailed CA saying that the case of the applicant was rejected on 16.9.2008 due to non-fulfilling of the indigency criteria. The applicant No.1 however, made a representation dated

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24.10.2008 which was replied by letter dated 28.10.2008. She again made representation dated 3.3.2009 which was forwarded to the higher authorities from there, it was intimated that according to the direction issued by DOP&T letter dated 5.5.2003, once the matter of compassionate appointment was rejected due to non-fulfilling the indigency criteria, the same cannot be re-opened. The respondents have also taken a plea of limitation in view of Section 21 of the AT Act. In respect of case of Km. Sopna, it has been averred that the claim was rejected initially on 2.9.2005 but on 14.3.2008 i.e. after about 3 years, the Headquarter released three vacancies of Group 'C' for giving compassionate appointment and therefore, her case was considered in her favour. It is further averred that she passed recruitment examination and therefore, she was appointed to the post of Clerk w.e.f. 11.11.2008. But it is not clear as to what is the relevance of recruitment examination when admittedly she was given compassionate appointment. During the course of arguments, this point could not be clarified.

4. By filing of Rejoinder Reply, it has been said on behalf of the applicants that the contents of paragraphs 6 and 7 of the C.A. are incorrect and contradictory and is also misleading because on one hand, it has been said that the matter of compassionate appointment once rejected due to non-fulfillment of indigency criteria, the same cannot be re-opened. But on the other hand, in para 7 of the CA, it has been stated that that her case for compassionate appointment will be placed before the committee for 3 years and she would be kept informed by whatsoever decision is taken. It means that the case of the applicant No.2 was to be placed before the committee for

consecutive three years. In any case according to the applicant, nothing has been done in this regard.

5. I have heard the learned counsel for the parties at length and perused the material on record.

6. At the outset, from the perusal of the pleadings of the parties, it comes out that the respondents have undoubtedly taken contradictory pleas to the extent that on one hand, it has been said on their behalf that once the matter of compassionate appointment is rejected due to non-fulfillment of indigency criteria, the same cannot be re-opened but on the other hand, in para 7 of the C.A., it has been said that the case of applicant no.2 would be considered before the committee for 3 years and she would be kept informed about the decision. The claim of the applicant No.2 has already been rejected on 16.9.2008. As per their own letter written by Dy. Controller Administration on 31.3.2010 addressed to the applicant No.1, mother of applicant no.2, the case of the applicant no.2 would be kept pending for 3 years to be placed for consideration before the concerned committee. It is also significant to note that in the last but one paragraph of this letter, a specific reference has been made to DOP&T's OM dated 5.5.2003 and after considering that O.M., The above observation has been made on behalf of the respondent (Annexure 11 of the OA). But on the other hand, vide another letter dated 14.12.2009, issued 3 months before the issuance of the aforesaid letter, a contradictory stand was earlier taken while interpreting the same O.M. dated 5.5.2003, saying that the cases which have been finally closed cannot be re-opened (Annexure CA-5). Be that as it may. But the subsequent stand of the respondents themselves is in favour

of the applicants as their case has been kept alive and pending ,to be placed before the concerned committee for consecutive three years.

7. Now let us come to O.M. dated 5.5.2003. Unfortunately, neither of the parties have filed copy of this O.M. dated 5.5.2003. This O.M. lays down the limitation on compassionate appointment and prescribes that maximum time a person's name can be kept under consideration for offering compassionate appointment is 3 years subject to the condition that the concerned committee has reviewed and certified the penurious condition of the applicant at the end of the first and the second year. After three years, if the compassionate appointment is not possible to be offered to the applicant, his case will be finally closed .

8. From the perusal of the aforesaid O.M., it comes out that case of a person can be kept under consideration for a maximum period of 3 years and during this period, it shall be put up before the concerned committee to review and certify the penurious condition. Thereafter, it shall be taken to have been closed finally if the compassionate appointment is not possible to be offered. According to their own version of the respondents, as noted in Annexure A-11 of OA dated 31.3.2010, the case of applicant No.2 is still alive and has been kept pending. About 3 months prior to the issuance of aforesaid Annexure A-11 dated 31.3.2010, a letter from Dy. Controller General of Defence Accounts (Administration) to Principal Controller of Defence Accounts in respect of applicant No.2 was issued on 14.12.2009. In the first paragraph, it is mentioned that the reason for rejection of the claim of applicant has been told to the applicant that his case does not fulfill the norms and that no vacancy was

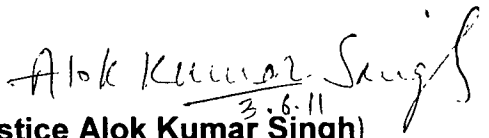
available. In the last paragraph, a general observation has been made that in accordance with the existing conditions envisaged in O.M. of DOP&T dated 5.5.2003, the cases which have been finally disposed of, there is no provision to re-open the same. But nowhere, it is mentioned that the case of the applicant has been closed. As far as general observation in respect of O.M. dated 5.5.2003 is concerned, this O.M. also nowhere says that once a case is rejected, it shall be deemed to be closed. Rather, it stipulates that the name of a person can be kept under consideration for 3 years as mentioned before. It is also worthwhile to mention that this O.M. dated 5.5.2003 itself has now been declared as irrational and violative of Article 14 and 16 of Constitution of India. by the Hon'ble High Court, Allahabad in the case of ***Hari Ram Vs. Food Corporation of India and others reported in (2009) 3 UPLBEC 2212***. Therefore, the pleadings on behalf of the respondents based on the aforesaid O.M. have become meaningless.

9. Learned counsel for respondents however submits that vide Annexure A-1 dated 16.9.2008, the case of the applicant has been closed. A careful perusal of this order shows that nowhere in the entire order, it has been mentioned that the case of the applicant has been closed finally. In the last line, it has been simply said that the department is unable to accept the request for appointment on compassionate ground. Therefore, the respondents are bound by their own letter dated 31.3.2010 to keep the request pending for 3 years or for any other time which may be considered reasonable, for the matter being placed before the concerned committee yearly for consideration for compassionate appointment subject to availability of

vacancy. Moreover, the respondents cannot be permitted to go against the established preposition of law of 'intelligible differentia'. As mentioned before, the case of Km. Sapna was also initially rejected. Subsequently, after about 3 years, the respondents reconsidered her case and gave her the appointment, although she had scored only 47 points out of 100 in respect of indigency criteria. The required minimum cut off is 60 points. The applicant had scored just one point short i.e. 46 points out of 100 and his claim was also rejected earlier. The contention of the applicant's counsel has substance that the respondents cannot be permitted to have different norms and criteria in respect of almost similarly situated persons.

10. In view of the facts and circumstances of the case, there does not appear to be any inordinate delay in filing of O.A. so as to attract the provision of Section 21 of the AT Act as raised on behalf of the respondents in their C.A. Therefore, this point is also decided against the respondents.

11. In view of the discussions made hereinabove, this O.A. deserves to be and is accordingly allowed. The impugned order dated 16.9.2008 is hereby quashed. The respondent No.2 is directed to reconsider the case of the applicant No.2 for appointment on compassionate ground having regard to all the facts and circumstances discussed in the body of this order. No order as to costs.


(Justice Alok Kumar Singh)
Member (J)

HLS/-