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Central Administrative Tribunal ,Lucknow Bench, Lucknow.

Original Application No. 393/2011

Reserved on 25.3.2015

Pronounced on 30/3/15

Hon'ble Sri Navneet Kumar, Member (J)

Vikas Yadav son of late Pratap Bahadur, aged about 21 years resident of Malhaur Ka purwa, Post- Chinhut, District- Lucknow.

Applicant

By Advocate: Sri Amit Verma for Sri S.K.Verma

Versus

1. The Union of India, through Secretary, Ministry of Defence, New Delhi.
2. Chief Engineer EIC (2) HR Central Command, Lucknow.
3. Garrison Engineer (East), 11, Rani Laxmi Bai Marg, Chawani, Lucknow.

Respondents

By Advocate: Sri S.P.Singh for Sri Rajendra Singh

ORDER

By Hon'ble Sri Navneet Kumar, Member (J)

The present O.A. is preferred by the applicant under Section 19 of the AT Act with the following reliefs:-

- a) To quash para 5 of the impugned order dated 23.3.2011 passed on behalf of respondent No.3 as contained in Annexure No. A-1 to this original application so far it impose a time limit of three years while rejecting the case of applicant.
- b) to direct the opposite party to appoint the applicant on any class IV post in terms of letter issued by the opposite party as made by the respondent No. 3 as contained in Annexure No.1 to the Original Application within a specified time.
- c) to direct the respondents to pay the cost of this application.
- d) Any other order which this Hon'ble Tribunal deems just and proper in the circumstances of the case be also passed.

2. The facts of the case are that the applicant is the son of late Pratap Bahadur who was working with the respondents as Mate Electricity Department (MES) in Lucknow Sadar Cantt. and died in

harness on 14.2.2007 at the age of 50 years and was having about 10 years of service at the time of his death. After death of his father, the applicant applied on 7.8.2008 with an object to get compassionate appointment so as to be able to take over the sudden crisis to the family of the deceased from financial destitution. The applicant also submitted the reminders when his application was not considered. During the said period, the respondents directed the applicant to complete all formalities and applicant also given an undertaking and income certificate in March 2009. Thereafter, the respondents have also not taken any decision on the application of the applicant. In March, 2011, the respondents have again issued a letter asking the applicant to submit certain certificates and finally the respondents rejected the claim of the applicant by means of an order dated 23rd March, 2011 indicating therein about the circular dated 5th May, 2003. The learned counsel for the applicant has categorically indicated that the said circular is no more in existence at the time impugned order is passed and same was already quashed by the Hon'ble High Court. As such, taking a decision on this count is unwarranted.

3. Learned counsel for the applicant has also drawn the attention towards the order passed by the Tribunal and has indicated that the Tribunal vide order dated 28th October, 2011 has also indicated that the applicant may be considered as and when vacancy arises in accordance with relevant provisions ignoring the O.M. dated 5.5.2003, and the said O.M. has already been struck down by the Hon'ble High Court. Learned counsel for applicant has also indicated that in pursuance of the order of the Tribunal, the respondents have also considered the case of the applicant and again rejected the claim and through separate O.A. No. 39/2013, he has challenged the said rejection order and the case of the applicant is pending for final adjudication.

4. On behalf of the respondents, no reply is filed despite several opportunities granted to them and finally by means of order dated 11.7.2014, right to file reply was forfeited. However, the learned counsel for respondents has indicated that since the applicant has already challenged the order passed in pursuance of the direction of the Tribunal dated 28.9.2011 and the O.A. is pending as such the present O.A. has rendered in-fructuous and is liable to be dismissed.

5. Heard the learned counsel for parties and perused the records.

6. The applicant is the son of deceased employee who died in harness on 14.2.2007. Soon thereafter, the applicant has moved application for grant of compassionate appointment in place of his father. The said application was processed by the respondents and he was asked to submit certain certificates which were duly submitted by the applicant. After sufficient length of time, the respondents passed an order on 23rd March, 2011 indicating therein that the scheme of appointment on compassionate ground has been envisaged with the whole object of granting compassionate appointment to enable the family to tide over the sudden crisis and to relieve the family of the deceased from financial destitution and to help it get over the emergency. It is also indicated in the said order that the case of the applicant was considered keeping in mind the family size including age of children, amount of terminal benefits, amount of family pension, liability in terms of unmarried daughter, minor children etc., movable/ immovable properties left by the deceased at the time of death and also ceiling of 5% direct recruitment vacancies. Not only this, the committee has not considered the request for appointment taking into account the position regarding availability of vacancy for such appointment and finally it is observed that in terms of DOP&T O.M. dated 5.5.2003, the time limit for making compassionate appointment and prescribes the maximum time a person's name can be kept under consideration for offering compassionate appointment

will be 3 years. It is also to be indicated that the said circular of the DOP&T dated 5.5.2003 stands quashed by the Hon'ble High Court in the case of **Hari Ram Vs. Food Corporation of India reported in (2009) 3 UPLBEC 2212.**

7. As such, the Tribunal passed an order on 28.9.2011 and observed that the applicant may be considered as and when vacancy arises in accordance with relevant provisions ignoring the O.M. dated 5.5.2003.

8. The respondents passed an order on 12th October, 2012 and rejected the claim of the applicant indicating therein that appointment on compassionate ground is not a matter of right and after balanced objective assessment of the totality of the circumstances of the case including the decision of the Board of Officers, at the command Headquarters, the competent authority rejected the claim of the applicant for grant of compassionate appointment.

9. As indicated above, the said order has already been challenged by the applicant in O.A. No. 39/2013 which is pending for final adjudication. Since in terms of order of the Tribunal, the respondents have already passed an order and the same has already been challenged by means of O.A. No. 39/2013, as such the present O.A. has rendered in-fructuous.

10. Accordingly, O.A. is dismissed as in-fructuous. No order as to costs.

Navneet Kumar
 (NAVNEET KUMAR)
 MEMBER (J)

HLS/-