

Central Administrative Tribunal ,Lucknow Bench, Lucknow.

Original Application No.413 of 2011

This the ~~20~~th day of December, 2013

Hon'ble Sri Navneet Kumar, Member (J)

Kumari Renuka Franklin aged about 31 years d/o late Samual Franklin r/o of House No. 71, Ram Gali, Harjinder Nagar, Lal Bagh, Kanpur Nagar.

Applicant

By Advocate: Sri G.S. Sikarwar

Versus

1. Union of India through Secretary, Govt. of India, Ministry of Defence, New Delhi.
2. Engineer-in-Chief, Army Head Quarters, Kashmir House, DHQ-PO, New Delhi.
3. Chief Engineer, Head Quarters, Lucknow Zone, Lucknow.
4. Commander Works Engineer, Kanpur.
5. Garrison Engineer (I) B/R MES, Chakeri, Kanpur.

Respondents

By Advocate: Sri Rajendra Singh for Sri R. Mishra

(Reserved on 13 .12.2013)

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 set aside the orders dated 28.3.2008 passed by respondent No. 3 contained in Annexure No. 1 to this original application.
- b) to issue a suitable order or direction directing the respondents to reconsider the case of the applicant for appointment on compassionate ground.
- c) to issue any appropriate orders or directions in favour of the applicant as this Hon'ble Tribunal deems fit and proper for the facts and circumstances of the case.
- d) to allow the present O.A.with cost.

2. The brief facts of the case are that the applicant is the daughter of ex-employee , who was working with the respondents organization as an electrician and while working, the applicant's father died on

8.5.1997. It is also pointed out by the learned counsel for the applicant that at the time of death of her father, she was minor and the mother of the applicant was illiterate lady, as such she could not apply for appointment under dying in harness rules. Subsequently, the applicant had passed High School Examination and after attaining the age of majority in the year 1998, she submitted an application dated 21.12.1998 for considering her case for grant of compassionate appointment and when nothing was heard, she again submitted a reminder in 2000 and in 2002. Since the applicant was so poor, she could not approach the Tribunal and submitted again a letter in 2003 and reminder in 2005. In 2006, the applicant was called for interview and after taking the interview by the committee, she was found eligible for the post of Peon by the committee and the whole records of the applicant was forwarded to the office of Commander Works Engineer, Kanpur which was subsequently forwarded to the Chief Engineer, Lucknow zone but subsequently vide order dated 28.3.2008, the case of the applicant was rejected by the authorities stating therein that the deceased Govt. servant family received Rs. 1,75,689/- as terminal benefits and also getting monthly pension of Rs. 1275/- plus Dearness relief as applicable. Apart from this, it is also pointed out by the applicant that the family does not have any property, despite that the case of the applicant was rejected by the authority and also finally closed. The applicant feeling aggrieved by the communication of the respondents, preferred the present O.A.

3. The learned counsel appearing on behalf of the respondents filed their reply as well as two Supple. Counter Affidavits. Through reply, it is categorically pointed out by the learned counsel for the respondents that that applicant's father died on 8.5.1997 and as per the Govt. rules, the case was considered and the same was submitted before the Board of Officers. However, due to more deserving cases and less number of vacancies, the applicant's case was not

recommended by the Board of officers for appointment on compassionate grounds. The learned counsel for respondents has also taken shelter of DOP&T O.M. dated 5.5.2003 which provides for considering the case maximum for a period of three years. The learned counsel for respondents has also taken a ground that the family of the ex-employee has received a lump sum amount to the tune of Rs. 1,75,689/- and also getting pension at the rate of Rs. 1275/- per month plus D.A. Through their Supple. Counter Affidavits, the respondents have reiterated the same contention as raised in the reply and it is pointed out that since the case of the applicant is beyond the period of 5 years, as such it cannot be considered again.

4. Learned counsel for the applicant has filed Rejoinder reply as well as reply to the Supple CA and through Supple. CA, it was pointed out by the learned counsel for applicant that the mother of the applicant also expired on 4.2.2013, as such the applicant is leaving in a penurious condition and she requires kind consideration for considering her case for grant of compassionate appointment. Apart from this, the learned counsel for the applicant has also reiterated the averments made in the O.A. and has pointed out that this Tribunal while considering the two judgments, directed the respondents to consider the case of the applicant and also taken into the consideration of O.M. dated 5.5.2003 which is no more in existence.

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

6. Admittedly, the applicant is the daughter of the ex-employee, who was working with the respondents organization and the ex-employee expired on 8.5.1997 and at the time of death of her father, the applicant was minor and after she became major, she applied for compassionate appointment and her case was kept pending and finally it was rejected by means of order dated 28.3.2008, whereby the

respondents have observed as under:-

“According to the information available on record, the following is the position/status of the family of the deceased Govt. servant:-

- a) The death of the Govt. servant occurred on 8th May, 1997. His wife and 01 daughter survive him.**
- b) The deceased Govt. servant’s family received Rs. 1,75,689/- as terminal benefits. At present they are in receipt of monthly pension of Rs. 1275/- plus Dearness relief as applicable.**
- c) The family owns property worth Rs. Nil.”**

7. Not only this, the learned counsel for the respondents also failed to indicate on what basis they arrived at a conclusion that applicant’s family is not having financial crisis.

8. The learned counsel for the applicant placed reliance on the case of **Mukesh Kumar Vs. Union of India and others reported in (2007) 8 Supreme Court cases, 398**. The relevant paragraph 7 is as under:-

“7. There is no indication as to on the basis of which materials the conclusion was arrived at. It is also not clear as to what were the material before the Circle Level Selection Committee to conclude that the family was not in financially indigent condition. To add to it, both CAT and the High Court proceeded on factually erroneous premises, as has been highlighted by the appellant and noted supra. Above being the position, the appeal deserves to be allowed, which we direct. The orders of the Central Administrative Tribunal and the High Court are set aside. The matter is remitted to the Central Administrative Tribunal, Chandigarh

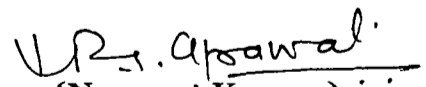


Bench for fresh hearing. Parties shall be permitted to place material in support of their respective stand.”

9. At this stage, the impugned order was examined and thoroughly perused. The claim of the applicant was rejected on the basis of comparative financial condition of the family and its responsibilities. But there is no indication as to on what basis and on what material, the respondents arrived at this conclusion. It is also not clear as to what was the material before the committee to conclude that the family was not in indigent condition and it is also not ascertainable as to what material was available before the committee to make a comparative study between the case of the applicant vis-à-vis other cases. It goes without saying that justice should not only be done but it should appear to have been done. Similarly, transparency is supposed to be one of the significant component of real justice which is certainly lacking in the impugned order. Therefore, in view of the proposition of law laid down by the Hon'ble Apex Court in the case of Mukesh Kumar (supra) and also in the light of the observations made hereinabove, this O.A. deserves to be allowed.

10. Accordingly, the impugned order dated 28.3.2008 is quashed. The respondents are directed to reconsider the case of the applicant for grant of compassionate appointment. This exercise shall be completed within a period of 3 months and the decision so taken be communicated to the applicant.

11. With the above observations, O.A. is allowed. No order as to costs.


(Navneet Kumar)
Member (J)

HLS/-