

**Central Administrative Tribunal ,Lucknow Bench,
Lucknow.**

Original Application No.449/2011

This the th13 day of December, 2013

Hon'ble Sri Navneet Kumar, Member (J)

Rahul Pandey aged about 21 years son of late Sri Hari Shankar Pandey r/o House No. 591/791, BaldevVihar, Near DurgaMandir,Telibagh, Lucknow.

Applicant

By Advocate: Sri Dharmendra Awasthi

Versus

1. Union of India through the Secretary, Ministry of Defence, New Delhi.
2. Engineer-in-Chief, Army Head Quarter, DHQPO, New Delhi.
3. Chief Works Engineer, Central Command, Lucknow.
4. Chief Engineer, Lucknow zone, Lucknow.

Respondents

By Advocate: Sri Rajendra Singh for Sri R.Mishra

(Reserved on 29.11.2013)

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:-


- i. Quash the order dated 15th September, 2011 and order dated 19th August, 2008 passed by opposite party No. 3 as contained in Annexure No.1 and 2.
- ii. Direct the opposite parties to consider and provide the compassionate appointment to the applicant in accordance with the law.
- iii. Pass any other suitable order or direction as deem fit and proper in the facts and circumstances of the case in favour of the applicant.
- iv. allow the cost of the application.

2. The brief facts of the case are that the applicant is the son of deceased employee. The ex-employee was working in the

respondents organization , died on 23rd March, 2004, while he was in service. The applicant being the eldest son of the deceased employee, who was minor at the time of death of his father and when he attained major, in the year 2007, he applied for grant of compassionate appointment through this application dated 24.3.2007. The learned counsel for the applicant has pointed out that the application of the applicant was not considered by the authorities and subsequently, vide order dated 19th August, 2009, it was rejected stating therein that the family of the deceased employee has received the terminal dues and also getting the monthly pension of Rs. 2300/- P.M. plus dearness relief and also owns property worth Rs. 28,000/-, as such rejected the claim of the applicant.

3. Learned counsel for applicant also argued to the effect that the order passed by the respondents is based on the circular dated 5.5.2003 and since the said circular was quashed by the Hon'ble High Court and therefore, they cannot take shelter of the said circular and the case of the applicant is liable to be reconsidered.

4. Learned counsel appearing on behalf of the respondents filed their reply and has pointed out that the respondents have passed the final speaking order on 19.8.2008 which was communicated to the applicant. It is also pointed out by the respondents counsel that after the order dated 19.8.2008, applicant has chosen to prefer the present O.A. after the period of 3 years , as such, the present O.A. is liable to be dismissed on this count itself. The case of the applicant was considered by the Screening Committee at Command Headquarter after taking into account each aspect referred to and due to non-availability of the vacancy, the applicant could not find place in the merit list and as such, he could not be given appointment. Not only

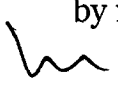


this, the respondents have taken shelter of the law laid down by the Hon'ble Apex Court in its various judgments and pointed out that the appointment on compassionate ground is not a matter of right and after a balanced objective assessment in the totality of circumstances of the case including decision of Board of officer, the compassionate appointment was denied and it was communicated to the applicant as well.


5. Learned counsel for the applicant has filed their Rejoinder Reply and through Rejoinder Reply, mostly the averments made in the O.A. are reiterated. However, it is pointed out by the learned counsel for the applicant that the present O.A. is not barred by limitation as the respondents have intimated the decision of the respondents dated 19.8.2008 vide their letter dated 15.9.2011. Therefore, the O.A. is not liable to be dismissed on the ground of limitation. Apart from this, the learned counsel for the applicant has also taken a ground that the family of the ex-employee consists of widow, two sons and a daughter and it requires kind consideration by the respondents to reconsider the case of the applicant and also submitted that the non-availability of vacancy cannot be a reason for rejection of the case of the applicant and the Board has to consider the case keeping in view the family condition and if the case is fit for appointment, then the appointment be given to the applicant.

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

7. The applicant is the son of the deceased employee who admittedly, expired in the month of March, 2004 and in 2007, the applicant moved an application for grant of compassionate appointment which was subsequently considered and rejected by means of order dated 19.8.2008 which was communicated to



the applicant vide letter dated 15th September, 2011. While rejecting the claim of the applicant, the respondents have pointed out that the whole object of granting compassionate appointment is to enable the family to tide over the sudden crisis and to relieve the family of deceased from financial destitution and to help it get over the emergency. Apart from this, it is also pointed out by the respondents that the scheme does not necessarily imply that the dependent of each and every deceased/medically -boarded out/missing Govt. employee will be offered appointment on compassionate ground. Consideration of compassionate appointment can be only upto 5% of direct recruitment quota occurring in a year in Group 'C' and 'D' posts and it is also to be taken note that the claim of compassionate appointment cannot be claimed as a matter of right. The respondents while deciding the claim of the applicant has categorically pointed out that as per the information received, the family of the deceased employee received Rs. 2,33,081 as a terminal benefit and also getting Rs. 2300/- per month as family pension and also owns property worth Rs. 28,000/-. Not only this, it is also mentioned in the rejection order that the family of the deceased employee consists of his wife, two sons and a daughter. Undisputedly, the compassionate appointment cannot be claimed as a matter of right but while deciding the case of compassionate appointment, the respondents should not reject the case on the ground that the family of the deceased employee has received an amount under various welfare scheme. As observed by the Hon'ble Apex Court in the case of **Mukesh Kumar Vs. Union of India and Ors. reported in (2007) 8 SCC 398** that the claim of the applicant was rejected on the ground that the family was



not in indigent condition is not correct. The Hon'ble Apex Court has been pleased to observe as under:

“ 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 materials 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 materials in support of their respective stand”

8. The contention of the learned counsel for the applicant cannot be accepted to the extent that the rejection cannot be made on the basis of circular dated 5.5.2003 because the respondents have not considered the case of the applicant three times whereas they have considered the case of the applicant on the basis of information received by them. Undisputedly, the family is getting monthly pension of Rs. 2300/- per month but this amount appears to be insufficient for survival of a family with four members of the deceased employee, as such considering the penurious condition of the family of the applicant, I deem it proper to interfere in the present O.A.

9. Accordingly, order dated 15th September, 2011 and 19.8.2008 passed by the respondents are quashed and the respondents are directed to reconsider the case of the applicant for grant of compassionate appointment and in case the applicant is found eligible, he can be given appointment.

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

U.R. Arora
(Navneet Kumar)
Member (J)

HLS/-