

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION No. 489/96 /199

Date of Decision: 31-3-97

Paul Peter John Paramasivan

Petitioner/s

Dr.A. Shivade

Advocate for the
Petitioner/s

v/s.

U.O.I. & Ors.

Respondent/s

Mr.R.K.Shetty

Advocate for the
Respondent/s

CORAM:

Hon'ble Shri M.R.Kolhatkar, Member(A)

Hon'ble Shri

- (1) To be referred to the Reporter or not?
- (2) Whether it needs to be circulated to other Benches of the Tribunal?

M.R.Kolhatkar
(M.R.KOLHATKAR)
Member(A)

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

O.A.489/96

Promised this the 31st day of MARCH 1997

CORAM: HON'BLE SHRI M.R.KOLHATKAR, MEMBER(A)

Paul Peter John Paramasivan,
Servant Quarters No.66,
IAT Campus, Girinagar,
Pune - 411 025.

By Advocate Dr.A.Shivade .. Applicant

-versus-

1. Institute of Armament Technology,
Girinagar, through
The Director & Dean,
2. Union of India,
Ministry of Defence,
South Block,
New Delhi - 110 011.
3. The Director General
Research & Development,
Directorate of Personnel,
Ministry of Defence,
Sena Bhavan, DHQ
New Delhi - 110 011.

By Advocate Shri R.K.Shetty .. Respondents

-: O R D E R :-

(Per M.R.Kolhatkar, Member(A))

In this O.A. the applicant has challenged the order dt. 29-12-95 from respondent No.2 addressed to the mother of the applicant which reads as below:

"Reference your application dated 9-3-87 and subsequent correspondence on the subject.

It is regretted that the Competent Authority at Defence Research & Development Organisation Headquarters Ministry of Defence, New Delhi - 110 011. to whom your case was submitted, has rejected your request for providing employment assistance to your son (viz.Shri PP John Paramashivan) being a very old case and in the light of Hon'ble Supreme Court's judgment to the effect that compassionate employment cannot be claimed and offered after a lapse of a reasonable period and after the crisis is over.

Your case has accordingly been closed at this end.

This is for your information please."

It could thus be seen that the case for compassionate appointment of the applicant has been rejected on the ground that the case is an old one and in terms of Supreme Court judgment compassionate appointment cannot be claimed and offered after lapse of a reasonable period and ~~refused~~ after the crisis is over.

2. The father of the applicant expired on 1-2-87. Initially his mother applied for compassionate appointment vide letter dt. 21-2-87^{Ex.A-3} but subsequently by her letter dt. 30-5-1990(Ex.A-4) she requested that her son may be given the compassionate appointment. It is not disputed that the son attained majority on 21-11-91. There is a correspondence which shows that the case for compassionate appointment of the applicant is under consideration. At page 17 is the letter dt. 7-2-1992 asking to fill up particulars correctly. At page 19 is the letter from the applicant stating that he is willing to accept the post of waiter. At page 20, Appendix 'G' is the recommendation of the Head of Establishment that a vacancy in the grade of Chowkidar is available in the Institute under the direct recruitment quota for considering the case of the applicant for compassionate appointment. At page-23 is the letter dt. 3-1-94 asking the ~~applicants~~ mother of the applicant along with applicant to appear for an interview. Counsel for the applicant therefore submits that there has been no delay and that the respondents are bound to offer compassionate appointment to them.

3. Respondents in their reply ~~have~~ stated that the the delay on the part of the applicant ^{is} three fold viz. applicant's mother changed her mind after a lapse of three ~~years~~, secondly the applicant attained the requisite age only after four years after the death of his father and thirdly delayed submission of the requisite documents for consideration of his appointment. Admittedly,

xxxxx the applicant attained majority only on 21-11-1991 and his mother had withdrawn her own name and put forth the name of her son ~~and~~ vide letter dt. 30-5-1990. Any delay ^{however} prior to the son attaining the majority cannot be said to be the real delay attributable to the applicant. So far as the delay in submitting the information is concerned the respondents have called on the applicant to file particulars vide their letter dtd. 7-2-1992 and the counsel for the respondents have stated that the correct particulars were available on 31-5-1993. The matter was under process thereafter and the reply was sent only on 29-12-1995. The applicant cannot therefore be blamed for any delay subsequent to 31-5-93. In my view therefore the contention of the respondents that the case of the applicant cannot be considered because of delay and that the applicant is responsible for delay cannot be accepted.

4. The next contention of the respondents, which was not in the impugnd letter is that the applicant's father was a retired D.S.C. Sepoy and as such he is not a Ex-serviceman, ~~for which~~ they rely on the Ministry of Defence letter dt. 15-3-1995 at page 8-A of the additional written statement. xxxxxxxx. In my view, however, the case of the applicant's father is not all covered by the circular cited and this cannot be a reason for denial of the compassionate appointment to the applicant.

5. Respondents then submit that applicant is not ^{the} in real need of the employment because his mother is given a job carrying a monthly honorarium of Rs.545/- with free accommodation, ~~and~~ uniform and other benefits like PF, gratuity etc. and the

However, responses have not taken into

account the following basically which refers to
consideration of the quality of the deceased employee
only after affording major and general instructions
being given to the next of kin.

Pointed

"If this need describes that it is an employee of
which no benefit or is service or is available
benefit and there is a ward prior to
employment and marriage is done and the
should apply to a job as soon as the
benefits should be of 18 years. The person prior
for a combination of compensation
M.O. of benefit referred to in O.
No. 14014/88-Eff. (D) dated the 30th June,
1988, may be treated as member of this family
The upper age limit may, however, be relaxed
as mentioned above as per the order already
existing on this subject".

10. The following instructions also do not prevail to

be considered

"Benefit and objective assessment on financial
condition of the family".
It is not the intention that a combination
of compensation should be reflected
merely on the ground that the family has
received the benefits under the various
welfare schemes. While these benefits could
take into account, the financial condition
of the family has to be assessed fairly into
account in this situation and all other relevant
factors such as the presence of an eligible
member, size of the family, date of the application
etc. to the extent that the family
is incapable of objective and balanced
make no financial contribution to the family
while considering a request for
compensation during".

11. Consider for the responses sample first
consideration the same number in the case of
I.C. as the same number in the case of

the son was also given a job in the CSD canteen on a monthly honorarium of Rs.300/- but he left the job on his own.

6. Counsel for the applicant however contends that the job being done by his mother is not a regular Govt. job and the job offered to her son was also a purely temporary job and therefore these circumstances cannot be held against him.

7. I am required to consider the reasons given by the respondents in the reply negating the compassionate appointment. It is not open to them to rely on additional material going beyond the reply unless compassionate appointment is patently against provisions in the rules. I notice that there is no such rule cited before me.

8. The respondents appear to have relied on the following paragraph of the standing instructions relating to "Belated requests for compassionate appointments"

"Ministries/Departments can also consider the requests for compassionate appointment even where the death took place long ago, say, five years or so. While considering such belated requests it should be kept in view that the concept of compassionate appointment is largely related to the need for immediate assistance to the family on the passing away of the Government servant in harness. The very fact that the family has been able to manage somehow all these years should normally be adequate proof to show that the family had some dependable means of subsistence. Therefore examination of such cases calls for a great deal of circumspection. The decision in those cases may be taken at the level of Secretary only."

9. However, respondents have not taken into account the following paragraph which refers to consideration of the child of the deceased employee only after attaining majority and general instructions being ~~modified~~ to that extent. These are reproduced below :

"It has been decided that if an employee dies while in service or is retired on invalid pension and there is a ward below 18 years of age and who alone is available for employment he should apply for a job as soon as he attains the age of 18 years. The persons below the age of 18 years should not be considered for appointment on compassionate grounds. The general instructions referred to in O.M. No.14014/6/86-Estt.(D) dated the 30th June, 1987, may be treated as amended to this extent. The upper age-limit may, however, be relaxed as hitherto as per the orders already existing on this subject."

10. The following instructions also do not ~~appear to~~ [~]
~~have been noticed:~~

"Balanced and objective assessment on financial condition stressed"

It is not the intention that application for compassionate appointment should be rejected merely on the ground that the family has received the benefits under the various welfare schemes. While these benefits should be taken into account, the financial condition of the family has to be assessed taking into account its liabilities and all other relevant factors such as the presence of an earning member, size of the family, ages of the children and the essential needs of the family etc., so that a balanced and objective assessment is made on the financial condition of the family while considering a request for appointment on compassionate ground."

11. Counsel for the respondents submits that considering the Supreme Court judgment in the case of L.I.C. vs. Asha Ramchandra Ambekar, and Umesh ChandraNagpal

vs. State of Haryana the applicant is not entitled to the relief. These cases in my view are not applicable to the facts of the present case. In the instant case the applicant has attained majority only on 29-11-1991 and therefore the applicant is not responsible for the delay which is the main reason cited by the respondents for rejecting the request of the applicant for compassionate appointment.

12. I am therefore of the view that the application has been rejected wrongly and unfairly and the impugned letter is liable to be quashed and the applicant is entitled to have his case reconsidered by an authority superior to the authority which took the decision to reject the appointment. Impugned letter dt. 29-12-95 is quashed. Respondents are therefore directed to reconsider the case of the applicant in the light of the judgment and take a decision in accordance with rules keeping in view all relevant facts of the case. The respondents are directed to pass a speaking order within three months. O.A. is disposed of in these terms with no order as to costs.

MR.Kolhatkar
(M.R.KOLHATKAR)
Member(A)

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