

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

O.A.NO.579/2000

~~Friday~~, this the 9<sup>th</sup> day of November, 2001.

CORAM;

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

Smt.Lata Vasant Dabhade,  
W/o late Vasant Gangaram Dabhade,  
(Ex.Mazdoor T.No.6315 of  
Ordnance Depot, Talegaon Dabhade,  
Tal-Maval, Dist-Pune)  
R/at-C/o Smt.Kamal Bhimrao Parave,  
D.D.Patil Chawl,  
Nehru Nagar,  
Pimpri, Pune-411 018. - Applicant

(By Advocate Mr J.M.Tanpure)

Vs

1. The Union of India  
through the Secretary,  
Ministry of Defence,  
BHO PO, New Delhi-110 011.
2. The Commandant,  
Ordnance Depot,  
Talegaon Dabhade,  
Tal-Maval, Dist-Pune. - Respondents

(By Advocate Shri R.K.Shetty)

O R D E R

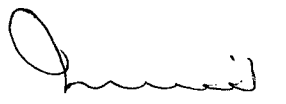
SHRI T.N.T.NAYAR, ADMINISTRATIVE MEMBER

The issue that arises for consideration in this O.A. is whether the respondents were justified in turning down the request of the applicant for compassionate appointment by awarding appropriate marks for each of the eligibility norms with particular reference to the direction contained in C.A.T., Mumbai Bench's order dated 25.3.98 in O.A.521/97 filed by the applicant on the same subject.

small family norm should be favoured with compassionate appointment in preference to another who haplessly is burdened with a larger number of mouths to feed is not a matter which the Tribunal can adjudicate upon since the existing guidelines or instruction do not give any scope to consider such issues. On the contrary, the more the number of dependants, the greater the case for evoking compassion for purposes of allowing succour by way of some job. In this case, 2 eligibility points or marks are to be awarded for every year of unexpired service on account of the death of the bread-winner, <sup>Subject,</sup> however, to the ceiling of 40 marks in any case. It means that whether one has 30 years or 20 years of unexpired service the eligibility marks would be 40. Prescription of such ceiling does not bring in any inequity. It is a perfectly rational exercise, according to me. In any case, that is the rule applicable to all. Thus, on the facts and in the circumstances of the case, I hold that the applicant has failed to show that any injustice has been done to her. No malafides are alleged. I am not inclined to allow any relief prayed for.

7. On the facts and in the circumstances of the case, the application is without merit and hence liable to be dismissed and I do so. There is no order as to costs.

Dated, the 9th November, 2001.



T.N.T. NAYAR  
ADMINISTRATIVE MEMBER

2. The basic facts are not disputed. The applicant's husband died in harness on 8.8.94 while working as a Mazdoor in Ordnance Depot, Talegaon, Dabhade, Pune District. The applicant's claim for compassionate appointment was considered thrice earlier together with the claims of dependants of certain other deceased employees. Since her claim was turned down, she filed an O.A. before this Tribunal. The Tribunal, after going through the provisions contained in the Guidelines on Employment in Relaxation to Normal Rules, came to the finding that there were certain anomalies in allotting marks for some of the eligibility norms like number of dependants, the unexpired period of service in each case etc. The Tribunal directed the respondents to reconsider the case of the applicant for grant of compassionate appointment against the next available vacancy. It is significant to note that no order was quashed or set aside in that order. Another aspect to be noted is that there was a Contempt Petition filed by the applicant alleging noncompliance of the order in O.A.521/97 dated 25.3.98. This Tribunal, as per order in C.P.No.25/99 in O.A.521/97 dated 6.4.2000, held that "the order has been complied with and there is no wilful disobedience. It is altogether separate issue in case the applicant is aggrieved by the decision of the reconsideration." (Emphasis supplied) The Tribunal further observed that in case the applicant was aggrieved by the fresh order passed in pursuance of the Tribunal's order, she could seek legal remedy as a fresh cause of action. It would appear that the applicant is aggrieved and hence this application. Following reliefs are sought:

9.

(a) A declaration regarding the applicant's entitlement for compassionate appointment and a direction to respondents to offer/give her compassionate appointment or reconsider the applicant for compassionate appointment.

(b) Quashing/setting aside of Exbt.A letter dated 27 July, 2000 and Para 8(d)(i) & (iii) (Exbt.B) of Army Headquarter letter No.93669/Policy/05-80(i) dated 30.7.89.

(c) Costs & damages/compensation to the extent of Rs.50,000/-.

3. In the reply statement, the respondents have stated that the applicant's case was actively reconsidered and she was given more marks. In spite of the additional marks granted to her, she has not made the grade in the face of more deserving pending cases and limited number of vacancies. It is submitted by the respondents that the Tribunal cannot sit in judgement on the policy guidelines of Administration by reappreciation of the existing system. Nor can the Tribunal grant compassionate appointment as held by the Supreme Court in LIC Vs Asha Ramchandra Ambekar, it is pleaded.

4. I have heard Shri J.M.Tanpure, learned counsel for the applicant and Shri R.R.Shetty, learned counsel for the respondents. Drawing inspiration from the pleadings in the O.A., learned counsel for the applicant underscored the stance

that denial of compassionate appointment to the applicant on account of her bread-winner husband's demise and the consequent financial indigence is violative of Article 21 of the Constitution and granting more marks to persons who have not observed the small family norm and awarding less marks to the applicant inspite of her adherence to small family norm amounts to violation of Articles 14 and 16 of the Constitution. Learned counsel has also highlighted what he considers to be violation of the principles of equality before law inasmuch as marks have not been awarded strictly on the basis of the length of unexpired service of the claimants' husbands. For instance, when the husbands of Smt. Ucheb Kanwar and Smt. Asha died, they had unexpired service of 22 years each while the applicant's husband had 30 years of unexpired service at the point of his demise. However, all of them have been awarded equal marks of 40. Thus the whole ranking for grant of compassionate appointment is faulty and the claim of the applicant deserves to be upheld, the learned counsel has urged.

5. Shri R.R. Shetty, learned counsel for the respondents has pointed out that while the impugned order was made, the respondents had adhered to the directions of the Tribunal in the earlier O.A. in so far as it related to the applicant. There was no other direction that was binding on the respondents according to the learned counsel. Although the additional marks held to be admissible was allowed to the applicant, her case could not be considered since more deserving cases were there.

2.

The allegation regarding disparities in awarding marks on the basis of number of dependants and the extent of unexpired service in terms of years in each case was due to a very subjective and faulty appreciation of the norms laid down by the Department in that regard, counsel would plead. He would vehemently contend that the policy guidelines laid down in this respect have no scope for bias or distortion and the Tribunal cannot replace the system by what is canvassed by the applicant. He would therefore, urge that the application is liable to be dismissed.

6. I have carefully perused the case records and considered the pleadings and the rival submissions made by the respective counsel. At the outset, I must clarify that not all observations made by the Tribunal in the earlier O.A.521/97 are directions to be followed. The only binding direction to the respondents was to reconsider the case of the applicant for grant of compassionate appointment against the next available vacancy. In fact, in fairness, it should be said that the respondents in apparent acceptance of the Tribunal's observation that the applicant should get altogether 88 marks on account of the various eligibility norms, have given 88 marks to the applicant while reconsidering her case as directed. But unfortunately for the applicant, there are others who have scored higher eligibility points or marks. This is the reason for not <sup>acceding</sup> ~~acceding~~ to her claim for compassionate appointment. Whether the dependant of a person who had assiduously followed

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