

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 521/97

Date of Decision: 25/3/98

Smt. Lata Vasant Dabhade Applicant.

Ms. Neelima Gohad Advocate for
Applicant.

Versus

Union of India & Anr. Respondent(s)

Shri R. K. Shetty Advocate for
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 X
other Benches of the Tribunal?

abp.

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

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GULESTAN BIDG. NO. 36, PRESCOT RD, 4TH FLR, FORT,
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION No. 521/97.

DATED THE 25TH DAY OF MARCH, 1998.

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

Smt. Lata Vasant Dabhade,
W/o. Late Vasant Gangaram Dabhade,
(Ex. T. No. 6315) Residing at:
c/o. Smt. Kamal Bhimrao Parave,
D.D. Patil Chawl, Opp. English School,
Nehru Nagar, Pimpri,
Pune - 411 018.

... Applicant.

By Advocate Ms. Neelima Gohad.

V/s.

1. The Union of India,
Through The Secretary,
Ministry of Defence,
DHQ PO, New Delhi - 110 011.

2. The Commandant,
Ordnance Depot,
Talegaon Dabhade - 410 506.

... Respondents.

By Advocate Shri R.K. Shetty.

I O R D E R I

[Per Shri M. R. Kolhatkar, M(A)]

In this OA the applicant is challenging non grant of compassionate appointment to her and in particular order dated 15/4/97 at page-12 (Exhibit A-1). It is ~~also~~ indicated in that letter that this is the last and final chance and therefore her case will not be considered further. The contention of the applicant is that she is a widow of a Government employee who died on 8/8/1994, who ^{was} survived ~~in~~ in addition to the applicant, by the following:-

daughter - 4 years.

son - 1½ years.

Mother - 75 years.

2. It is further stated that in addition the deceased employee was looking after the Mother of the Applicant i.e. Mother in law/who is also dependent on of the Govt. servant

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the applicant because the applicant had lost her father in her childhood. It is stated that the applicant was considered thrice ^a with certain other employees including one Smt. Bharti Tapse whose husband had died after the applicant's husband ^{se} but who/case had been/considered favourably. The applicant has therefore prayed for directing the respondents to re-consider the applicant's case on merit for compassionate appointment keeping in mind ^a her poor financial conditions and liabilities.

3. The respondents have opposed the OA. According to them the case of the applicant has been considered thrice strictly according to rules and scrutiny of marking conducted by a Board of Officers (procedure/is attached as Appendix - A)., ^a This procedure is followed by department since there are/limited number of vacancies for consideration against compassionate appointment. The system of marking is given at/para-6 of the Guidelines on Employment in Relaxation to Normal Rules (attached as Appendix-A to reply of respondents.)

This envisages as follows:-

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|------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (i) Minor Children and Un-married daughters. | : Maximum 30(thirty)marks at the rate of 10(ten) marks per minor child, unmarried daughter. |
| (ii) Family Members | : Maximum 10(ten) marks at the rate of 2(two) marks per dependant member i.e. Father/Mother/Widow/Minor brothers/un-married or widowed sisters. |
| (iii) Number of year(s) of service that the deceased/retired on invalid pension Govt. servant, could have served more. | : Maximum 40(forty) marks at the rate of 2(two) marks for each year of service left out. |
| (iv) Assessment of monthly income. | : Maximum of 20(twenty)marks as under, based on monthly family income, to include family pension, approximate monthly interest lumpsum payments like CBEIS/GPF/DGRG/Leave encashment and estimated monthly rental value of immovable property. |

4. Smt. Tapase and applicant's marking as given by department is reproduced below:-

Smt. BN Tapase

Smt. Lata. V. Dabhade

a) No. of minor children/ unmarried daughters	- 03	a) No. of minor children/ unmarried daughters	-03
b) Marks allotted	- 30	b) Marks allotted	20
c) No. of dependent family members	- 03	c) No. of dependent family members	-02
d) Marks allotted	- 06	d) Marks allotted	-04
e) Balance service (in years)	- 26	e) Balance service (in years)	-30
f) Marks allotted	- 40	f) Marks allotted	40
g) Pension/Monthly Income	Rs. 400/-	g) Pension/Monthly Income	Rs. 375/-
h) Marks allotted	- 19	h) Marks allotted	-20
	<hr/>		<hr/>
Total	95		84
	=====		=====

5. The contention of the applicant is that she has been given less marks under the head "number of dependents", because two more dependents were required to be taken into account, which has not been done. Secondly, balance of years of service in the case of applicant's husband was 30 and in the case of Smt. Tapase was 26, but the marks allotted to Tapase are more. The Marks in the Pension Column in applicant's case is 20 and in the case of Mrs. Tapase is 19. This is as against Rs. 375/- and Rs. 400/-. According to the counsel for applicant, therefore there is wrong allotment of marks. The contention of the counsel for applicant moreover is that the appointments on compassionate grounds should not be on the basis of a competition, but there must be a minimum number of marks beyond which an appointment on compassionate ground should be automatic. Thirdly, the counsel for applicant has stated in the rejoinder that when the case of applicant was pending, three appointments on compassionate grounds were given to Smt. Sindhu Thorve and Smt. Talane in 1995 and Smt. Sutar in 1997 and that her case has been deliberately overlooked by respondents. As mentioned in the

order sheet, the respondents were directed to file the particulars of marks obtained by the three widows mentioned above for compassionate appointment. The respondents have failed to file the same.

6. Counsel for the applicant also relies on judgement of this Tribunal in OA-987/95 decided on 21/1/97 vide 1997(2)SLJ(CAT)-502 in Shri Shyamrao G. Mali & Ors. v/s. Union of India, in which the Tribunal had considered a similar case, regarding system of marking adopted by respondents and the same was faulted in as much as the handicapped child was not given due weight. Respondents were directed to reconsider the case. The applicant prays for similar relief.

7. On going through the circular/instructions, it appears to me that the procedure of allocation of marks is required to be judicious and not mechanical. It must take into account comparative disadvantage of a particular applicant. There is no doubt that there is less marking to the extent of 4 marks in as much as two dependents of the applicant namely her mother as well as monther-in-law are left out. Therefore, the applicants marks are liable to be increased by atleast 4 marks. Secondly, the marks allotted to number of years left, do not reflect the fact that the applicant's husband was left with a longer period of service i.e. 30 years whereas Mrs. Tapase's husband was left with 26 years of service. Therefore, the applicant is at a greater disadvantage than Mrs. Tapase. Respondents allotted more marks to Mrs. Tapase than justified. In regard to the reminder of the service, respondent No.1 should consider that the disadvantage of the applicant is to the tune of 4 years and therefore, relative difference between the marking should correspondingly be reflected which is about 8 marks (2 marks for each year x 4 years of service. The marks of Mrs. Tapase should be 22 and not 26). Lastly, so far as pension is concerned, the relative difference between the pension of the two is that of Rs. 25/- in Rs. 400/- i.e. order of the magnitude of 1:16, whereas

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marks secured by Mrs. Tapase reflect order of magnitude of 1:20, which means Mrs. Tapase should have been allotted 18 marks and not 19.

8. On a consideration of the circular applicable to individual case, I find that the applicant is entitled to an increase of marks to the tune of 4 marks i.e. on account of dependents i.e. total-88. Mrs. Tapase is liable to the decrease of 4 marks on account of number of years of service left and 1 mark on account of Pension, which will bring down her total to 90 against 88 secured by the Applicant. Therefore, the difference between the applicant and Mrs. Tapase is only marginal. I am also of the view that the system of considering the cases for compassionate appointment in a competitive matrix, in which the applicant is in competition with a particular rival applicant irrespective of the level of marks obtained by the applicant and irrespective of the dire financial straits of the applicant is clearly irrational.

9. I therefore direct the respondents to re-consider the case of the applicant for grant of compassionate appointment against the next available vacancy. Action be taken within three months from the date of communication of this order. There will be no orders as to costs.

abp.

M. R. Kolhatkar

(M. R. KOLHATKAR)
MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

C.P.NO.25/99 in OA.NO.521/97

Dated this the 6th day of June 2000.

CORAM : Hon'ble Shri D.S.Baweja, Member (A)

Hon'ble Shri S.L.Jain, Member (J)

Smt.Lata Vasant Dabhade

... Applicant

By Advocate Shri N.K.Iyer

V/S.

1. K Prasad,
The Secretary,
Ministry of Defence,
DHQ, PO New Delhi.

2. Col.M.I.Husain,
The Commandant
Ordnance Depot,
Talegaon Dabhade,
Dist. Pune.

... Respondents

By Advocate Shri R.K.Shetty

O R D E R

{Per : Shri D.S.Baweja, Member (A)}

This Contempt Application has been filed by the applicant alleging non compliance of the order dated 25.3.1998 in OA.NO.521/97.

2. The applicant has filed OA.NO.521/97 challenging non grant of compassionate appointment to her. The OA. was decided as per the order dated 25.3.1998 giving the following directions in para 9 :-

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..2/-

"9. I therefore direct the respondents to re-consider the case of the applicant for grant of compassionate appointment against the next available vacancy. Action be taken within three months from the date of communication of this order. There will be no orders as to costs."

3. The applicant has submitted that the respondents had asked for extension in time for implementation of the order twice based on the Misc. Applications filed by the respondents. The time was extended last upto 28.2.1999. Since the respondents failed to implement the order even after extension of time allowed, he is forced to file the present contempt application on 6.5.1999. The applicant submits that due to non implementation of order, the respondents have committed contempt of court and therefore the respondents deserve to be punished as per the law.

4. Notices were issued to the respondents and the respondents have filed first written statement on 29.9.1999. Thereafter, additional written statement has been filed on 26.11.1999. The respondents have also filed Misc. Application through which number of documents dealing with the consideration of the case of the applicant for compassionate appointment have been brought on record.

5. The applicant has not filed any rejoinder reply for the written statement.

6. We have heard the arguments of Shri N.K.Iyer, learned counsel for the applicant and Shri R.K.Shetty, learned counsel for the respondents.

(v)

7. From the directions given in para 9 of the order dated 25.3.1998 and extracted above, it is noted that the respondents were directed to reconsider the case of the applicant for grant of compassionate appointment against the next available vacancy. The respondents have brought out that the case of the applicant has been reconsidered as per the directions and observations made in the order and the applicant's case has not been found fit for compassionate appointment. The applicant has been advised of the result of the reconsideration as per letter dated 22.1.1999. Thereafter, the applicant has been again advised of the result of reconsideration as per letter dated 27.7.1999. The respondents have pleaded that the order of the Tribunal has been complied with and therefore there is no case of contempt of court. The counsel for the applicant, however, during the hearing submitted that the respondents have not reconsidered the case of the applicant for compassionate appointment as per the observations made in the order dated 25.3.1998. The respondents have again rejected the claim of the applicant by allocation of marks and in competition with the other candidates seeking compassionate appointment. The counsel for the applicant also stated that Bench has observed that the system of marking followed by the Department in determining the need for compassionate appointment is irrational and therefore the same should not be followed in considering the case of the applicant. The counsel for the respondents, however, contested this statement of the applicant and has stated that the procedure of allocating of marks has been



followed as per the instructions laid down by the Department and the applicant has been allowed extra marks based on the observations made in the order. However, inspite of allotting the additional marks, the case of the applicant was not found more deserving as compared with the other candidates seeking compassionate appointment.

8. We have carefully considered the rival contentions and find that there is a substantial compliance of the order ^{by} of the respondents. The respondents have reconsidered the case of the applicant and we find that additional marks have been allotted as per the observations made in the order. In the contempt proceedings, it is to be seen whether there is any wilful disobedience. In the present case, we find 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. The submissions made by the counsel for applicant will call for going into the merits of the reconsiderationsⁿ. It is not the scope of contempt of court proceedings. In this connection, we refer to the judgement of the Hon'ble Supreme Court in the case of J.S.Parihar vs. Ganpat Duggar & Ors., 1996 SCC (L&S) 1422. In this judgement, the Hon'ble Supreme Court has held that merits of ^{Compliance of} the court's order cannot be considered in the contempt of court proceedings. If the party is aggrieved by order passed in pursuance of the directions of the court, then there is a fresh cause of action and the

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matter can be agitated as per the law but no findings can be recorded on merits in the contempt application and to issue fresh directions for compliance to the respondents. Keeping these observations in focus, we are of the view that there is no wilful disobedience and the respondents have complied with the order of the Tribunal. In case the applicant is aggrieved by this order, he can seek legal remedy as ^{a r} fresh cause of action.

9. In the result of the above, the contempt petition is devoid of merits and the same is dismissed accordingly. Notices issued are discharged.

S.L. Jain
(S.L.JAIN)
MEMBER (J)

D.S. Baweja
(D.S.BAWEJA)
MEMBER (A)

mrj.

20/6/20
order/Judgement despatched
to Applicant Respondent (s)
on 20/4/20
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