

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:

HYDERABAD

O.A.No.1258 OF 1999.DATE OF DECISION: 9-11-1999.Between:

B.Shyam Reddy.

....Applicant

a n d

1. The Commandant,
60 COY ASC (Sup) Type 'C',
Trimulgherry, Secunderabad-500 015.
2. A.S.C.(Sup), Head Quarters,
Southern Command (ST), Pune-411 001.
3. Union of India, Represented by its
Secretary, Ministry of Defence,
New Delhi.

....Respondents

COUNSEL FOR THE APPLICANT :: Mr.R.Brizmohan Singh

COUNSEL FOR THE RESPONDENTS :: Mr.V.Bhimanna

CORAM:

THE HON'BLE SRI JUSTICE D.H.NASIR, VICE CHAIRMAN

: O R D E R :

(PER HON'BLE SRI JUSTICE D.H.NASIR, VICE CHAIRMAN)

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OA. No. 1258/1999:

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1. This is a case for compassionate appointment. The applicant's father was working as Industrial Mazdoor in the office of the Commandant, 60 COY ASC(Sup) Type 'C', Trimulgherry, Secunderabad (1st respondent). He was medically invalidated on 15-7-1996, whereupon the applicant advanced his claim for compassionate appointment.
2. According to the applicant, the family of the applicant's father consists of two grown up sons who were married and living separately. Both of them have sufficient means of livelihood. Further according to the applicant, his father has three more sons and wife to be looked after. Two sons out of them were School going children and the third son, who is an applicant in this OA was a drop out from the School after passing 8th Class.
3. Further according to the applicant, his father received a sum of Rs.35,936/- only as retiral benefits and he was drawing a sum of Rs.772/- per month as pension. From this scarce means, five members of the family had to feed themselves as they had no other means of livelihood. In view of the scarce means of livelihood, the father of the applicant requested the respondents to appoint the applicant as Chowkidar for which post he was qualified and eligible to be appointed.

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4. The applicant in Paragraph 4.5 of the OA pleads that the respondents caused an investigation to be made through Andhra Pradesh State Police Service, who submitted a report dated 20-6-1997 that the elder brothers of the applicant were driving Autorickshaw and were working in a Private Factory and that the parents are living with the applicant, who had no source of income. In Paragraph 4.10 of the OA, it is stated that the father of the applicant died recently. However, according to the applicant, inspite of the precarious circumstances through which the applicant and the members of the family of the deceased were passing, the respondents denied the applicant's claim for compassionate appointment.

5. In the reply statement, the respondents point out that the father of the applicant after being medically invalidated, submitted a representation for providing compassionate appointment to his third son (the applicant). However, the request was rejected and therefore, the applicant filed OA.No.1697 of 1999 before this Tribunal challenging the legality of the rejection order dated 25-11-1997. The said OA was disposed of by the Tribunal with a direction to Respondent No.2 to re-consider the issue as requested by R-1 in his letter dated 5-1-1998 expeditiously, preferably within three months, and as directed by the Tribunal, the Respondent No.2 re-considered the case but rejected the same explaining the rule position, vide impugned Order dated 15-6-1999.

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6. It is further pointed out by the respondents in their reply affidavit that the applicant's father had given the details of his children on 26-9-1996 as under:-

<u>Ser.No.</u>	<u>Name</u>	<u>Age</u>	<u>Relationship</u>
(i)	B.Narasimha Reddy	- 33 yrs	Son
(ii)	B.Krishna Reddy	- 30 "	"
(iii)	B.Shyam Reddy	- 26 "	"(Applicant herein)
(iv)	B.Rama Reddy	- 25 "	"
(v)	B.Sathi Reddy	- 24 "	"

These particulars are not disputed by the applicant.

7. It is further submitted on behalf of the respondents that it was evident from the above particulars that the age of the applicant was 29 years and that it is not plausible to believe from verifying the above particulars that the applicant's father had any School going child as contended by the applicant. It is further pointed out in the reply affidavit that the applicant's father was getting Rs.1683/- as pension and not Rs.772/- as submitted by the applicant.

8. On perusing the Judgment of this Tribunal in OA.No. 1697 of 1998, dated 25-2-1999, an observation is made in paragraph 5 that the other two sons were employed on a very low salary and that the Government employee who was medically invalidated was staying with his second son and that his pension also appeared to be meagre. The Tribunal further observed that even if he was not having marriageable daughters or School going children, the amount of Rs.36,000/- and the meagre pension, which he was getting, it may not be possible for him to survive fairly comfortably in the last

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few years and that in that view it was necessary to re-consider the case of the second applicant for appointment on compassionate ground especially in view of the fact that R-1 had already requested R-2 for reconsideration taking all the points mentioned in the said Judgment.

9. According to the applicant, the applicant's case was re-considered by the respondents and the same was rejected by an Order passed on 15-6-1999.

10. It is pertinent to note that the grounds urged in the present OA had already been urged before the Tribunal in OA.No.1697 of 1998, which was disposed of on 25-2-1999 and that the respondents also after re-considering the applicant's case for compassionate appointment in the light of the observations made by this Tribunal in the said OA, had rejected the case, and therefore, it would not be in order for this Tribunal to re-open the same. On perusing the Order dated 15-6-1999, the legality of which is challenged in this OA, it would at once appear that all the aspects of the applicant's case have been elaborately considered by the respondents and the conclusions which the respondents have drawn in the impugned Order are not such which could be termed as outrageous to the spirit of providing employment on compassionate ground. Any man of ordinary prudence would not have ventured to arrive at different conclusions with the facts and circumstances of the case in view. In para (b) of the said Order, the

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authorities refer to the decision of the Supreme Court in the case of AUDITOR GENERAL OF INDIA AND OTHERS Vs G. ANANTA RAJESWARA RAO (reported in (1994) 1 SCC 192) in which it is held that appointment on grounds of descent clearly violates Articles 16(2) of the Constitution; but if the appointment is confined to the son or daughter or widow of the Government servant who died in harness and who needs immediate appointment on grounds of immediate need of assistance in the event of there being no other earning member in the family to supplement the loss of income from the bread winner to relieve the economic distress of the member of the family, it was unexceptionable.

11. The authority has further taken into consideration that the whole object of granting compassionate appointment was to enable the family to tide over the sudden crisis and to relieve the family of the deceased from financial destitution and to help it get over the emergency. It is further considered that offering compassionate appointment as a matter of course irrespective of the financial condition of the family of the deceased or medically retired Government servant was legally impermissible. The Government or the Public Authority concerned had to examine the financial condition of the family of the deceased, and only if it was satisfied that but for the provision of employment the family would not be able to meet the crisis, that a job had to be offered to the eligible member of the family.

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12. Major General V.K.Arjuna in his impugned Order dated 15-6-1999 has further taken into consideration that the MBO of the Government servant was on 15-7-1996 and that the ex-government servant was in receipt of his service pension i.e., Rs.1275/- per month Plus Rs.408/- per month as DR. Moreover, the elder two sons were employed and therefore the claim for immediate assistance to tide over the emergency by way of compassionate employment to his grown-up third son could not be agreed to and the immediate crisis and indigent circumstances due to the MBO of the Government servant had no justification.

13. While arriving at his conclusions the Major General V.K.Arjuna in the last paragraph of his impugned Order states that, after due circumspection and consideration in the light of the guidelines of DOP&T and the various judgements of Supreme Court in this regard, the case was examined keeping all the above factors in view and considering the large number of even more pitiable and more deserving pending cases who were waiting the appointment because of very limited availability of vacancy due to the restrictions of 5% quota (emphasis supplied) for compassionate employment and after a balanced and objective assessment of the totality of the circumstances of the case, the Major General states that the economic distress was not adequately established as two elder sons were earning members. Hence, the justification for the need of providing immediate employment assistance to the third son to tide over the immediate financial crisis was lacking in this case as there were no minor

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children or marriageable daughters. He further observes that employment assistance under the Scheme of compassionate appointment did not mean employment generation and existing instructions, guidelines and the Judgements of the Apex Court were not in favour of giving guaranteed compassionate appointment to dependents as a matter of routine. Compassionate appointment could be made only to the barest minimum possible and to the most deserving cases only.

14. From the particulars of the members of the family which have already been extracted above in paragraph 6 give us a strong reason to believe that since all the four sons who were within the age range of 24 to 33 years, could not be believed to be not possessed of sufficient means of livelihood and that during the period from the date of the medical invalidation of the Government employee till 6-8-1999 when this OA was filed, no satisfactory explanation had come on record as to how the family pulled on if it is believed that they did not have sufficient means of livelihood.

15. Thus the present OA in my opinion does not disclose any convincing ground for interference with the impugned order which had been passed after re-consideration of the case in compliance with the direction given by this Tribunal in the previous OA proceeding. Hence, the OA is dismissed. No costs.

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(D.H.NASIR)
VICE CHAIRMAN

DATED: this the 9th day of November, 1999

DSN

Am
9-11-99.

6/11/99 Reportable Case 3
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH : HYDERABAD

1ST AND 2ND COURT

COPY TO :-

1. DBHNJ ✓
2. HRRM M (A)
3. BOPP M (A)
4. D.R. (A) ✓
5. SPARE ✓
6. ADVODATE
7. STANDING COUNSEL

⑧ DRG - 2

⑨ Reports - 5

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

THE HON'BLE MR. JUSTICE D.H. NASIR

VICE - CHAIRMAN

THE HON'BLE MR. R. RANGARAJAN :
MEMBER (ADMN.)

THE HON'BLE MR. S. S. JAI PARAMESWAR :
MEMBER (JUDL.)

* * *

DATE OF ORDER: 9/11/99

MA/R/CP. NO.

in
OA. NO. 1258/99

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

(15 copies)

CP CLOSED

RA CLOSED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED / REJECTED

NO ORDER AS TO COSTS

