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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL JAIPUR BENCH
JAIPUR.

OA NO. 594/1993

: Date of order: 28.9.95.

Naeem Khan S/o late Shri Noor
Khan, aged about 28 years,
resident of House No.2876
Kumher Mohalla, Nasirabad
(Ajmer).

: Applicant

Versus

1. Union of India through Secretary,
Ministry of Defence, New Delhi.
2. Chief Engineer(M.E.S.) Jaipur Zone
Power House Road, Bani Park, Jaipur-6.
3. Garrison Engineer (M.E.S.) Nasirabad
(Ajmer).
4. Commander Works Engineers(Army)
Multan Lines, Jodhpur.

: Respondents

Mr. Akhil Simlote, Counsel for the applicant
Mr.V.S.Gurjar, Counsel for the respondents

CORAM:

HON'BLE MR. RATTAN PRAKASH, MEMBER (JUDICIAL)

O R D E R

(PER HON'BLE MR. RATTAN PRAKASH, MEMBER (JUDICIAL))

The applicant Naeem Khan has filed this application under Section 19 of the Administrative Tribunal's Act, 1985 to seek compassionate appointment on account of the death of his father late Shri Noor Khan and for quashing the impugned order dated 2.2.1993 (Annexure A-5) rejecting his claim for it.

2. Facts relevant to this application are that the applicant's father late Shri Noor Khan was working in ^{the}

MES as DES and while in service he died on 24.10.1987. Applicant's mother Smt. Mubarak Bano submitted an application to the Chief Engineer, Jaipur Zone, Jaipur on 26.3.1989 for giving appointment to the applicant on compassionate grounds vide an application as at Annexure A-1. The Garrison Engineer forwarded the application of the applicant to the Commander of Works, Jaipur whereupon the Chief Engineer, Jaipur Zone, Jaipur accorded the sanction for the appointment of the applicant against the existing vacancy on the post of Chowkidar and consequent thereupon a communication dated 30.5.1992 (Annexure A-2) was sent to the Commander of Works Engineer (Army) Multan Lines, Jodhpur. A subsequent communication dated 10.6.1992 by the Chief Engineer Jaipur Zone, Jaipur was also issued to the Commander Works Engineer, Jodhpur vide Annexure A-3. It is the case of the applicant that the Garrison Engineer, Jodhpur vide communication dated 27.6.1992 intimated to Commander Works Engineer, Jodhpur that the applicant who was to be appointed as Chowkidar, his date of birth is 1-1-1965 and as such on the date of issuance of the order the applicant had already attained the age of 27 years, four months for which a further clarification is being sought. The grievance of the applicant is that he made several representations to the respondents and finally sent a representation dated 7.8.1992 (Annexure A-4) but they did not respond and ultimately vide letter dated 2.2.1993 (Annexure A-5) after more than one year intimated to him that his

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case for appointment on compassionate ground has been rejected. Having failed to get the requisite relief, the applicant has now approached this Tribunal to claim the aforesaid relief.

3. The respondents have opposed this application by filing a written reply to which the applicant has also filed a rejoinder. The stand of the respondents has been that the case for compassionate appointment of the applicant has been rejected because he has been found overage. It has also been urged on behalf of the respondents that since the applicant has five brothers including himself and there being five members in the family and all of them being major, hence it is beyond imagination that the family consisting of five major sons of the deceased employee would be in distress and hence appointment on compassionate ground cannot be accorded to the applicant ignoring the recruitment rules. Lastly it has been claimed that mere offer of an appointment to the applicant does not confer upon the applicant any right to claim appointment on compassionate grounds. It has therefore been claimed that the application deserves rejection.

4. I have heard the learned counsel for the applicant Shri Akhil Simlote as also Shri V.S.Gurjar, the counsel for the respondents and have carefully gone through the records of this case.

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5. In this OA the only point of controversy is whether the applicant cannot be issued an order of appointment on compassionate grounds only on the premise that before an appointment order is issued, he has become overage?

6. It has been argued by the learned counsel for the applicant that the applicant has made the application for appointment on compassionate ground within the reasonable time after the death of his father on 24.10.1987 and on the date of application he was within the age limit i.e. of 24 years and two months prescribed for appointment to Government service on compassionate grounds. It has accordingly been urged that the delay of more than three years ^{the} on part of the respondents to issue an offer of appointment on the post of Chowkidar has not been on account of any fault on his part and there being no other earning family member employed on the date of application, he should have been given the appointment to the post of Chowkidar as per the offer of appointment dated 30.5.1992 (Annexure A-2). The learned counsel for the applicant has also drawn an attention to Clause (iii) of the letter dated 30.5.1992 (Annexure A-2). It has accordingly been argued that since the applicant was within the age limit for appointment to Government service, he cannot be refused appointment merely on the plea that on the date of offer of appointment he has become overage. In support of this, the learned

counsel has relied upon the judgment of Chandra Mohan Vs. State of Rajasthan, RLR 1990 (1) 804.

7. As against this, the arguments of the learned counsel for the respondents is two fold. Firstly that the applicant has become overage on the date of offer of appointment Annexure A-2 and secondly there being five major members in the family, it cannot be presumed that the family of deceased employee was in distress or in financial crisis. It has also been urged that the applicant cannot claim an appointment on compassionate ground as of right in violation of the Recruitment Rules applicable in the case of compassionate appointment. In support of his argument that when other members of the family are in the employment, the person cannot insist for claiming appointment on compassionate grounds, the learned counsel has cited the judgments of Hon'ble the Supreme Court in the case of Anil Malik Vs. State of Haryana and others, Judgment Today 1994 (3) 525 and in the case of Umesh Kumar Nagpal Vs. State of Haryana and others, JT 1994 (3) SC 525. It has accordingly been urged that there is no force in the application and it should be dismissed.

8. I have given anxious thought to the able arguments addressed by both the learned counsels and have gone through the pleadings and authorities relied upon by them.

9. It may be stated at the outset that pursuant to the orders dated 9.5.1995, the respondents made

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available the official record relating to the compassionate appointment of the applicant. There is no dispute between the parties that the applicant did make the application for seeking compassionate appointment before he became overage for recruitment to the post of Chowkidar with the respondents department. In the application dated 26.3.1989 (Annexure A-1) which was moved on behalf of the mother of the applicant Smt. Mubarak Bano it has been mentioned that the family of the deceased Government employee consisted of the mother of the applicant and five brothers including the applicant. A perusal of the particulars contained in the application in the prescribed pro forma and made available at the time of arguments for perusal, it is clear that none of the brothers including the applicant have been shown to have been employed. In the order of offer of appointment dated 13.5.1992 (Annexure A-2), a copy of which has been endorsed to the applicant, the date of birth of the applicant Shri Naeem Khan has been indicated as 1.1.1965. In this order under Para 3 it has been specifically mentioned that:

"3. Before appointment it should be ensured that he is fully qualified for the post and within the age limit as prescribed in the recruitment rules. Simple character verification may be done before appointment."

In the endorsement made to the applicant he has been advised to report in the office of CME(A) Jodhpur in connection with his employment. It is thus

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clear that the respondents have issued the offer of appointment of the applicant to the post of Chowkidar taking into consideration every aspect including the financial status of the family of deceased Government Servant. The only thing which remained to be complied with was with regard to ascertainment of the qualifications for appointment to the post as also the requirement of age limit prescribed under the Recruitment Rules. It is on the basis of this condition laid down in Annexure that A-2, /it has been vehemently argued by the learned counsel for the respondents that the applicant is not qualified for appointment to the post offered as he was overage when the order dated 30.5.1992 (Annexure A-2) was received. It has also been urged on behalf of the respondents that since the applicant has five brothers including himself and that there are five members in the family who all are major, it is beyond imagination that the family consisting of five sons who are all major must be in distress. It has accordingly been argued that in these circumstances appointment on compassionate grounds could not have been accorded to the applicant ignoring the Recruitment Rules. In this regard it may be mentioned here that except taking a bald stand in their reply to the effect that the applicant and his brothers are all major and that it cannot be believed or imagined that the family should still be in distress; no

other material has been made available on behalf as to of the respondents to exhibit that what has been the financial status of the family of deceased Government employee. The respondents have failed to place on record any material to support that any of his brothers are earning members in the family. Contrary to it from the record made available during the arguments, it is made out that none of the brothers of the applicant have been employed as is evident from performa application form for appointment on compassionate grounds. It may however be mentioned that although in the official record made available during the arguments, there is one communication of the year 1994 wherein it is indicated that three brothers of the applicant are earning members in the family but this correspondence has come into existence during the pendency of the OA. The OA has been filed by the applicant as early as on 11.10.1993 and the respondents have also filed their reply on 25.4.1994 but no specific particulars have been furnished by the respondents regarding the fact that any of the brothers of the applicant are really in the employment any-where. In fact, the stand of the respondents has only been that the applicant has not been issued the letter of appointment as he has become overage at the time when the letter of offer of appointment Annexure A-2 was issued. Even a perusal of letter dated 7.8.1992 (Annexure A-4) sent to the applicant by the respondents, there is only the

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reference that his case for obtaining age relaxation is in progress with appropriate competent authority and that the decision will be communicated to him on receipt from them. As against their own stand that the matter of appointment of the applicant on compassionate ground is under consideration as they are seeking age relaxation, impugned order Annexure A-5 dated 2.2.1993 indicates nothing in this regard but rejects the case of the applicant simply on the basis that "he is not found deserving". It is not understandable how the respondents have found the applicant as not deserving when they were considering the appointment of the applicant to the post of Chowkidar. The issuance of offer of appointment as at Annexure A-2 dated 30.5.1992 does not disclose that the applicant is not a deserving candidate. The only rider placed in Annexure A-2 is with regard to his qualification and also with regard to the eligibility on the basis of age. The applicant further fulfils the qualifications prescribed for the post of Chowkidar. He did apply before he became overage or for that matter before the letter of offer of appointment dated 30.5.1992 (Annexure A-2) was issued by the respondents. Applicant made the application to seek compassionate appointment in March 1989 and it is the respondents who took almost four years to take a decision of offering an appointment to the applicant. It has no where been the fault of the applicant to seek appointment

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within time on compassionate ground. Moreover the respondents have also failed to satisfy that there has been any other member in the family of the deceased employee who has been an earning member when the applicant's mother made an application to seek compassionate appointment. On the contrary, from the pleadings of the respondents it is made out that no other member of the family of deceased employee has been in any employment. Thus the stand taken by the respondents that the applicant is not a deserving candidate is not borne out from the facts disclosed in the pleadings. The only ground on which, in fact the appointment of the applicant has been refused on compassionate ground, is that he has become overage but as discussed above the applicant in fact has become overage because of the inaction on part of the respondents in taking a decision on his application to seek appointment on compassionate grounds. Be that as it may, from the facts in this case it is abundantly clear that except the applicant no other member of the family of deceased employee had applied to seek appointment on compassionate ground and there is no other earning family member in the family of deceased Government servant. It is in fact to provide respite to the dependants of such a deceased Government servant where there is no bread earner in the family left after his death, I consider that it is a most deserving case where the applicant should have been extended the order of appointment to the post of

Chowkidar relaxing the requirement of age particularly when the applicant has become overage on account of the delayed decision taken by the respondents to offer him appointment to the post of Chowkidar. Even in the decision of Hon'ble the Supreme Court in the case of Umesh Kumar Nagpal Vs. State of Haryana, 1994(3)SC 525, it has been pointed out that before an appointment on compassionate ground can be extended to any member of the deceased family, the concerned authority has to examine the financial condition of the family of the deceased Government servant. In the instant case, it appears that the respondents have not given due consideration to the financial distress of the family of the deceased Government servant and the impugned order as at Annexure A-5 has been issued on a presumption that since there are five major members in the family, it ~~cannot~~ be believed that the family is in distress. The decision to extend appointment on compassionate basis has to be evaluated on the basis of all the pros and cons of the matter including the financial distress through which the family of deceased has to pass and in accordance with the scheme/instructions and rules made for the purpose of giving compassionate appointment. The instant case cannot be classified as a case of charity for giving appointment in Government service where the applicant is seeking appointment on compassionate ground since the year 1989 but the respondents appear to have rejected the request of the applicant

on some extraneous considerations which have not been disclosed in the pleadings by the respondents. The respondents main hurdle in issuing the letter of appointment to the applicant appears to be mainly on the plea that he has crossed the age before he could be issued the letter of appointment. As pointed out above since the applicant has applied within time and when he was within the age limit, the stand taken by the respondents to the contrary cannot be accpeted. In this regard the judgment of ~~Rajasthan High Court~~ Court in the case of Chandra Mohan Vs. State of Rajasthan RIR 1990(1)804 relied upon by the learned counsel for the applicant is an authority in which it has been laid down that it is the date of application on which the age of the candidate has to be considered and not the age on the date of appointment. In the instant case also the applicant being of age on the date of application, the respondents cannot deny appointment to him on the ground that on the date of offer of appointment, he has become overage. In any view of the matter, impugned order dated 2.2.93 (Annexure A-5) cannot be sustained in the eye of law and is hereby quashed.

10. I consider the instant case as one of the befitting case to extend appointment on compassionate basis to the applicant by relaxing the age prescribed for appointment to the post of Chowkidar for which the letter of offer of appointment dated 30.5.92 (Annexure A-2) was issued by the respondents.

SA Accordingly the issue framed in this OA is answered

in the negative and the impugned order dated 2.2.1993 (Annexure A-5) is quashed.

11. For all the aforesaid reasons while quashing the impugned order dated 2.2.1993 (Annex.A-5) and allowing the OA, the respondents are directed to give relaxation in the age limit to the applicant and issue a letter of appointment to the applicant for the post of Chowkidar in the respondents department in pursuance of their order dated 30.5.1992 (AnnexureA-2) within three months from the date of receipt of copy of this order.

It is made clear that after an appropriate order for appointment in favour of applicant is issued by the respondents, it will not enure any benefit, pecuniary or otherwise for any period prior to the date on which he may have been appointed consequent to this order.

12. Under the circumstances, both the parties shall bear their own costs.

Rattan Prakash
22.2.93
(RATTAN PRAKASH)
MEMBER (J)