

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

OA/291/00670/2014

Order reserved on : 18.05.2016

Date of order : 03.06.2016

Coram

Hon'ble Ms. Meenakshi Hooja, Member (A)

Laxmi Narayan S/o Late Shr Prabhu Dayal, aged about 29 years,
R/o Ward No. 4, Raigaro Ka Mohala, Chakshu, Tehsil Chaksu,
District, Jaipur (Raj).

.....Applicant

(By Advocate Mr. Kapil Gupta)

VERSUS

1. Union of India through Secretary, Ministry of Defence,
North Block, New Delhi 110011
2. The Chief Engineer Jaipur Zone (Army), Power House
Road, Bani Park, Jaipur (Raj)

.....Respondents

(By Advocate Mr.S.S. Sharma)

ORDER

This Original Application has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985, against the order dated 17th September, 2013 (to correctly read with 17th September, 2014 (Annexure A/1) by which the case for compassionate appointment has been rejected on the ground of being a married son, seeking the following reliefs:

- (i) The impugned letter issued dated 17.09.2014 by which intimated that a married son is not considered

OA/291/00670/2014

dependent on government servant, may kindly be quashed and set aside.

- (ii) The respondents may kindly be directed to appointment the applicant on the suitable post according to his educational qualification on compassionate ground;
- (iii) Pass any other appropriate order which this Hon'ble Tribunal may deem fit, just and proper in the facts and circumstances of the case in favour of the applicant.

2. When the matter came up for considering and hearing on 05.05.2016 and continued on 18th May, 2016, Ld. Counsel for the applicant submitted that the father of the applicant died on 08.03.2013 while serving in the Respondents Department and after death of his father, the applicant has submitted an application for appointment on compassionate grounds on 07th March, 2014 and the same was rejected vide letter dated 17.09.2014 unactioned due to as per Para 13 of DOP&T letter No.14014/02/2012-Estt (D) dated 30th May, 2013 that a married son is not considered dependent on government servant. In this regard counsel for applicant submitted that the main issue is that whether a married son can be deprived for compassionate appointment. In this context, he submitted that as per the OM dated October 9, 1998 (which is the scheme for compassionate appointment under the Central Government – revised consolidated instructions), Para 2 the scheme makes it applicable to the Dependent family members and the

OA/291/00670/2014

"Dependent Family Member" amongst others means: son (including adopted son) and there is no provision in the said scheme that only unmarried son can be considered or that the married son does not come in the definition of the dependent of family members.

3. Counsel for applicant further contended that his case has only been rejected with reference to Para 13 of DOP&T letter No. 14014/02/2012 -Estt(D) dated 30th May, 2013 that a married son is not considered dependent on a government servant. He further submitted that this matter was considered in FAQs on compassionate appointment dated 25.02.2015 filed with the Rejoinder as Annexure A/1 (also filed by the respondents as Annexure R/3) in which it has been clarified that a married son can be considered for compassionate appointment if he otherwise fulfills all the other requirements of the Scheme i.e. he is otherwise eligible and fulfils the criteria laid down in this Department's OM dated 16th January, 2013. It has also been stated that this would be effective from the date of issue of this FAQ viz 25th February, 2015 and the cases of the compassionate appointment already settled with reference to the FAQs dated 30th May, 2013, may not be reopened.

4. In this regard counsel for applicant contended that the directions that the cases already settled with reference to the FAQs dated 30th May, 2013, may not be reopened

OA/291/00670/2014

and that cases only after issue of this modification vide DOP&T OM No. 14014/02/2012- Estt (D) dated 25th February, 2015 would be considered is illegal and not in accordance with the basic definition of a family member which does not exclude a married son.

5. In this regard counsel for applicant also relied upon the followings decisions/judgements :

- (i) Brijkumar Gupta Vs Food Corporation of India WP No. 1995/2015 decided on 17th July, 2015 – Madhya Pradesh High Court.
- (ii) CAT order dated 18th March, 2016 in OA No. 200/00294/2014 – Dilip Singh Vs Union of India & Ors.
- (iii) CAT order dated 09th April, 2015 in OA No. 060/00395/2014 - Sandeep Singh Vs Union of India & Ors.
- (iv) Union of India Vs Central Administrative Tribunal CWC No. 16510 of 2015 decided on 12.08.2015
- (v) Kapil Kumar Sharma Vs Food Corporation of India WP No. 1995/2015 decided on 17th July, 2015 – Madhya Pradesh High Court.

6. Counsel for applicant contended that in all these cases, the FAQs dated 30th May, 2013 and 25th February, 2015 were examined in detail and it was held that not considering a married son for compassionate appointment or having a cutoff date was found to have no legal validity and in all cases the respondents were directed to consider the case of a married son for compassionate appointment if he otherwise fulfills all the other requirements under the Scheme. Counsel for applicant also referred to relevant portions of the aforesaid judgement in detail and in the light of aforesaid judgements prayed for setting aside

letter dated 17th September, 2014 (Annexure A/1) and OA to be allowed.

7. Per contra, counsel for Respondents argued that FAQ dated 30th May, 2013 and 25th February, 2015 (Annexure R/3) are administrative instructions with regard to the Scheme and are required to be followed by the Respondents Department. Counsel for Respondents further submitted that the father of the applicant died on 08.03.2013 and the mother of the applicant had already expired prior to him on 22.11.2009 and as may be seen from the consent and affidavit of the applicant, the surviving members of the deceased employee are four sons along with the applicant and, the application was made by the applicant who was married and thereby trying to get a job.

8. Counsel for Respondents further submitted that the directions cannot be given effect retrospectively and it has been clarified that FAQ dated 25th February, 2015 (Annexure R/2) which is effective from the date of issue, is not applicable in the case of the applicant as it has been already been closed by Annexure A/1 dated 17.09.2014 and therefore, there is no case whatsoever for the matter to be reopened and prayed for the dismissal of the OA.

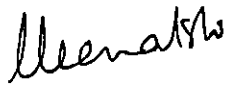
9. After the matter was finally heard and reserved for order on 18.05.2016 and the OA was under study for deciding the case, Counsel for Respondents filed an MA on 25.05.2016 after serving a copy to the counsel for applicant that the matter of the applicant for compassionate appointment had already been considered by the Respondent Department and the decision of the Board of

OA/291/00670/2014

Officers has been conveyed to the applicant vide letter No. 15010/Gen/Vol.II/3507 dated 09 May, 2016 (Annexure MA/1). It has been stated in the letter that the applicant being low in merit could not be considered for appointment for a compassionate ground for the year 2014-2015. The applicant has also been informed that his case will be reconsidered by the Board of Officers as and when vacancies for compassionate appointment are released by the higher authorities. The above letter Annexure MA/1 is taken on record.

10. In view of the above letter dated 09 May, 2016 (Annexure MA/1) filed with the MA by the Respondents, the prayer of the applicant in this OA for due consideration of his case has been met and in a way the OA has been infructuous. Accordingly, after considering the aforesaid position, nothing remains in this OA for any further adjudication. However, at the same time, it is also clarified that if the applicant has any grievances with the aforesaid letter No. 15010/Gen/Vol.II/3507 dated 09 May, 2016 of the Respondents (Annexure MA/1) he would be liberty to approach the appropriate forum as per law and the order in this OA would not be construed a bar to the same.

The OA is thus disposed of as above with no order as to costs.


(MS.MEENAKSHI HOOJA)
ADMINISTRATIVE MEMBER