

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Dated of order: 14.05.2003

OA No.45/98

Vazeer Hussain s/o Shri late Shri Ragib Hussain r/o Gali Shahdeen Ki Kali Paltan, Tonk (Rajasthan).

.. Applicant

Versus

1. Union of India through its Secretary, Mines Department, New Delhi.
2. The Director General, Geological Survey of India, 27, Jawahar Lal Marg, Calcutta.
3. The Deputy Director General, Geological Survey of India, Western Region, Jhalana Doongari, Jaipur.

.. Respondents

Mr. S.S.Hasan, counsel for the applicant

Mr. T.P.Sharma, counsel for the respondents

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDICIAL)

O R D E R

Per Hon'ble Mr. M.L.Chauhan

The grievance of the applicant in this OA is regarding inaction on the part of the respondents in not considering his case for compassionate appointment despite the fact that he has given an application for giving appointment on compassionate ground alongwith necessary documents to the competent authority and has prayed that directions be issued to the respondents to consider his case for appointment on compassionate ground and to pass an appointment order in this regard immediately.

*[Signature]*

2. Few relevant facts of the case as noticed are that:-

2.1 The father of the applicant late Shri Ragib Hussain while working as Turning Operator under the respondents died on 28.3.96. After the death of his father, his mother as well as the applicant moved an application for giving appointment to the applicant on compassionate ground alongwith necessary documents. Further, the case of the applicant is that he is 8th pass and according to the Govt. rules, the applicant is entitled for appointment on compassionate ground. The applicant has also annexed copies of the applications alongwith marksheets at Annexure A3 to A6. Since nothing was heard from the respondents, the applicant sent a notice for demand of justice dated 6.11.97 and because the family of the deceased employee is suffering a lot, the applicant has filed this OA for the reliefs as mentioned above.

3. This Tribunal vide order dated 10.4.2000 disposed of this OA on the basis of reply filed by the respondents whereby it was stated that the father of the applicant was engaged only as a Waterman on daily wage basis for summer season for a specific period. It was further stated in the reply that the applicant had earlier filed OA No. 31/96 which was decided vide order dated 31.7.98 and, therefore, the OA is not maintainable on the basis of principles of res-judicata. Considering the reply as filed by the respondents, this Tribunal vide order dated 10.4.2000 dismissed the OA on the ground that the deceased employee was only engaged as seasonal Waterman. It has further been established that the applicant has already filed OA No. 6/

31/96 which was disposed of on 31.7.98. Therefore, this OA is not maintainable on the principle of res-judicata.

4. The applicant filed Review Application against this order, which was registered as RA No.15/2000. In that RA, it was categorically stated by the applicant that the OA No.31/96 was filed by one Shri Nandu Singh Shekhawat and not by the applicant, as such the matter could not have been disposed of by this Tribunal on the basis of the order passed in another OA No. 31/96 stating this OA as barred by the principle of res-judicata. The applicant has also placed on record certain documents whereby showing that the father of the applicant at the relevant time was working as Turning Operator. Considering the material placed on record, the Review Application was allowed vide order dated 23.9.02 and the order passed by this Tribunal dated 10.4.2000 was recalled and the OA was restored to its original number. The respondents were directed to file fresh reply based on the facts of this OA within six weeks. Now the respondents have filed fresh reply in which it has been stated that the Director (Personnel) Geological Survey of India vide its order dated 14.3.01 directed the Dy. Director General, Western Region, Geological Survey of India, Jaipur to review all the pending compassionate appointment cases at his own level keeping in view the guidelines laid down in DOPT OM dated 3.12.99 pertaining to the compassionate appointment and only those cases which do not fall under the purview of the DOPT's OM may be forwarded to the headquarter for obtaining Ministry's approval. A copy of this letter has been placed on record as Ann.R1. It is further submitted by the respondents that pursuant to the aforesaid

directions issued by the Director (Personnel), Geological Survey of India, all the old cases of compassionate appointment were considered by the Compassionate Appointment Committee in its meeting held on 17.7.02 and keeping in view the pensionary benefits and overall position of the family, the case of the applicant for compassionate appointment was rejected. The respondents have also reproduced extracts of the Compassionate Appointment Committee meeting in the reply and stated that based on the findings of the Compassionate Appointment Committee, the case of the applicant was rejected by the appointing authority which has approved the recommendations made by the Compassionate Appointment Committee.

5. The applicant has filed rejoinder in which it has been stated that the order dated 17.7.2002 has not been communicated to the applicant nor the same has been filed alongwith the reply. The respondents have also not communicated the reason as to how the case of the applicant has been rejected. The respondents have quoted the recommendation of the Compassionate Appointment Committee in the preliminary objection from which it appears that the Compassionate Appointment Committee has rejected the old cases. However, the Committee has not given any reason as to how the applicant's case was rejected. Under these circumstances, the applicant has stated that the preliminary objections raised by the respondents may kindly be rejected.

6. I have heard the learned counsel for the parties and persued the material placed on record.

6.1 The question which requires my consideration is as to what relief the applicant is entitled for. The learned counsel for the applicant argued that in fact the respondents have not passed any order regarding rejection of his case for compassionate appointment and as stated in their reply, such an order has not been communicated to the applicant, therefore, directions may be given to the respondents to consider the case of the applicant afresh.

6.2 I have considered the submissions made by the learned counsel for the applicant and is not inclined to accept the same. As can be seen from the pleadings and the facts as stated above, the grievance of the applicant in this OA was regarding non-consideration of his case for compassionate appointment by the respondents despite the fact that he as well as his mother moved an application alongwith necessary documents for giving appointment to the applicant on compassionate ground and has prayed for giving directions to the respondents to consider his case for compassionate appointment and pass appointment order in this regard immediately. As can be seen from the reply of the respondents, the case of the applicant was considered by the Committee in its meeting held on 17.7.02 and the case of the applicant was rejected keeping in view the pensionary benefits and the overall position of the family. The applicant has not challenged these findings and as such this Tribunal is precluded from examining the matter on merit. The contention of the learned counsel for the applicant that since this order/finding has not been communicated to him and as such directions may be given to the respondents to reconsider his case afresh, cannot be accepted. In case the impugned order ~~order~~/findings of the Compassionate Appointment Committee was not communicated *if*

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to the applicant, it was open for him to move a Misc. Application in this case for production of such order and thereafter challenge this order either by amending the present OA or by filing a substantive OA. The applicant has not adopted this course and as such without challenging the validity of the impugned order/decision taken by the respondents, no such direction can be given to the respondents to reconsider his case afresh. However, the ends of justice will be met if a direction is given to the respondents to communicate the decision taken by them pursuant to the recommendations made by the Compassionate Appointment Committee in its meeting held on 17.7.02 whereby the case of the applicant for compassionate appointment has been rejected, notwithstanding the fact whether such order has already been communicated to the applicant. Accordingly, direction is given to the respondent No.3, the Dy. Director General, Geological Survey of India, Western Region, Jaipur, to communicate the aforesaid decision to the applicant within 4 weeks from today and the applicant will be at liberty to challenge the impugned order, if so desires, subject to limitation.

7. With these observations, this OA is dismissed with no order as to costs.

  
(M.L.CHAUHAN)

Member (J)