

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Dated of order: 4.10.2003

OA No.408/2001

Sirajuddin s/o late Shri Subhan Khan, r/o Tila No.2,
Jawahar Nagar, Jaipur.

.. Applicant

Versus

1. Union of India through the Secretary, Ministry of Steels and Mines, Govt. of India, Shastri Bhawan, New Delhi.
2. The Director General, Geological Survey of India, 27-JLN Road, Kotkotta.
3. The Deputy Director General, Geological Survey of India, Western Region, Jhalana Doongri Office Complex, Jaipur.

.. Respondents

Mr.Kunal Pawar, counsel for the applicant.

Mr. Tej Prakash 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 applicant has filed this OA against the order dated 27th May, 2001 (Ann.A7) passed by respondent No.3 whereby the case of the applicant for compassionate appointment was rejected.

2. The facts of the case are that father of the applicant, who was sick, took voluntary retirement. Thereafter, his mother made an application for appointment of the applicant on compassionate grounds stating that her other two major and married sons were living separately

and it is the applicant who is looking after the parents, therefore, he may be appointed on compassionate grounds. Thereafter the applicant was given appointment as contingent/^{to}~~child~~ basis till such time the case of the applicant for compassionate appointment is finalised. The applicant was further asked to give undertaking to the effect that he would not make any claim for appointment on the basis of such appointment and such appointment would be only temporary appointment for the time being. However, subsequently vide order dated 10.4.95 (Ann.A4) the applicant was dis-engaged in terms of his undertaking and it was further stated that he cannot be appointed on compassionate grounds on the basis of the facts provided by him.

2.1 It may be relevant to mention here that on earlier occasion the applicant has filed OA No. 521/94 seeking directions to regularise his services from the date of his initial appointment i.e. 24.11.1989 with all consequential benefits. During the pendency of this OA, the respondents passed the order dated 10.4.95 (Ann.A4) dis-engaging the services of the applicant. The applicant was permitted to seek an amendment to the original application and the said order was challenged by the applicant by way of amendment. This Tribunal while considering the averments made by the applicant as well as the stand taken by the respondents in the reply affidavit, came to the conclusion that the impugned order of dis-engagement dated 10.4.95 (Ann.A4) is not a speaking order and no reasons are assigned in the impugned order except stating that the applicant was not entitled for appointment on compassionate grounds on the basis of the facts provided by him. In these circumstances, it cannot

led

be precisely gathered as to what were the facts that weighed with the respondents while passing the impugned order (Ann.A4). This Tribunal therefore, directed the authorities to reconsider the case of the applicant afresh without being influenced by their order dated 10.4.1995 and pass a fresh speaking order taking into consideration the judgment of the Principal Bench reported in 1990 (2) ATJ 206. The respondents in compliance of the aforesaid directions given by this Tribunal have passed the impugned order dated 29th May, 2001 (Ann.A7) thereby rejecting the case of the applicant for compassionate appointment. It is on the basis of these facts that the applicant has filed the present OA thereby praying for the following reliefs:-

- "a. The application of the applicant may kindly be accepted.
- b. The orders dated 10.4.95 and 29.5.2001 may kindly be quashed and set aside holding the applicant entitled for reinstatement on his post of store clerk with all consequential benefits.
- c. The respondents be directed to reinstate the applicant on his earlier post as if no dismissal order has ever passed.
- d. The respondents be further directed to grant the regular pay scale of Group 'C' posts and the applicant be treated regularised on his post from his initial appointment dated 28.11.89 or in all eventualities from the date his juniors have been regularised.
- e. Cost of the application through out may also kindly be awarded to the applicant and any other order direction which may be deemed fit in the circumstances may also kindly be passed in favour

62

of the humble applicant in the larger interest of equity justice and law."

3. The respondents have filed reply. By way of preliminary submissions, it has been submitted that in compliance of the order dated 12.7.2000 passed in OA No.521/94, a fresh order dated 29.5.2001 (Ann.A7) has been passed. Therefore, the OA filed by the applicant has become infructuous. It is further stated that the applicant had earlier challenged the order dated 10.4.95 in OA No.521/94 in which the same relief was demanded by the applicant and as per directions of the Tribunal the respondents passed a speaking order and in the present OA also the applicant has challenged the same order. In view of the provisions of the res-judicata, the OA is liable to be dismissed on this ground alone.

3.1 On merits, it has been stated that the applicant was appointed on chit basis and other persons whose names have been mentioned by the applicant were working on casual basis and the case of the applicant has been rejected after due consideration of the facts and circumstances and other persons' case has been considered by the Central Government and their services have been regularised, therefore, the case of the applicant and above named persons are different which cannot be considered to be same. It is further stated that the applicant was only appointed on chit basis after the applicant had given an undertaking that if his case is rejected, he will not claim any right from the respondents. Since the case of the applicant has been rejected by the respondents, his services have to be discontinued by the respondents. Thus the question of regularisation does not arise.

4. The applicant has filed rejoinder thereby reiterating the submissions made in the OA. It is further stated that the respondents were directed by this Tribunal to reconsider the case afresh without being biased with their earlier order dated 10.4.95, but the respondents have not considered his case afresh. The earlier OA was partly allowed and not rejected/dismissed, therefore, the plea of res-judicata does not apply in the present case. It is further stated in para 2 of the rejoinder that though the respondents have taken the case of the applicant under compassionate appointment, but the appointment of the applicant was made as a general candidate. It is further stated that the undertaking given by the applicant was under duress and it is no undertaking in the eyes of law. In case he would not have signed the undertaking, the respondents would not have appointed him on chit basis.

4. I have considered the submissions made by the learned counsel for the parties and gone through the material placed on record.

4.1 It is not disputed that the applicant was appointed on contingency/chit basis as casual labour and he was not appointed against a regular post. It is also not disputed that the applicant was given wages as admissible to a casual labour. Thus, the applicant was neither a holder of a civil post nor it can be said that the applicant was appointed to the civil service of the Union. As such this Tribunal has no jurisdiction, power and authority to direct the respondents to re-engage the applicant on contingent/chit basis in the capacity of

casual worker. Therefore, the applicant is not entitled to the relief 8 (c) of the prayer clause.

4.2 Now let me consider other reliefs sought by the applicant whereby he has prayed for quashing and setting aside the order dated 10.4.95 (Ann.A4) and order dated 29.5.2001 (Ann.A7) and to give directions to the respondents to reinstate the applicant to the post of Store Clerk with all consequential benefits in terms of relief 8(b) and also directions to the respondents to grant regular pay scale of Group-C post and the applicant be treated regularised on his post from his initial appointment i.e. 28.11.89 or in all eventualities from the date his juniors have been regularised. Vide order dated 10.4.95 (Ann.A4) the applicant was informed that his case for compassionate appointment has been rejected on the basis of the facts provided by him. Further, it was also recorded that he is also dis-engaged w.e.f. 10.4.95 (AN) in view of an undertaking furnished by him at the time of engagement on chit basis daily worker. As already stated above, this order was the subject matter of challenge before this Tribunal in CA No.521/94 which was finally disposed of on 12.7.2000 and this Tribunal directed the respondents to pass a speaking order taking into consideration the judgment of the Principal Bench of this Tribunal reported in 1990 (2) ATJ 206 without expressing any finding on merit. The respondents have now passed a fresh order dated 29.5.2001 (Ann.A7) whereby the case of the applicant has been rejected after recording detailed reasons. The competent authority while taking into account all the instructions issued by the Government regarding compassionate appointment from time to time and also noticing the decisions of the Apex Court in the case of

12/

Umesh Kumar Nagpal Vs. State of Haryana and ors. [JT 1994 (3) SC 525] and another decision of the Hon'ble Apex Court in the case of LIC vs. Asha Ram Chandra Ambekar [JT 1994 (2) SC 183] recorded the following finding:-

"Shri Subhan retired on medical grounds under Pension Rule No.38 w.e.f. 12.06.87. He submitted the application for the appointment of his third son, Sirajuddin to the department on 24.07.87. Shri Subhan expired in December, 1988 leaving behind widow Smt. Sakina, two daughters, third son Sirajuddin, His daughter-in law (Shri Sirajuddin's wife) and his grant children)

The two elder son of late Shri Subhan, namely Shamsuddin and Shri Mahbood are married and living separately alongwith their families. These two have not been constructed as a part of family of Late Shri Subhan, while considering the case of Shri Sirajuddin afresh especially in the light of the Judgment of the Principal Bench reported in 1990 (2) ATJ 206 which inter-alia states that compassionate appointment cannot be denied to the youngest son of Muslim on the ground that his three married elder brother living separately are in Govt. service as Muslim law does not recognize a joint family.

Further Shri Subhan was in receipt of pension before his death in December, 1988. Subsequently his widow, Smt. Sakina became entitled for the family pension and had been drawing the same regularly. After fifth pay commission the minimum admissible family pension rate is Rs. 1275/- p.m. plus D.A. thereon, w.e.f. 01.01.96, which by all

62

standards is adequate for her day to day requirements for the rest of her life, especially in view of the fact that she is not burdened with any impelling social liability to discharge.

Further, it is seen that Shri Sirajuddin was married even at the time of his father's death in 1988. Although he continued to stay with his mother yet he was burdened with his own set of responsibilities towards his family.

From the records it is seen that Shri Sirajuddin was born in the year 1965 and is educationally a matriculate. As he is an able bodied man he is supposed to earn for the maintenance and welfare of his family like other people instead of waiting for any bounty from the Govt. in the shape of appointment on compassionate ground. For the same reason he cannot be termed as a liability on his mother and cannot be extended the concession of compassionate appointment in terms of the rules governing the subject.

In addition to this as Shri Sirajuddin is married and restrained by the financial commitments towards his own wife and children and hence he can be of only little help to his father's family. The grant of concession of appointment on compassionate grounds cannot be justified, therefore, on these grounds especially in view of the fact that his mother, Smt. Sakina has her own means of dependable subsistence in the shape of regular family pension, sufficiently adequate to keep her body and soul together for

42

the rest of life. Shri Sirajuddin, therefore, cannot be assumed as a source of support to the family.

The family of late Shri Subhan had been managing their day to day expenses ever since 1987 out of the resources at their disposal which serves as an ample proof in support of the fact that the family of Shri Subhan is not in indigent circumstances to claim appointment of Shri Sirajuddin on compassionate grounds for subsistence and survival. Besides, it is a belated case (1987) and in terms of GOI OM No. 14014/6/94-Estt (D), dated October 9th 1988 and OM No.14016/6/86, dated June, 1987; and 14014/14/91-Estt.(D), dated September 23rd 1992, the purpose of providing assistance to the family to no justifiable grounds to extend the concession of compassionate ground appoint to Shri Sirajuddin and his case is rejected."

Thus from the findings recorded above, it is evident that the income of 2 major sons of late Shri Subhan namely Shri Shamsuddin and Shri Mahbood has not been taken into consideration in the light of the judgment rendered by the Principal Bench as reported at 1990 (2) ATJ 206. The family of the deceased consists of widow and the applicant. It has further been recorded that the widow is getting family pension at the rate of Rs. 1275/- p.m. plus DA w.e.f. 1.1.96, which by all standards is adequate for her day to day requirements for the rest of her life. It is further noted that the applicant was married even at the time of his father's death in the year 1988. Although he continued to stay with his mother yet he was burdened

62

with his own set of responsibilities towards his family.

4.3 It is settled judicially by the decision of the Apex Court that the only ground which can justify compassionate employment is the penurious conditions of the deceased's family. The consideration for such employment is not vested right which can be given any time in future. The object being to get over the financial crisis which occurred due to the death of the sole bread winner. The applicant in this OA has not alleged as to how the findings recorded by the authority as reproduced above, is wrong and on what basis the family is facing financial crisis so as to justify compassionate appointment. The applicant has also not established as to what are the further ^{liabilities} ~~responsibilities~~ of the family. Admittedly, the family of the deceased consists of only widow and the applicant, who is major and was even married at the time of death of his father. Thus on the basis of the findings recorded above, I am of the view that the applicant has failed to establish his case for grant of compassionate appointment. As already stated above, compassionate appointment cannot be ^{claimed} ~~said~~ as a matter of right, which is in the nature of exception to the normal provisions regarding employment. As such, I see no infirmity in the impugned order dated 10.4.95 (Ann.A4) and order dated 29.5.2001 (Ann.A7).

4.4 Similarly, the applicant is also not entitled to the relief that he should be granted regular pay scale of Group-C post when he was initially appointed on 28.11.89 or in all eventualities from the date his juniors have been regularised. Admittedly, the applicant was engaged as casual labour on contingent/chit basis in the year 1989. The applicant has not shown any rule or policy according

122

to which he is entitled for regularisation from the initial date. Further, the applicant has not made out any case when the so called juniors have been regularised. Although the applicant in para 4(d) has stated that similarly situated persons were appointed on different posts on compassionate appointment and he has also mentioned names of 3 persons who have been appointed as contingent worker/daily wages basis but this fact has been denied by the respondents in their reply whereby it has been specifically stated that the applicant was engaged on chit basis. That apart, even if it is assumed that some persons have been appointed on different posts on compassionate grounds and were junior to the applicant, it does not improve the case of the applicant inasmuch as the sole consideration for appointment on compassionate grounds is the financial condition of the family at the relevant time and whether the person was junior or senior has no relation with it. The applicant has not placed on record as to how his case was similar to that of persons named in para 4(d) of the application. Thus the applicant cannot be granted any relief for regularisation from the date when his so called juniors were regularised/appointed on compassionate grounds.


4.5 Lastly, it was contended that the impugned order dated 10.4.95 (Ann.A4) and dated 29.5.2001 (Ann.A7) were passed with malafide intention inasmuch as the applicant has earlier filed OA No.521/94 in this Tribunal whereby seeking relief that the respondents be directed to regularise his services w.e.f. his initial appointment date i.e. 28.11.89 and also that the directions may be given to the respondents to grant pay scale of Group-C w.e.f. 28.11.89 with all consequential benefits. Since he

69

has sought this relief from the Tribunal, the respondents have passed the order dated 10.4.95 (Ann.A4) thereby dis-engaging his services even as a casual labour. It is further contended that while offering appointment on chit basis w.e.f. 24.11.89 an undertaking was taken from him under duress to the effect that in case his case for compassionate appointment is rejected by the higher authority, he will be dis-engaged and therefore, such a condition could not have been imposed and dis-engagement of the applicant on this ground is bad and as such the impugned order dated 10.4.95 is also liable to be set-aside on this ground.

4.6 I have given my thoughtful consideration to the submissions made by the learned counsel for the applicant. The facts remain that the applicant was engaged on daily wage basis purely on humanitarian ground till his case for compassionate appointment is not decided by the competent authority in accordance with the rules. It is immaterial that he has given any undertaking and once it is found that the applicant is not entitled for appointment on compassionate grounds in accordance with the rules, the very fact that he was engaged on contingent/chit basis as daily rated worker and was allowed to continue, does not improve the case of the applicant. It may be also added here that during the pendency of this OA, this Tribunal vide order dated 7.5.2003 passed the following order:-

" During the course of arguments, the learned counsel for the applicant has very fairly conceded that in case the applicant is re-engaged as casual labour and granted temporary status and regularisation as per scheme, he may forgo his




past wages and will not press this OA. In view of this submissions made by the learned counsel for the applicant, it is expected that the authority concerned will examine the matter sympathetically and grant appropriate relief to the applicant within the aforesaid period of four weeks.

Needless to add that the applicant was engaged as casual labour by the department after the death of his father taking into consideration his indigent circumstances and was allowed to continue as such for a period of six years when the impugned order terminating his services was passed on the basis that his case for compassionate appointment has been rejected by the competent authority. Keeping in view the facts and circumstances of this case as also the financial condition of the family and more particularly the undertaking given by the applicant that in case he is re-engaged and his case for grant of temporary status/regularisation is considered as per rules/policy of the Government, he will not insist for back wages, I am of the view that let the respondents explore the possibility of appointing the applicant as casual labour at the first instance and then consider his case for granting temporary status and regularisation as per scheme in his own turn."

4.7 The respondents were directed to file affidavit. The respondents have now filed a supplementary affidavit thereby stating that the case of the applicant on chit paid basis was considered only because of the undertaking

62

given by the applicant that he will not claim any right of regular appointment. Since the appointment was conditional and therefore, the question of giving temporary status to the applicant does not arise. No temporary status was given to the applicant and no junior to the applicant has been given temporary status. It is further stated that at present there is no provision under the rules to engage daily wage employee. Neither junior to the applicant has been considered for compassionate appointment nor any junior has been given temporary status. The respondents have further stated that vide order dated 24.1.96 in respect of compassionate appointment of son/daughter/near relatives of the deceased Govt. servants - consolidated guidelines were issued by the Dy. Director General (Personnel) Kottakatta whereby it has been mentioned that practice of engagement on contingent basis prior to regular appointment on compassionate appointment has been stopped forthwith, no such proposal to be considered and forwarded to the Central Headquarter. It is further stated in that affidavit that in view of the DOPT OM dated 30.5.89 and C&AG circular dated 9.3.94 it has been stated that ^{no} casual labour in any case be recruited against vacancies justified in the staff proposal. It is further stated that the GSI is a scientific organisation and there is no need to appoint any casual labour in the department. The casual labours are employed by the CFWD only where the work of casual and seasonal nature are available. Thus, in view of the stand taken by the respondents whereby they have categorically stated that no casual labour should be recruited against vacancies and also that no person junior to the applicant has been regularised and granted temporary status, no relief can be




: 15 :

granted to the applicant on the basis of the sforesaid order.

4.8 However, it is made clear that if in future the the department decides to engage persons on contract basis or make regular appointment under any category, in that case, the applicant's case should be considered and he should be given weightage of his experience for the period he has worked and he should also be given age relaxation to the extent of service rendered by him on chit basis/contingent basis.

5. The CA is accordingly disposed of with no order as to costs.


(M.L. CHAUHAN)

Member (J)