

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Dated of order: 11.09.2003

RA No.19/03 (OA No.215/2001) with MA No.296/2003

1. Union of India through the Secretary to the Govt. of India, Department of Posts, Ministry of Communication, Department of Posts, Dak Bhawan, New Delhi.
2. The Chief Post Master General, Rajasthan Circle, Jaipur.
3. The Superintendent of Post Offices, Jaipur Mofussil Division, Jaipur-16.

Review Applicants

Versus

Jai Kishan Meena s/o Shri Phool Chand Meena r/o Sakat, Tehsil Rajgarh, District Alwar.

.. Respondent

Mr. N.C.Goyal, counsel for the review applicants.

CORAM:

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

HON'BLE MR. A.K.BHANDARI, MEMBER (ADMINISTRATIVE)

O R D E R

PER HON'BLE MR. M.L.CHAUHAN.

The present Review Application has been filed by the respondents in the Original Application against the order dated 06.05.2003 (Ann.1) passed in OA No.215/2001, Jai Kishan Meena vs. Union of India and ors. Alongwith this Review Application, the review applicants have also filed a Misc. Application for condonation of delay as there is a delay of 28 days in filing the Review Application. For the reason stated in the Misc. Application, the Misc. Application is allowed and it stands disposed of accordingly.

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2. Now let us proceed to decide the Review Application on merits. The respondent herein (applicant in the OA) filed the OA before this Tribunal which was registered as OA No.215/2001 for considering his case for appointment on compassionate grounds. The said OA was decided by this Tribunal vide order dated 06.05.2003 thereby holding that the rejection of the case of the applicant by the respondents for the reason that the financial condition of the family is not indigent, is not proper. The case of the applicant requires consideration after properly determining the vacancies against direct recruitment quota that arise in a year without linking it with the actually filling and after laying down norms in order to have objective assessment in determining the comparative merit and till such time it is done, the respondent Department should follow the procedure/norms laid down by the M/o Defence in this regard in their ID dated 9.3.2001. In the light of the observations made, the respondents were directed to consider the case of the applicant for appointment on compassionate grounds against any Group-C or Group-D posts for which the applicant may be found suitable keeping in view the instructions in this regard within a period of two months from passing of the order.

3. The review applicants have filed the Review Application on the ground that as per instructions 5% quota for compassionate appointment is to be worked out with reference to the direct recruitment vacancies in each recruitment year finally approved for filling up by the prescribed Screening Committee. The Hon'ble Tribunal has

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not considered the OM dated 16.5.2001 in right perspective and it requires to be reviewed by the Hon'ble Tribunal as per OM ~~dated~~ dated 16.05.2001. The second ground which has been taken by the review applicants for reviewing the aforesaid judgment is that in para 5.5 at page 11 of the order, the Tribunal has observed that the case of Smt. Maya Rathore, who has been given appointment under the compassionate scheme is not so indigent as to the applicant. The respondents in the OA have come with the specific plea that two vacancies were determined for giving appointment under the compassionate scheme and after a comparative assessment Smt. Maya Rathore has been given appointment and if as per the observation of the Hon'ble Tribunal, the applicant is given appointment then the appointment of Smt. Maya Rathore is to be cancelled and such a direction could not have been issued without impleading Smt. Maya Rathore as party. The third ground which has been taken for reviewing the aforesaid judgment is that for determining the comparative merit, the department should follow the procedure/norms laid down by the M/o Defence. In the OM dated 9.10.98 of the Department of Personnel and Training it has been stipulated that while considering the request for compassionate appointment, a balanced and objective assessment of the financial condition of the family has to be made taking into account its assets and liabilities including the benefit received under various welfare schemes and all other relevant factors such as the presence of an earning member, size of the family, ages of children and essential needs of the family etc. This observation of the Tribunal in para 6 of the judgment to have objective assessment in determining the comparative merit to follow the procedure/norms laid down by the M/o

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Defence in this regd vide their ID dated 9.3.2001 is required to be reviewed as there are already guidelines issued by the DOFT vide its OM dated 9.10.98.

4. We have considered the submissions made by the review applicants in this Review Application and we are not inclined to accept the prayer of the review applicants to review the order dated 6.5.2003 passed in OA No.215/2001.

4.1 It cannot be disputed as a matter of law that review cannot be claimed or asked for merely for a fresh hearing or arguments or correction of an erroneous view taken earlier. The power of review available to the Tribunal is same as has been given to the court under Section 114 read with Order 47 of the CPC. The power is not absolute and is subject to restrictions enshrined in Order 47 of CPC. Power of review can be exercised only on discovery of new and important material or evidence which after exercise of due diligence was not within the knowledge of the person concerned and could not be produced by him at the time when the order was made. Power of review can also be exercised on account of some mistake or error apparent on the faced of record or for any other sufficient reason. Reference in this behalf can be made in the case of Ajit Kumar Rath vs. State of Orissa, JT 1999 (8) SC 578.

4.2 At this stage, it may also be relevant to refer to the decision of the Apex Court in the case of Subash vs. State of Maharashtra, AIR 2002 SC 2537 whereby the apex Court held that the scope for consideration before the Tribunal was very limited. Inasmuch as this Court had found that the appellant did possess necessary qualification as per Rules and the Tribunal having found

he was entitled for appointment in original application No.94/1995, there is no justification for the Tribunal to have reviewed the matter once again, particularly, when the scope of review under Section 22(3)(f) of the Administrative Tribunals Act, 1995 as is vested in Civil Court under the Code of Civil Procedure. The Tribunal could have interfered in the matter if the error pointed out is plain and apparent. But the Tribunal proceeded to examine the matter as ~~is~~ if it is an original application before it. This is not scope of review.

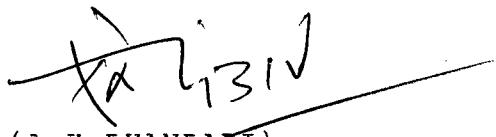
4.3 Having viewed the matter from the aforesaid settled position, the review applicants have not made out any case for reviewing the order dated 6.5.2003 passed in OA No.215/2001. This Tribunal while disposing of the case on merits has specifically held that number of vacancies has not been determined properly and further that Smt. Maya Rathore who was granted appointment on compassionate ground had only 3 dependents whereas according to the respondents themselves there are 4 dependents although in fact there were 5 dependents at the time of missing of the Govt. official. It was also mentioned that the family pension drawn by Smt. Maya Rathore was more than the pension received by the mother of the applicant and thus, this Tribunal observed that the case of the applicant has not been considered properly and the same required to be considered based on actual vacancies available through comparative merit of the candidates and for that purpose the respondents should evolve the norms in order to have object assessment in determining the comparative merit and till such time it is done, the respondents should follow the procedure/norms laid down by the M/o Defence in this regard in their ID dated 9.3.2001. The contention of the

learned counsel for the review applicants is that they are following the norms as issued by the Department of Personnel and Training vide OM dated 9.10.98 and as such the OM issued by the M/o Defence dated 9.3.2001 is not applicable in their case. This is not a good ground for reviewing the order. It may be mentioned that the M/o Defence vide their ID dated 9.3.2001 has laid down the norms in conformity with the guidelines issued by the D/o Personnel and Training vide OM dated 9.10.98 and as such the contention of the learned counsel for the review applicants is totally misconceived. For the sake of clarification, it may be mentioned that the observation was made by this Tribunal in the judgment after perusing the impugned order Ann. Al whereby the case of the applicant for compassionate appointment was rejected on the ground that the family was receiving family pension and has also received terminal benefits and there is an income worth Rs. 500 P.M. from agriculture land, without taking into consideration other relevant factors such as presence of earning members, size of the family, age of children and essential needs of the family, which was one of the requirement as stipulated in the DOPT OM dated 9.10.98 which OM according to the review applicants was applicable in the case of the original applicant (respondent herein). What this Tribunal has clarified in the judgment under review is that the department should form their own guidelines in consonance with the DOPT OM dated 9.10.98 so that the matter could be examined objectively and persons against whom adverse order is passed can discover the reasons behind the decision so that he may be able to tell the court or Tribunal that the matter has not been examined in right perspective and he

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may be given appropriate relief as per law. It is needless to say that a right to reason is an indispensable right of a person and where an authority makes an order which has the effect on the civil right of a person, it must record reasons in support of the order it makes. For that reason the prescribed norms in conformity with the DOPT OM dated 9.10.98 is necessary requirement so that the matter can be decided objectively. At any rate, it cannot be said to be a case where the error pointed out by the review applicants is plain and apparent in the light of the observation made by the Apex Court in the case of Subash (supra). Further more, if this Tribunal has not determined the vacancy correctly as according to the respondents there were only two vacancies whereas this Tribunal has held that the vacancies have not been determined correctly and ^{also that} OM dated 16.5.2001 has not been considered in right perspective, this is not a ground for review. At the most, the judgment may be wrong on this count for which there is a further remedy available to the review applicants and the same cannot be made a ground for reviewing the judgment.

5. For the reasons as stated above, the Review Application is totally misconceived and is hereby dismissed with no order as to costs.


(A.F. BHANDARI)

Member (A)


(M.L. SHAUHAN)

Member (J)