

CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

Original Application No. 325/2003.

Jaipur, this the 17th day of February, 2005.

CORAM : Hon'ble Mr. M. L. Chauhan, Member (J).

Trivendra Kumar Sharma
S/o Late Shri Kailash Chandra
R/o Gandhi nagar,
Near Rly. Colony,
Distt. Bharatpur.

... Applicant.

By Advocate : Shri Raghunandan Sharma.

Vs.

1. Union of India
Through the Secretary
Ministry of Defence,
New Delhi.
2. The Major General Comanding Officer,
Head Quarter, Southern Command O.s.,
8C, Army Head Quarter,
Pune.
3. The Commandant,
Ammunition Depot,
Bharatpur.

... Respondents.

By Advocate : Shri Rakesh Jain proxy counsel for
Shri Sanjay Pareek.

: O R D E R (ORAL) :

The applicant is the son of Late Shri Kailash Chandra, who expired on 9.6.1994 while working as Permanent Majdoor with Respondent No.2. His case for

compassionate appointment was considered by the respondents on three occasions. He could not be given compassionate appointment due to limited number of vacancies available with the respondents. Consequently, he filed OA in this Tribunal which was registered as OA No.103/2000 and the same was decided by this Tribunal vide judgment dated 7.9.2000 whereby this Tribunal has held that the case of the applicant was not considered after three chances on the ground that according to the Policy/guideline dated 30.7.1999, the case of the applicant has already been considered three times, therefore, the case of the applicant cannot be considered at this stage again. The case of the applicant was not considered whether any indigenous circumstances exist in the family or not. Accordingly, this Tribunal directed the respondents to consider the case of the applicant by relaxing the age, if necessary, for appointment on compassionate ground considering whether any indigent circumstances exist for the applicant. Pursuant to the judgment rendered by this Tribunal, the respondents have considered the case of the applicant again and the applicant has not been recommended for appointment as he was lacking in comparative merit. The copy of the order dated 13.05.2003 has been placed on record by the applicant as Annexure A/8. A perusal of this order reveals that the appointment has been given to the persons who have obtained 96 and 85

ml

marks. Aggrieved by this order, the applicant has filed this OA thereby praying that appropriate direction be issued to the respondents to give appointment to the applicant on the post of Group 'C' or Group 'D' on compassionate appointment.

2. Respondents have filed reply. In the reply it has been stated that initially the applicant's case for employment on compassionate ground was considered in relaxation to normal rules and the applicant's case was forwarded to the higher authorities. But the case of the applicant was not further recommended by higher authorities due to limited number of vacancies. Thereafter, the applicant filed OA No.103/2000 before this Tribunal which was allowed vide order dated 7.9.2000, directing the respondents to consider the candidature of the applicant for appointment on compassionate ground within three months. It is further stated that as per existing policy an individual for compassionate ground is to be considered only three times by the board of officers. The applicant's case had already been considered thrice by the board but his name was not recommended due to non availability of the vacancies and also on this ground that there were other persons whose circumstances are more compelling than that of the applicant. Thus, the respondents filed a Writ Petition No.255/2001 before the Hon'ble High Court,

u

Jaipur Bench, Jaipur, against the Hon'ble Tribunal's order dated 7.9.2000. After hearing both the parties, Hon'ble High Court passed an order on 10.12.2002 directing the respondents that Tribunal has only directed to consider the candidature of the applicant for appointment on the compassionate ground within three months. Consequently, in compliance of the order dt.10.12.2002 the applicant's case was once again i.e. fourth time forwarded to the higher authorities for considering this case on compassionate ground against laid down rules for considering case. But the applicant could not be appointed as he was lacking in comparative merit.

3. It is further stated that the applicant has got only 52 marks and he stands 23rd in merit, out of 34 candidates. It is further stated that initially the applicant got 61 marks which was calculated based on old policy of year 1994 but now applicant gets only 52 marks which is calculated based on latest policy No.A/23802/1/Policy/OS-8C (i) dt. 16.3.2001. It is further clarified in the reply that the variation of marks (old 61 marks and new 52 marks) is due to fact that when old list was prepared by the respondents the father of the applicant had an unmarried daughter at that time and that attached him ten additional marks like the bonus marks as per policy but now she is married, therefore, applicant does not get 10 marks as

led

per policy and also due to other minor variation in awarding procedure. Thus, only 52 marks have been given to the applicant by the board of officers.

4. The applicant has filed rejoinder. In Para 3 of the rejoinder, the applicant has taken entirely new plea that one Shri Pradeep, civilian majdoor died in the year 2002, his wife has been given appointment in depot, although she was not in merit. It is further stated that one Ratiram ~~who~~^u also died in the year 2002, his son was given appointment on compassionate appointment. One another Jagdish who was also died in the year 2002, his wife was given appointment. The applicant has also given example of Mr. Pappu S/o S/W Nanak who is placed at no.16 of merit list possess only 42 marks ^{in the merit list} given appointment.

5. The respondents have filed reply to the rejoinder thereby denying the averment made by the applicant in the rejoinder. It is stated that Shri Pappu S/o Late S/W Nanak had applied for compassionate appointment but he could not be selected/appointed as he was lacking in comparative merit. Regarding giving appointment to Smt. Neelam w/o Late Mazdoor Pradeep Kumar, Shri Ramesh Meena S/o Late Mazdoor Shri Ratti Ram Meena and Smt. Meena Sharma W/o Late LDC JP sharma, it has been stated that they were given appointment as per merit list duly recommended by Head

Quarter South Command, Pune and approved/released by the Government of India, Ministry of Defence. Thus, the allegation of the applicant that the persons named by him in the rejoinder were appointed on compassionate ground though not on merit has been denied.

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

7. It is not disputed that the case of the applicant for compassionate appointment was considered by the respondents on 3 occasions in the past but he could not be given appointment due to non availability of the vacancies and also on the ground that there were others deserving persons whose circumstances were more compelling than the applicant and it was only those deserving persons who were given appointment subject to the availability of the posts. It is also not in dispute that the case of the applicant was recommended for appointment on compassionate grounds for the fourth time but the same was not considered by the respondents as according to the policy/guidelines dated 30.7.1999, the case for compassionate appointment can be considered three times. Aggrieved by non consideration of the case of the applicant, the applicant filed OA No.103/2000 before this Tribunal which was allowed vide order dated 7.9.2000 and the

by

respondents were directed to consider the candidature of the applicant for appointment on compassionate ground within three months whether any indigent circumstances exist for the applicant. It is also not disputed that the matter was carried before the Hon'ble High Court, Jaipur Bench, Jaipur, by the respondents but the said writ petition was also dismissed vide order dated 10.12.20002. Thereafter the case of the applicant was considered by the respondents along with other candidates by placing the same before the Board of Officers. The Board of Officers considered the case of 34 candidates against 2 vacancies available for compassionate appointment. The Board of Officers recommended the name of Smt. Nanda W/o Late M/s Waghule who has obtained 96 marks and Smt. Mangal W/o Late DB wahile AD Dehu who has obtained 85 marks. This fact can be seen from the impugned letter dated 13.05.2003 (Annexure A/8). It is also seen from the reply filed by the respondents that the applicant was awarded 52 marks by the Board of Officers pursuant to policy letter dated 16.03.201 though according to old policy, the applicant got 61 marks as at that time 10 additional marks were awarded on account of the fact that there ~~was~~ one unmarried daughter in the family. It is also clear from the reply that the applicant stand at Sl. No.23rd in the merit list out of 34 candidates. Thus, in view of the material placed on record, and in view of the limited

by

number of vacancies it cannot be said that the case of the applicant has been wrongly rejected by the respondents. Even if, for arguments' sake it is to be considered that the applicant has got 61 marks instead of 52 marks that will not materially change the position of the applicant inasmuch as the compassionate appointment has been given to those widows who have secured 96 and 85 marks and were thus admittedly more deserving candidates than the applicant.

8. The respondents have also refuted the allegation of the applicant in the rejoinder that certain persons who have obtained less marks were given appointment on compassionate ground. The Apex Court in the number of decisions has held that Strictly this claim cannot be upheld on the touchstone of Articles 14 or 16 of the Constitution of India. However, such claim is considered as reasonable and permissible on the basis of sudden crisis occurring in the family of such employee who has served the State and dies while in service. It is further held that the appointment on compassionate ground is not another source of recruitment but merely an exception to the aforesaid requirement taking into consideration the fact of the death of employee while in service leaving his family without any means of livelihood. In such cases the object is to enable the family to get over sudden

financial crisis. But such appointments on compassionate ground have to be made in accordance with the rules, regulations or administrative instructions taking into consideration the financial condition of the family of the deceased. Further the Apex Court in the case of Regional Manager A.P.S.R.T.C. and another vs. M. Sampooramma 1999 SCC (L&S) 1162 has held that once it is found that the decision of the employer not to make any fresh appointment is bona fide it would not be proper for the court to question the same and in spite of the decision to that effect, direct him to consider appointing the person on compassionate grounds. Merely because a vacancy existed it was not proper for the High Court to direct the appellant Corporation to consider the respondent and give her appointment ignoring the ban on any fresh appointment. Thus, according to the decision rendered by the Apex Court in the case of M. Sampooramma (supra), even if, the vacancy exists and government has decided to impose the ban, it is not ~~for~~ the court to give direction for compassionate appointment. Further in the case of Union of India vs. Joginder Sharma 2002 SCC (L&S) 1111, the Apex Court has held that according to the Scheme in force claim for compassionate appointment can be countenanced only as against a specified number of vacancies arising and the policy laid down by the Government should not be departed from by the

Courts/Tribunals by issuing directions for relaxations, merely on account of sympathetic considerations or hardships of the person concerned.

9. Thus, viewing the matter on the basis of the ratio laid down by the Apex Court and the fact that there were only 2 vacancies available against which Board of Officers has recommended two persons who were admittedly more deserving than the applicant, I am of the view that no infirmity can be found in the impugned order dated 13.5.2003 (Annexure A/8) whereby the applicant was not recommended ~~for~~ compassionate appointment by the Board of Officers.

10. For the foregoing reasons, the OA is bereft of merit and is accordingly dismissed with no order as to costs.


(M. L. CHAUHAN)

MEMBER (J)