

CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR

DATE OF ORDER: 11-10-04

ORIGINAL APPLICATION NO. 397/2003

Ajay Singh son of Late Shri Kahari Singh aged about 31 years,  
by caste Rajput Resident of Namak Ka Katra Opposite Surgit  
School, Bharatpur (Raj.)

....Applicant

VERSUS

1. Union of India through Secretary to the Ministry of  
Defence, Government of India, New Delhi.
2. Chief Engineer, Military Engineering  
Services, Southern Command, Engineers Branch, Pune.
3. Chief Engineer, MES, Jaipur Zone, Power House Road,  
Bani Park, Jaipur (Raj.).

....Respondents.

Mr. Abhishek Sharma, Counsel for the applicant.  
Mr. H.C. Bairwa, Proxy counsel for  
Mr. Bhanwar Bagri, Counsel for the respondents.

CORAM:

Hon'ble Mr. A.K. Bhandari, Member (Administrative)

ORDER

PER HON'BLE MR.A.K.BHANDARI

This application has been filed u/s 19 of the CAT Act  
to seek the following reliefs:

- (i) The Hon'ble Tribunal may be pleased to call the  
original record of the case and after examining the  
same be pleased to quash and set aside the order  
dated 22nd October 2002 and 7th August 2002 issued  
from the office of the respondents.
- (ii) The respondents may kindly be pleased to  
consider the candidature of the applicant for the  
compassionate appointment on the available post.
- (iii) Any prejudicial order to the interest of the  
applicant, if passed during the pendency of the  
application, the same may kindly be taken on record  
and be quashed and set aside.
- (iv) Any other appropriate order or direction which  
may consider just and proper in the facts and

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circumstances of the case may kindly be passed in favour of the applicant.

2. The brief facts of the case are that applicant's father died in harness on 7.7.1996. The applicant applied for compassionate appointment but the same was rejected on the ground of family pension and pensionary benefits received by the bereaved family. This decision was challenged in this Bench of the Tribunal through OA No. 236/2001 which was decided favourably on 19.12.2001. The respondents were directed to reconsider the case of the applicant within a period of three months. When this order was not complied with, the applicant filed a Contempt Petition bearing No. 69/2002. Notices of this Contempt Petition were issued to the respondents. The respondents filed reply. In the reply it was stated that marks obtained by the applicant are 46 and that no one having equal or lesser marks have been given appointment on compassionate grounds and that due to limited number of vacancies, the applicant could not be given appointment. Per contra, the learned counsel for the applicant alleged that within six months, some other person who is less meritorious has been appointed. This was considered as a vague averment <sup>and</sup> ~~but~~ in view of the fact that there was no wilful disobedience of the order of the CAT, the Contempt Petition was dismissed, however, reserving to the applicant the right to file a duly constituted fresh OA, if he feels that his case has not been correctly dealt with, giving full details of the persons who are considered less meritorious and have obtained less marks than the applicant or marking system is not correct. This liberty was reserved subject to limitation.

3. In pursuance to this, he has filed the present OA. The decision of the respondents in reconsideration of his case vide orders dated 7.8.2002 (Annexure A/2) and 22.10.2002 (Annexure A/1) have been impugned.

In the grounds, it is stated that grounds of rejection in reconsideration are the same on the basis of which his earlier claim for compassionate appointment was rejected vide order dated 8.11.2000 and was challenged in earlier OA, which was allowed. Secondly order dated 7.8.2002 is a rejection of the claim whereas meeting for reconsideration of the case of the applicant for compassionate appointment was held on 22.10.2002. Thus this meeting is nothing but a face wash by the respondents to

support their rejection order dated 7.8.2002, that order dated 7.8.2002 is without application of mind. Thirdly, even in reconsideration, the respondents have taken into account the earnings of the elder brother who is not living with the family and who is not providing any financial assistance to them. This action was found wrong on the part of respondents in the earlier OA by the Tribunal and should have been excluded in the reconsideration exercise. Also the evaluation of the house at Rs.85,000/- is arbitrary because the actual value of the same is Rs.40000/- only. The marks awarded on the basis of these grounds/facts deserves to be quashed. That comparison of indigency of various persons done in the meeting held on 22.10.2002, is arbitrary because preference should have been given to the persons <sup>where</sup> father/mother died earlier. For this case of Kerala High Court reported in Fr. Antony Kavalakatt and another vs. District Educational Officer, Aluva and another reported in 1999(5)SLR 472 has been cited during the arguments. That applicant was twice asked to change his option as no vacant post of LDC and Mazdoor were available and in the alternative, the post of Chowkidar has also not been given to him arbitrarily. Lastly, the indigent condition of the family has not been considered correctly for giving appointment on compassionate grounds to the applicant. Rejoinder has also been filed in which GOI OM NO. 14014/19/2002-Estt.(D) dated 5.5.2003 has been cited with plea that the names of indigent persons can be kept in wanting list for three years.

4. The respondents have filed reply denying all the above pleadings and arguments. In the preliminary, it is stated that appointment on compassionate grounds was rejected due to non availability of vacancies. Replying to the grounds, it is stated that allotment of marks has been done on the basis of well thought out policy to determine comparative indigency on the basis of which all cases were considered by the Board of Officers on 22.10.2002 but due to non availability of vacancies, no-one could be appointed.

5. Before considering the detailed reply given by the respondents, I would like to dwell upon the OA and its contents and would like to examine whether the applicant is justified in initiating this OA on the facts and grounds

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elaborated in it. For this, consideration of the exact order of the Tribunal in OA No. 236/2001 and CP 69/2002 is necessary. The relevant part of the decision is reproduced below:-

10. In the instant case, it is true that widow was given reitral benefit to the tune of Rs.4,15,769 but that itself does not become a ground for rejecting the claim of the applicant as it has been held in Balbir Kaur and another vs. UOI, AIR 2000 SC 1596. The competent authority was required to examine all the circumstances around the applicant so as to reach to the conclusion whether family of the deceased requires any assistance for its survival as the widow has to maintain his two children including their education expenses and after marriage expenses of the married daughters and the elder son who is employed is already leaving separate from his mother, who is not providing any help to the widow or the family members of the deceased. Therefore, it can be very well said that indigent circumstances still exist in the family. Looking to the facts and circumstances of the case and settled legal position, I am of the opinion that indigent circumstances still exist in the family and applicant entitled to be considered for appointment on compassionate grounds.

11. I, therefore, allow this OA and quash the impugned letter dated 8.11.2000. The repondents are directed to consider the candidature of the applicant for appointment for compassionate grounds within three months from the date of receipt of a copy of this order. If age comes in the way, the age relaxation shall be done by the competent authority.

Obviously, the Tribunal had held the competent authority's consideration of retiral benefits as the basis of rejection wrong. However, in the Contempt Petition, it has been held that there was no wilfull disobedience on the part of the respondents and the Contempt Petition was dismissed. However, liberty to the applicant was given to submit a duly constituted fresh OA on the limited points about the persons who are less meritorious and have obtained less marks than the applicant or the marking system is not proper. This liberty was subject to limitation. Perusal of the present OA reveals that the present OA is completely misconceived because neither the persons less meritorious who are alleged to have been appoinned have been named nor they have been made respondents in the OA. There is not even a mermer in the facts or ground of the OA about how the marking system adopted

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by the respondents was wrong. No-doubt, it is stated that the evaluation of house has been wrongly done, the same being worth Rs.40,000/- but it has been evaluated at Rs.85,000/- but no evidence to substantiate this allegation has been given. On the contrary, facts which were mentioned in the earlier OA have been repeated which cannot be considered in view of the principle of res-judicata, about which objections have been rightly raised by the respondents.

7. It has been explained by the respondents that the orders dated 7.8.2002 (Annexure A/2) and dated 22.10.2002 (Annexure A/1) were passed before finalisation of the Contempt Petition and duly considered by the Tribunal while deciding the same on 24.4.2003. It was only after consideration of these documents, liberty to file fresh OA on limited points viz. wrong marking system and appointment of less meritorious persons over the applicant was granted. Thus the present OA which contains repetition of old facts, but no pleadings on the points on which filing of fresh OA was allowed is considered is misconceived and cannot be allowed.

8. These points have been touched upon in the detail in reply of the respondents. I am aware that respondent department have very well thought-out system of examining the cases of compassionate appointment regularly by awarding objective marks on each factor worth considering ~~for~~ considered while giving compassionate appointment. This system has been evolved on the various instructions and guidelines issued by the DOPT in this regard. They have also a system of scrutinising the pending cases regularly. Thus the exercise undertaken on 22.10.2002 in which the applicant was considered at item no. 4 is one such exercise. On the other hand, order dated 7.8.2002 is the re-consideration of the case under the CAT's order and it is noticed in this order, compassionate appointment has been rejected not on the basis of pensionary benefits alone but all other factors have also been taken into consideration, including paucity of vacancies of LDC/Mazdoor and Chowkidar. Thus, I do not find any fault with these orders.

9. In view of the foregoing paragraphs, the OA is dismissed with no order as to costs.

(A.K. BHANDARI)  
MEMBER (A)