

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO.428/2003

DATE OF ORDER: 21.12.2004

Wazeer Hussain aged about 25 years son of Late Shri Ragib Hussain, resident of 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 Nehru Marg, Calcutta.
3. The Dy. Director General, Geological Survey of India, Western Region, Jhalana Doongari, Jaipur.

....Respondents

Mr. R. Wahid Nakvi, Proxy counsel for
Mr. S.L. Verma, Counsel for the applicant.
Mr. Tej Prakash Sharma, Counsel for the respondents.

CORAM:

Hon'ble Mr. Kuldip Singh, Vice Chairman (Judicial)
Hon'ble Mr. A.K. Bhandari, Member (Administrative)

ORDER (ORAL)

This OA u/s 19 has been filed to seek following reliefs:-

"Your humble applicant prays that in the facts and circumstances state above, this Hon'ble Tribunal may be pleased to accept and allow this OA and the impugned order Annexure-1 may be quashed and set aside and the respondents be directed to give compassionate appointment to the applicant.

2. The impugned order dated 12.6.2003 (Annexure A/1) is reiteration of earlier decision of the respondents dated 17.7.2002 which has further been reviewed in the compassionate appointment committee meeting held on 16.4.2003 but the case of compassionate appointment of the applicant has been rejected by it also.

3. In fact this is a third round of litigation in this case.

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It is admitted by both the parties that applicant had earlier filed OA No. 45/98 in this Bench of the Tribunal. It was decided by Single Bench on 10.4.2000 on the basis of short reply filed by the respondents. It was stated that father of the applicant was engaged as Water Man on daily wage basis for summer season for specific period. It was further stated in the reply that applicant had earlier filed OA No. 31/96 which was decided vide order dated 31.7.1998 and therefore, the OA is not maintainable on the principles of res-judicata. Considering this, the Tribunal vide order dated 10.4.2000 dismissed the OA. However, the applicant filed a Review Application against this order vide RA No. 15/2000 therein categorically stating that OA No. 31/96 was filed by one Shri Nandu Singh Shekhawat and not by the applicant. Based on this pleading in this Review Application, the same was allowed vide order dated 23.9.2002 and it was ordered that the order passed by this Tribunal on 10.4.2000 be 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. Further deliberation in the OA revealed that by its order dated 14.3.2001, the Director (Personnel) GSI had directed the Dy. Director General, Western Region, GSI 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. Pursuant to these directions, relevant exercise was undertaken in meeting of compassionate appointment meeting held on 17.7.2002 and keeping in view the pensionary benefits and overall position of the family, the case of the applicant for compassionate appointment was rejected. In proof of this, the respondents have produced the extracts of minutes of the

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compassionate appointment committee meeting. These minutes were approved by the Compassionate Appointment Committee. However, in the rejoinder to the reply, the applicant stated that order dated 17.7.2002 was never communicated to him nor it has been filed alongwith the reply nor it has been stated how the case of the applicant has been rejected. After careful consideration of all the pleadings, the Tribunal was of the view that direction to the respondents to re-consider the case of the applicant may not be issued and if the finding of the Compassionate Committee are not communicated to the applicant, he may demand the same through Miscellaneous Application and thereafter challenge the order either by amending the OA or by filing substantive OA. However since the applicant had filed the OA without challenging the validity of the decision of the respondents, no other direction can be given to the respondents to reconsider afresh. Therefore, direction was given to the respondents:-

to communicate the decision taken by them pursuant to the recommendations made by the Compassionate Appointment Committee in the meeting held on 17.7.2002 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 four weeks from today and the applicant will be at liberty to challenge the impugned order, if so desires, subject to limitation."


Based on the above, this OA has been filed.

4. In the grounds, illegality has been alleged because respondents have failed to carry out mandatory responsibility cast upon by them to give compassionate appointment to the dependant of the deceased Government servant. That applicant was eligible, ^{r2} ~~because~~ family of the dependant consists of widow mother, one another son and one daughter and all are unemployed and that the retiral benefits consisting of DCRG and GPF were

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too meagre and widow is in receipt of an amount of Rs.1275/- only as family pension. That there was no other source of income and in these indigent circumstances, applicant deserves to be considered for compassionate appointment. It is further stated that rejection of compassionate appointment merely on the ground that mother of the applicant is getting family pension is not correct. That the applicant is VIIIth Class pass and is eligible and if appointed, he will be able to look after the other members of the family. That father of the applicant was a permanent Govt. Servant in Group 'C' category and he died while in service in 1997 but respondents have failed to give compassionate appointment as a measure to provide immediate relief which they are bound to, as per rules.

5. Per contra, these grounds have been largely denied by the respondents. On their behalf, it is submitted that on receipt of the application, the case of the applicant was placed before CAC on 13.3.1997 and complete case was forwarded to Director General, GSI for approval. This fact was intimated to the applicant also vide letter dated 12.12.1997 (Annexure R/4) stating that further action will be taken only after receipt of the reply from the Central Headquarter. Further that Director (P) Central Headquarter vide letter dated 14.3.2001 advised to review all compassionate appointment cases keeping in view the guidelines laid down in DOPT OM dated 3.12.1999 in which it is provided that compassionate appointment cases should be restricted within the ceiling of 5% of vacancies falling under the Direct Recruitment Quota and that compassionate appointment can be made only if vacancies are available for the purpose and they should be restricted to really deserving cases only. It was also stated that there is no provision for approving cases for compassionate appointment and keeping them in waiting list.



Copies of DOPT OM dated 3.12.1999 and 26.4.2001 are annexed as Annexures R/5 and Annexure R/6. Keeping these guidelines in mind, CAC met on 17.7.2002 and reviewed the case of the applicant and keeping in view the vacancy position as well as other grounds on the basis of which compassionate appointment can be given, the Committee rejected the case of the applicant for compassionate appointment. However, since the decision contained in OM dated 17.7.2002 was found not to be communicated to the applicant, while making compliance of the order of the Tribunal in OA No. 45/98 dated 14.5.2003 in letter & spirit under direction of the Central Headquarter Calcutta, matter was again placed before CAC which met on 16.4.2003 for review. But keeping in view the family pension of Rs.1275/- plus DA and other pensionary benefits amounting to Rs.1,16,172/- and over all position of the family it rejected the case of the applicant for compassionate appointment. Intimation of this was communicated vide letter dated 22.7.2003 (Annexure R/7) (also vide Annexure A/1). Thus there was no illegality or arbitrariness on the part of the respondents in dealing with this matter.

6. On receipt of the reply, applicant filed rejoinder wherein additional information about certain less indigent persons who were given compassionate appointment was mentioned while denying other facts contained in the reply. On the basis of this, the respondents were given further opportunity to file reply to the rejoinder which they have placed in the court at the time of hearing and the same has been taken on record.

7. On the one hand, counsel for the applicant argued that his case for compassionate appointment has been rejected arbitrarily and that rejection is based only on the ground of family pension

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and pensionary benefits, size of the family etc. Counsel for the respondents on the other hand drew our attention to detailed deliberation of this case ^{which has been} examined thrice namely on 13.3.1997, 17.7.2002 and 16.4.2003 by the CAC but on all occasions on account of paucity of vacancies and more indigent cases available for consideration, it was rejected. Even about certain cases mentioned by the applicant as less indigent as mentioned in the rejoinder, counsel for the respondents argued that Shri Snuil Kumar Bharadwaj and Smt. Indra Verma were recommended under Group 'C' post and as the applicant is only Middle pass, he could not be considered for appointment on Group 'C' post for which minimum qualification is matriculation. So comparing these two cases by the applicant is not correct. That Shri Rakesh Dhabi was initially recommended by the CAC for appointment for Group 'C' post on the basis of his penurious condition but while reviewing pending cases as per Govt. instructions dated 26.4.2001 which provided that no waiting list should be maintained, this old case of Rakesh Dhabi was transferred to Group 'D' category for recommendation. Further that Govt. instructions provide that compassionate appointment is to be given to the family who is in financial destitution and deserves immediate assistance. By comparison, case of Shri Rakesh Dhabi was more deserving. The respondents have also certified that no Group 'D' vacancy was available at the time of review and reconsideration.

7. Having heard contending parties, we have no doubt that subjectively the applicant may be feeling that his case is very deserving for compassionate appointment but in the face of the background and details of review and reconsideration, the action of the respondents in giving preference to more indigent cases appears justified. The method of giving compassionate

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appointment is an exception of normal rule of giving government appointment which is based on competition to decide suitability and it is violative of the principles natural justice because by this method appointments are given on extreneous considerations. But this exception is being continued to give immediate relief to the deserving indigent dependants of Govt. Servant who are left in penurious condition after the death of the bread-winner. As per the guidelines based on a series of Hon'ble Supreme Court's judgement, such appointment has to be given only in the rarest circumstances, to provide immediate relief to the most deserving candidates, subject to limited number of vacancies. The father of the applicant died in 1997 and the family has been able to maintain itself till today shows that their need for immediate relief no more exists. While deciding this matter, we would like to refer to recent decisions of Hon'ble Supreme Court regarding consideration of pensionary benefits and family pension while taking decision of compassionate appointments. Earlier view was that these benefits should be precluded from consideration but in recent decisions reported vide 2004(7) SCC 932 and 2004(7) SCC 943 in Punjab National Bank and others vs. Ashwini Kumar Taneja and General Manager, DMPV and others vs. Kunti Tiwari and others contrary view has been taken which make consideration of retiral benefits by respondents while rejecting compassionate appointment in this case as ~~permanant~~ ⁱⁿ law.

8. In the light of this also, rejection of the case of the applicant cannot be held to be irregular and in the light of what has been stated above, the OA is dismissed with no order as to costs.


(A.K. BHANDARI)

MEMBER (A)

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(KULDIP SINGH)
VICE CHAIRMAN