

Central Administrative Tribunal
Jabalpur Bench

OA No. 791/05

Thursday this the 23rd day of March, 2006

C O R A M

Hon'ble Dr. G.C. Srivastava, Vice Chairman

Hon'ble Mr. G. Shanthappa, Judicial Member

Narendra Kumar Yadav
S/o Late Shree Ramswaroop Yadav
R/o Rampur, Durganagar
Jabalpur (M.P.)

Applicant

(By advocate: None)

Versus

1. Union of India through
Secretary
Ministry of Defence
2. The General Manager
Gun Carriage Factory
Khamaria
Jabalpur.
3. The Chief Engineer
Jabalpur Zone, Bhagat Marg
Post Box No.84, Jabalpur Canit.
Jabalpur.
4. The Administrative Officer
Commander Works Engineers
Supply Marg
PB No.54, Jabalpur.

Respondents.

(By advocate Shri R. S. Siddiqui)

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O R D E R (oral)

By Mr.G.Shanthappa, Judicial Member

Case called. Neither the applicant nor the counsel for the applicant is present. Learned counsel for the respondents is present. Hence the provisions of Rule 15 (i) of CAT (Procedure) Rules 1987 are invoked.

2. We perused the pleadings and documents.
3. The application has been filed by the applicant under Section 19 of the A.T.Act, 1985 seeking the following relief:

- (i) Quash the order dated 22.9.2002.
- (ii) Direct the respondents to issue appointment order in favour of applicant on a suitable post on which the applicant could be adjusted.

4. The father of the applicant died in harness on 14.4.92 leaving behind his wife and the applicant. The mother of the applicant submitted a representation dated 18.2.1993 to give appointment on compassionate ground to her son, i.e. the applicant. The said application was considered and rejected as per the order dated 20.3.1993 on the ground, the applicant was not major at that time. The family of the deceased was and is in financial distress. Applicant passed 8th standard in the year 2000; due to poverty, he could not continue his studies. In the year 2001, he submitted an application for compassionate appointment, the same was rejected vide order dated 22.9.2002 (A1). While considering the case of the applicant, the respondents have applied the ingredients of OM of 1998 and rejected the request of the applicant without considering the legitimate claim.

5. Per contra, the respondents have filed reply statement rejecting the relief of the applicant and admitted the fact that the applicant is the only legal heir of the deceased government servant late Ram Swaroop Yadav who

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died on 14.4.92 while in service. He had served for 24 years, 1 month and 24 days. Terminal benefits of Rs.89,897/- has been paid, and family pension of Rs.1275 + Dearness Relief per month has been fixed. The application of the applicant was placed before the Board of Officers and considered as per the Min. of Defence ID No.19(3)/2000-D (Lab) dated 12 Feb 2001 and 9.3.2001 and the applicant was awarded points as per the instructions and the applicant could score only 56 marks.

6. We carefully examined the stand taken by the respondents that the applicant secured 56 marks compared with others, there was no financial indigence of the applicant, accordingly, the impugned order was passed on the basis of the scheme for compassionate appointment, relative merit points under the revised procedure for selection as per R-2. When the applicant did not come in the zone of consideration he was not recommended by the Board of Officers. Accordingly the respondents have applied the prescribed quota of 5% under the direct recruitment quota and selected the eligible candidates. Accordingly they have issued the impugned order.

7. We carefully examined the impugned order. The respondents have considered the financial indigence of the deceased family. They have considered the terminal benefits which were granted to the deceased family and also the annual income of Rs.10,000 per annum of the deceased family.

8. ~~We~~ ^{we} have come across a scheme for compassionate appointment, awarding relative merit points for selection drawn up by the Ministry of Defence in their OM dated 9th March 2001. ~~We~~ ^{We} should compliment the Ministry of Defence for drawing up a well balanced grading, taking various parameters into consideration, of course, as per the directions available in 2001 (which later stands modified: like consideration of a case of

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compassionate appointment for three years as per DoPT OM dated 5th May 2003, ~~no~~-inclusion of terminal benefits etc. as laid down by the Hon'ble Supreme Court in their decision reported in 2005 SCC (L&S) 590 (Govind Prakash Verma Vs. LIC & Ors etc.). What Ministry of Defence has done is to have a point based system on a 100 point scale, attributable to various parameters for a comparatively, balanced and *objective* (emphasis added) assessment of requests of deserving candidates for compassionate appointment. To give an instance, in this system, there is a provision for grading monthly income of earning members and income from property (excluding monthly family pension, income of family members living separately), number of dependents, left over service etc. The following ~~gradings~~ are given for the same:

"Monthly income of earning member(s) and income from property":

- (i) No income: 05
- (ii) Rs.1000 or less: 04
- (iii) Rs.1001 to 2000: 03
- (iv) Rs.2001 to 3000: 02
- (v) Rs.3001 to 4000: 01
- (vi) Rs.4002 to 5000: NIL

No. of dependents

- (i) 3 and above : 15
- (ii) 2 : 10
- (iii) 1 : 05

No. of unmarried daughters

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(i)	3 and above :	15
(ii)	2 :	10
(iii)	1 :	05
(iv)	None :	00

No. of minor children

(i)	3 and above :	15
(ii)	2 :	10
(iii)	1 :	05
(iv)	None :	00

Left over service

(i)	0-5 :	02
(ii)	Over 5 and upto 10 years :	04
(iii)	Over 10 and upto 15 yrs. :	06
(iv)	Over 15 & upto 20 yrs. :	08
(v)	Over 20 years:	10

9. Wade and Forsyth (7th Edition) page 1012 lays down broad principles when administrative action loses immunity from judicial review. It is stated that there is "no reason why simply because a decision making power is derived from a common law and not a statutory source, it should for that reason only be immune from judicial review". Irrationality as a ground for judicial review applies to a decision, which is so outrageous, in defiance of logic or accepted moral standards that no sensible person who has applied his mind to the question to be decided, could have arrived at it. Procedural

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impropriety is nothing but failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision.

10. We found that there is a lacuna in the impugned order in as much no details of year-wise vacancy position were given, by which it could be known to the applicant whether he was eligible under the ceiling of 5% of the direct recruit vacancies of a particular year. Accordingly the impugned order suffers. The said decision is applicable to all those who are waiting for compassionate appointment as on the date of the CRC. The judgment is later to the impugned order, but the law is applicable.

11. There was a delay in filing the application. The applicant has filed MA 772/05 for condonation of delay. The delay was on the ground that the applicant who studied upto 8th standard was not aware of the procedure in approaching the Tribunal/forum. We considered the circumstance and difficulty faced by the applicant. The reasons assigned in the MA are considered and this MA is allowed.

12. Since the impugned order suffers on account of considering the terminal benefits and the income of the family and there is no reasoning for comparison of financial indigence, accordingly we are convinced the impugned order suffers. The respondents shall consider the case of the applicant afresh and pass a detailed, speaking and reasoned order informing the applicant that comparative merit of the applicant. Learned counsel for the respondents has produced the scheme for compassionate appointment as per R2. There is a reference in page 9 of the reply statement that the candidates are required to apply only once and application if not recommended in the last meeting of the board of officers for want of



vacancy, it to be considered afresh along with fresh applications by the Board of Officers on 3 consecutive occasions to ensure that the final decision is communicated to the applicant. Since the respondents have considered the case of the applicant only once, respondents are directed to consider the case of the applicant as referred in their Annexure R-2 on two more occasions.

13. With the above observations, the OA is disposed of. No costs.

(G Shanthappa)
Judicial Member

Judicial Member

Ganesh
(Dr. G. C. Srivastava)
Vice Chairman

Vice Chairman

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पृष्ठांतर सं ओ/व्या..... जगत्पर. दि.....
 चौथे दिन विवरण
 (1) रुपी..... अमरपुर
 (2) रुपी..... कामरुप
 (3) रुपी..... कामरुप
 (4) विवरण
 सूचना दृष्टि द्वारा
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