

Central Administrative Tribunal
Jabalpur Bench

OA No.945/05

Thursday this the 16th day of March, 2006

C O R A M

Hon'ble Mr.G.Shanthappa, Judicial Member

Anil Kumar Sahi
Son of Late Shri Nageshwar Prasad Sahi
R/o H.No.3291, C/o Shri D.K.Singh
Government Girls Degree College
Ranjhi, Jabalpur.

Applicant

(By advocate: None)

Versus

1. Union of India through
Secretary
Ministry of Defence (Production)
New Delhi.
2. The Chairman
Ordnance Factories Board
10-A, S.K.Bose Marg.
Kolkata.
3. The General Manager
Gun Carriage Factory
Jabalpur

Respondents.

(By advocate Shri S.K.Mishra)

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. Shri S.K.Mishra, learned counsel for the respondents is present.

2. Heard the learned counsel for the respondents.

3. The application is filed under Section 19 of the A.T. Act 1985 seeking the following reliefs:

- (i) Direct the respondent No.3 to issue appointment order when junior persons have been considered.
- (ii) Direct respondent No.3 to give appointment after the date of interview and keep the applicant above the junior person and give all consequential benefits to the applicant

4. The brief facts of the case, according to the applicant, are that the father of the applicant was working as Carpenter HS-II in the Gun Carriage Factory, Jabalpur and he died in harness on 31.3.2000 after rendering more than 20 years of service. The wife of the deceased employee had pre-deceased him in the year 1987. The deceased employee left behind the applicant and 3 daughters, one of whom is unmarried. The applicant submitted his application for compassionate appointment. After completing the formalities of medical examination, interview and police verification, the request of the applicant for compassionate appointment was rejected by the respondents vide impugned order dated 25.10.2002. The grievance of the applicant is that his father died due to illness and the family had to spend more than Rs.50000/- towards the treatment of the deceased; an amount of Rs.3, 30,701/- was granted by way of terminal benefits and most of this amount was spent on the treatment and other purposes; the 3rd respondent has adopted a pick and choose policy in the matter of consideration of the case of the applicant for compassionate appointment; the respondents have not given the details in the impugned order regarding the monthly/yearly vacancy, how many vacancy filled up, how many remain to be filled up etc. Hence the impugned order violates Articles 14 & 16 of the Constitution of India. The applicant is entitled for grant of the reliefs prayed for.

5. Along with the OA, the applicant has filed an MA No.858/05 for condonation of delay in filing the OA. Though the impugned order was passed on 25.10.2002, because of the financial



distress, the applicant was not able to approach this Tribunal. The reason given in the MA is to be considered sympathetically.

6. Per contra, the respondents have filed a detailed reply denying the relief of the applicant. The contention in the reply statement is that the respondent No.3 had considered the case along with other similarly placed individuals for the post of Labourer and PVR forms were also issued. But it was noticed that the respondent No.3 had already exceeded the number of posts that needs to be filled up within the 5% quota meant for Group 'C' and 'D' posts under the scheme for compassionate appointment. Since there was no vacancy, the case of the applicant was regretted. The counsel for the respondents submitted that there is a delay of 3 years in filing the application and it is time barred. Hence the MA is to be dismissed.

7. The respondents have relied on the judgment of the Hon'ble Apex Court in the case of Prafull Kumar Swain Vs. Prakash Chandra Mishra (1993) (3) SCC 181, 190; in an another case of Union of India Vs. Joginder Sharma 2002 SCC (L&S) in CA No.6415 dated 30.9.2002.

8. I 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. I 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 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

(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 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. I 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.

11. The respondents have contended in Para 7 of the reply statement that the applicant has been able to sustain without a government employment for more than 5 years and it proves that he could very well sustain without the same. In accordance with DoPT OM dated 5.5.2003, there exists no provision for entertaining any claim for compassionate appointment beyond a period of 3 years under any circumstances. For granting compassionate appointment to the dependents, the Ministry of Personnel, Public Grievances and Pension vide its OM dated 9.10.98 and Ministry of Defence ID No.271'93'D/(Lab) dated 9.3.2001 has consolidated various instructions on the subject, as per which a 100% grading scale has been formulated for assessing similarly placed individual and for comparatively balanced objective assessment. The respondents have complied with the above OMs and considered the financial indigence on the basis of the family pension, terminal benefits, movable/immovable property, number of dependents, unmarried daughters, minor children and left service. The applicant had obtained only 50 marks out of 100. Even candidates who had obtained more marks than the applicant could not be accommodated due to non-availability of vacancies. Hence the applicant has not made out a case for grant of the relief prayed for by the applicant. The OA deserves to be dismissed.



12. Since the learned counsel for the applicant is not present, I heard the learned counsel for the respondents and perused the pleadings and the documents on record and the citations referred.

13. The short quest that arises for consideration is whether the impugned order is a speaking order? No doubt, the applicant has no legal right but the admitted fact is that the deceased employee has left behind the applicant and 3 daughters, one of whom is unmarried. The applicant had submitted his application with all relevant documents. The respondents have considered the same along with others. Since the applicant has got only 50 marks compared to others who had secured more marks, his case for compassionate appointment was rejected. I carefully examined the impugned order. As on the date of the impugned order, the O.M dated 5.5.03 was not in force. The respondents have to comply the OMs of 1998 and 2001. Moreover, the impugned order does not speak about the year-wise vacancies for 2000-2002 i.e. as on the date of the impugned order, during that period how applications were considered, that is also not known and there is no comparison of the financial indigence on comparison with others. The Hon'ble Apex Court has held that terminal benefits cannot be considered while assessing the financial position, as held by the Apex Court in the case of Govind Prakash Verma Vs. LIC & Ors. reported in 2005 SCC (L&S) 590. On these grounds, the impugned order suffers.

14. Though the impugned order is dated 25.10.2002, the applicant has filed an MA for condonation of delay. The applicant has explained poverty and other reasons in not approaching the Tribunal in time. Normally the Tribunal shall consider delay in filing the applications as held by Principal Bench of this Tribunal. Accordingly I am taking a sympathetic view and have considered the reasons mentioned in the MA for condonation of delay and I allow the MA.

15. The standing counsel for the respondents strongly opposed the application relying on the judgments cited in the reply statement.



17. The OA is disposed of in above terms. No costs.

(G. Shanthappa)
Judicial Member

पृष्ठंकन सं ओ/न्या.....जबलपुर, दि.....

पतिलिपि वाच्येतिह—

- (1) सचिव, उच्च न्यायालय के काउंसल
 (2) आवेदक श्री/श्री-जी/कु के काउंसल
 (3) प्रत्यर्पी श्री/श्रीजती/कु के काउंसल
 (4) वायपाल, कोर्ट, जवत
 सूचना एवं आवश्यक दस्तावेज़

सूचना एवं आवश्यक दस्तावेज

Bhup Singh Patel
New York

L. K. Mistry *LM*

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