

CENTRAL ADMINISTRATIVE TRIBUNAL,
JABALPUR BENCH,
JA BALPUR

Original Application No.946 of 2005

Jabalpur this the 14th day of March, 2006.

Hon'ble Mr. G.Shanthappa, Judicial Member

Chandra Bhan Choudhary,
S/o late Shri Prem Lal Choudhary,
Aged about 30 years, Residence of
H.No.2438 in front of Perfect Poultry,
Polipathar, Guarighat Road, Jabalpur(M.P.) -Applicant

(By Advocate – Shri Bhoop Singh)

V E R S U S

1. The Union of India through its Secretary
Ministry of Defence (Production),
Govt. of India, New Delhi.
2. The Director/Chairman, Ordnance Factory Board,
10-A, Sahid Khudiram Boase Marg, Kolkata(W.B.).
3. The Senior General Manager, Gun Carriage Factory,
Jabalpur (M.P.). - Respondents

(By Advocate – Shri A.P.Khare)

OR D E R(Oral)

The above Original Application was filed under Section 19 of the Administrative Tribunals Act, 1985, seeking the following main relief :-

- (i)..to issue the appropriate writ in the nature of mandamus certiorari or other and command the respondent and direct them the applicant be consider(sic) for compassionate appointment as the junior candidate have been consider(sic).
- (ii) ..the direct the respondent to issue the appointment order to the applicant also when the junior have been consider(sic)



and give all the consequential benefits under the provision of law."

2. The father of the applicant died in harness on 11.5.2000. The respondents have directed the family of the deceased to submit an application. Accordingly, the applicant had submitted his application for compassionate appointment. The applicant was called for interview on 21.9.2001 and he was directed to produce the necessary testimonial. Accordingly, he has submitted the documents. The applicant is a disabled person. The family of the deceased has no means of livelihood. They are facing financial indigence. It is very difficult for them to have both ends to meet. The application was considered by the respondents without following the scheme for compassionate appointment. The persons who are not deserving, have been considered. Hence, the applicant has a case for direction to consider for appointment on compassionate grounds. The respondents are showing discrimination to the applicant and they have adopted the policy of pick and choose in the matter of consideration. The previous persons have not been allowed and new persons have been permitted for duty with the appointment order, which amounts to discrimination. Hence there shall be a direction to the respondents to consider the case of the applicant.

3. The respondents have filed a detailed reply rejecting the averments and relief of the applicant. The applicant has no legal right in view of various judgments of the Apex Court. The compassionate appointment is given only to the deserving cases and that too within the ceiling of 5% of direct recruit vacancies as provided in the scheme. The compassionate appointment has been denied to the applicant on the ground that the quota reserved under the Scheme has already exhausted and the DOPT has declined to relax the regulations relating to 5%. As per OM dated 5.5.2003, there is no provision for entertaining any claim for compassionate appointment beyond a period of three years. The question of



Offering appointment at this belated stage will be in clear violation of the scheme as well as principles framed for giving compassionate appointment. It is further submitted that the case of the applicant has been considered on two occasions, on the first occasion he has been awarded 53 marks; on the second occasion he was not eligible; and on the third occasion he has not been considered. As per OM dated 5.5.2003, three times the case of the applicant has to be considered. Para 2 & 3 of the OM dated 5.5.2003 refer for consideration. Since it is a belated case, the respondents have prayed for rejection of the request of the applicant for compassionate appointment. The respondents have passed an order dated 22.7.2005 as per annexure-A-11, which is in order and there is no need to interfere with the same.

4. I heard the learned counsel from both sides and perused the pleadings and documents.

5. I have carefully examined the impugned order. The applicant had filed OA 12/2005 in which this Tribunal has directed the respondents to consider the case of the applicant for compassionate appointment in terms of the policy of the Government of India dated 5.5.2003 within a period of three months. Now, the impugned order dated 22.7.2005 is issued, which is not challenged in the Original Application. The relief is only for direction to consider the case of the applicant for compassionate appointment. The order dated 22.7.2005, as per Annexure-A-11, though it is a detailed order, refers that the applicant had obtained 53 marks in the 100 point grading, on comparing with other similarly placed individuals. There were far more indigent and deserving cases, who had secured the higher grading than that of the applicant, even they could not be accommodated for compassionate appointment due to lack of vacancies. A sample of such cases who secured more marks pertaining to the 2000 is appended to the impugned order.



6. The case of the applicant was considered in the year 2000. The applicant's grading was 53. He was not appointed as on the date of awarding the grading under OM dated 9.10.1998 which was applied. As per the order, they have referred to OM dated 5.5.2003. Even then it is stated that the applicant and the other dependent family members have been able to sustain for five long years without a Government appointment. Further they can survive very well, as there is no need of immediate relief to tide over the financial crisis which has arisen due to the loss of the earning member. Though there was a direction of this Tribunal in OA 12/2005, but they have not applied the ingredients of OM dated 5.5.2003. When the applicant was not eligible on earlier two occasions, as per OM dated 5.5.2003, still the applicant can be considered for one more occasion. Even then if there are no vacancy available, then the applicant cannot be considered. The respondents have not given the details of 5% vacancies of direct recruitment for the years 2000, 2001, 2002 to till 2005. If the vacancy position had been shown then only it can be found whether the applicant was eligible to be considered for compassionate appointment. Though the order passed dated 22.7.2005 is an administrative matter, when the respondents have not applied strict compliance of circular dated 5.5.2003, now I direct the respondents to consider the case of the applicant on one more occasion. While considering the case of the applicant, the respondents are directed to give details of year-wise vacancies available under 5% of direct recruitment quota, then apply the guidelines for compassionate appointment, and take a decision in the matter. Since the order dated 22.7.2005 does not speak about year-wise vacancies, and the applicant has got one more chance to be considered on that ground, I am directing the respondents to consider the case of the applicant for compassionate appointment.

7. I consider the statement made by the respondents that they have not given the year-wise vacancies in the reply-statement.

They refer only the OM dated 5.5.2003 and also the legal position for compassionate appointment.

g. I have come across a scheme for compassionate appointment, awarding relative merit points for selection drawn up by the Ministry of Defence in their O.M. 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 O.M. dated 5th May, 2003, non-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 Varma 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 & upto 10 years | : 04 |
| (iii) Over 10 and upto 15 yrs. | : 06 |
| (iv) Over 15 & upto 20 yrs. | : 08 |
| (v) Over 20 years | : 10 |

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.

9. I found that there is a lacuna in the impugned order inasmuch 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.

10. After careful consideration of the pleadings and the arguments of both the sides, as contended by the respondents in their reply statement, the case of the applicant has to be considered further one more time in accordance with the procedure of scheme



applicable for the relevant year and also O.M.dated 5.5.2003. Accordingly, I direct the respondents to consider the case of the applicant as observed supra.

10. With the above observation, the OA is disposed of. No order as to costs.

(G. Shanthappa)
Judicial Member

rkv

पृष्ठांकन सं. ओ/व्या.....जवलपुर, दि.....
प तिलिपि दाये विलः--

- (1) सर्विं, उमा उमाजलन्द बट एवं देवताल, जयलपुर
- (2) आखेदल श्री/मिस्ट्री/पु. देव कांतसल
- (3) प्रत्यर्थी श्री/मिस्ट्री/पु. देव कांतसल
- (4) वायपाल, फेराम, उमासुर वा प्रदेश

Asstt. Prof. Dr. D. S. Kharade

Forneus
21.3.06