

6)

22.02.2007

OA No. 534/2005 with MA 406/2005

Mr. Anupam Agarwal, Counsel for applicant.
Mr. Dinesh Chandra Sharma, Counsel for respondents.

Heard the learned counsel for the parties.

For the reasons dictated separately, the OA is dismissed.


(J.P. SHUKLA)
MEMBER (A)

AHQ

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

Jaipur, the 22nd day of February, 2007

ORIGINAL APPLICATION NO. 534/2005
With
MISC. APPLICATION NO. 406/2005

CORAM:

HON'BLE MR. J.P. SHUKLA, ADMINISTRATIVE MEMBER

Chhitar Mal Meena son of Late Shri Kajod Mal Meena aged about 33 years, resident of Gudha Bassi, Village & Tehsil Bassi, District Jaipur. Applicant's father expired as Chokidar, Jaipur City Division, Jaipur.

By Advocate: Mr. Anupam Agarwal

.....Applicant

Versus

1. Union of India through the Secretary to Department of Posts, Dak Bhawan, Sansad Marg, New Delhi.
2. The Chief Post Master General, Rajasthan Circle, Jaipur.

By Advocate: Mr. Dinesh Chandra Sharma

.....Respondents

ORDER (ORAL)

The applicant has filed this OA u/s 19 of the Administrative Tribunal's Act, thereby praying for the following reliefs:-

- "(i) The impugned order Annexure A/1 dated 9.10.2000 may kindly be quashed and set aside.
- (ii) The respondents should be directed to give appointment on compassionate ground by applying the circulars existing as on date when his first consideration was made alongwith the persons available on that date for such compassionate appointment.
- (iii) Any other relief with this learned Tribunal deems fit in the facts and circumstances of the case should also be granted."

2. In brief, the case of the applicant is that the father of the applicant, Late Shri Kajod Mal Meena, Ex- Chowkidar, expired on 07.06.1993 while in service. The applicant applied to the department for grant of compassionate appointment. His claim was rejected vide letter dated 13.01.1995. Against this rejection letter, the applicant preferred an OA

Anupam

No. 358/1995. This Hon'ble Tribunal vide its order dated 18.02.1997 directed the respondents to assess, evaluate and consider the case of the applicant in strict compliance with the instructions given in OM dated 30.06.1993 issued by the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel & Training) more particularly its para 4(3) and other relevant paras and communicate to the applicant its result by a speaking order giving detailed reasons within a period of three months from the date of receipt of a copy of the order, as it may involve seeking some information from the applicant. . However, the respondents vide order dated 02.05.1997 again rejected to give appointment to the applicant on compassionate grounds stating that there is an income of Rs.2500/- per annum from the unirrigated land to the applicant and both the sons of the deceased being married and major are earning Rs. 2000/- per month by doing labour. This order dated 02.05.1997 was again challenged by the applicant by filing OA No. 4/98 which was decided vide order dated 24.07.2000 with the direction to the respondents to reconsider the case of the applicant for appointment on compassionate grounds on any suitable post. His candidature for such compassionate appointment was again rejected vide letter dated 09.10.2000 (Annexure A/1). At this stage it will be useful to quote paras Nos. 5 & 6 of this order.

“5. The CSC has considered the case on 8.9.2000 and has opined that Hon'ble Supreme Court in the case of Hindustan Aeronautics Ltd. V/s Smt. Radhika Thirumalai dated 9.10.96 (Jt. 1996(9) SC-197) and Himachal Road Transport Corporation V/s Dinesh Kumar dated 7.5.96 (Jt.1996(5)SC-319) has held that the appointment on compassionate grounds can be made only if a vacancy is available for the purpose. The case is also not covered vide DO P&T OM No. 14014/37/96-Estt(D) dated 23.12.96 and also vide OM No. 14014/23/99-Estt(D) dated 3.12.99 that the appointment on compassionate grounds should be recommended if vacancies meant for the purpose will be available within a year and that too within the ceiling of 5% of vacancies falling under direct recruitment quota. Further to above there are only two members in the family of deceased. As the Govt. servant had expired on 7.6.93 both these dependents are already married and now major and capable to do any job etc. and, therefore, such of immediate relief does not exists at this stage. It is pertinent to state that 13 candidates approved for compassionate appointment as Group 'D'(TC) are on waiting list. First candidate awaiting absorption is since 1993 for want of vacancy, merely keeping the applicant on waiting list would not provide help to the family of deceased employee and will go against the spirit of the scheme. The condition of the family is also not indigent.

6. In view of the above and entire circumstances of the case there is no reason to disagree with the observations of the CSC. The appointment case of Shri Chhitar Mal Meena S/o late Shri Kajod Mal Meena under relaxation of normal recruitment rules on compassionate grounds as a result or reconsideration of above circumstances is hereby rejected by the undersigned.”

Om Prakash

Now the applicant challenged the said order dated 09.10.2000 before the Hon'ble High Court in DB Civil Writ Petition No. 6499/2005. The Hon'ble High Court vide order dated 18.08.2005 directed the applicant to approach this Tribunal. Hence this OA.

3. In the grounds, the applicant has urged that the impugned order dated 09.10.2000 (Annexure A/1) is not based on correct factual aspect of the matter and is also is not sustainable in the light of the DOPT circulars dated 23.12.1996 and 03.12.1999 as the father of the applicant expired in the year 1993 when these circulars were not in existence. The applicant further urged that the impugned order is also not sustainable for the reason that CSC while considering the candidature of the applicant had wrongly applied the judgement of the Hon'ble Apex Court and when the case of the applicant was considered for the first time, these judgements were not available at that time. The applicant further submitted that the impugned order is also not legal in as much as 13 candidates which were already on waiting list were only upto 1993. The applicant's case being also of the year 1993, placing him on the waiting list would bring him at the top of the said list and the first vacancy would go to him only.

4. The respondents have filed reply opposing the claim of the applicant. In their reply, the respondents have stated the case of the applicant was not one of hardship and the purpose of providing immediate assistance also did not exist in the case of the applicant. The claim of the applicant could not be accepted merely on the ground of sympathy disregarding the instructions and law on the subject. The respondents had considered the candidature of the applicant taking into account all the facts in consideration as well as availability of vacancy position and that too within the ceiling of 5% of vacancies falling under direct recruitment quota. The case of the applicant was comparatively not found more deserving and was therefore, rejected.

5. The applicant has also filed rejoinder reiterating the facts mentioned in the OA.

6. During the course of arguments, the learned counsel for the applicant argued that the respondents were adamant in not giving appointment to the applicant on compassionate grounds and they have also not reconsider the case of the applicant as directed by the Tribunal time & again in different OAs but they have simply reiterated that the applicant was not fit to be given appointment on compassionate grounds. He again reiterated that the Circulars of the DOPT dated 23.12.1996 and 03.12.1999 were

Omni

not in force when the case of the applicant for compassionate appointment was considered for the first time.

7. However, the learned counsel for the respondents argued that when the father of the applicant, Late Shri Kajod Mal Meena, expired in the year 1993, there were 13 candidates waiting for compassionate appointment before the applicant and the respondents have every time considered the case of the applicant sympathetically but unfortunately he was not found fit to be given appointment on compassionate grounds.

8. I have heard the learned counsel for the parties and have gone through the material placed on record. I found that the respondents have considered the case of the applicant three times as per the directions given by this Tribunal and have come to the conclusion that he was not fit to be given appointment on compassionate grounds. Hence the OA is liable to be dismissed which is accordingly dismissed with no order as to costs.

9. Since the OA filed by the applicant is dismissed, the MA No. 396/2005 for condonation of delay does not survives for consideration and is also accordingly dismissed.



(J.P. SHUKLA)
MEMBER (A)

AHQ