

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 5th day of September, 2008

ORIGINAL APPLICATION No.283/2006

CORAM:

HON'BLE MR. M.L.CHAUHAN, JUDICIAL MEMBER

Mahesh Kumar
s/o late Shri Kesari Lal,
r/o Ganeshpura Mohalla behind Nagadeo,
Attru, Tehsil Atru, Distt. Baran,
Aspirant for appointment on
Compassionate grounds.

..Applicant

(By Advocate: Shri C.B.Sharma)

Versus

1. Union of India
through its Secretary to the Govt. of India,
Department of Revenue,
Ministry of Finance,
Central Bureau of Narcotics,
North Block,
New Delhi.
2. Commissioner of Central Bureau of Narcotics,
19, Mal Road, Murar,
Gwalior
3. Dy. Narcotics Commissioner,
Central Bureau of Narcotics,
Mahaveer Nagar-I,
Jhalawar Road,
Kota.
4. Disctri Opium Officer,
Central Bureau of Narcotics,
Mahaveer Nagar-I,
Jhalawar Road,
Kota.

.. Respondents

(By Advocate: Ms. Kavita Bhati, proxy counsel to Shri Kunal Rawat)

O R D E R

The applicant has filed this OA thereby praying for the following reliefs:-

- (i) That the entire record relating to the case be called for and after perusing the same respondents may be directed to consider the case of the applicant and to give appointment on availability of vacancy by quashing letter dated 21/6/2006 (Annexure A/1) with the O.M. dated 5/5/2003 (Annexure A/7) with all consequential benefits.
- (ii) That the respondents be further directed to engage the applicant as casual worker, if the work is available with them, as allow between 1999 to 2003.
- (iii) Any other order, direction or relief may be passed in favour of the applicant which may be deemed fit, just and proper under the facts and circumstances of the case.
- (iv) That the costs of this application may be awarded."

2. Briefly stated, facts of the case are that father of the applicant while working as Sepoy under Opium Officer expired on 15.11.1996. At the time of death of father of the applicant the family consist of widow, two sons and three daughters. After death of the deceased, the widow was granted family pension of Rs. 2500/- p.m. besides other terminal benefits. The applicant made an application for grant of compassionate appointment and the said application was kept pending alongwith similar applications for consideration because at that time no vacancy was available with the respondent department. Although the

applicant has specifically stated that he was engaged as casual labour by the department as there was no post of Sepoy lying vacant with the department, however, the respondents have stated that applicant was engaged purely on casual basis as per requirement of work and not against regular post. Since appointment on compassionate grounds was not granted to the applicant, the applicant filed OA No.91/2003 before this Tribunal thereby praying that till appointment on compassionate grounds is not provided to the applicant, he be granted temporary status and also not to reduce wages of the applicant. The said OA was disposed of vide order dated 27.11.2003 whereby the prayer of the applicant for grant of temporary status was declined. Regarding alternative prayer of the applicant that he may be given compassionate appointment, this Tribunal after noticing the stand of the respondents in the reply affidavit whereby it was stated that case of the applicant for compassionate appoint is still under consideration and will be considered subject to availability of posts, this Tribunal disposed of the OA in the light of the averments made by the respondents holding that the respondent should consider case of the applicant for grant of compassionate appointment as per policy of the Government in his own turn. The judgment dated 27.11.2003 passed in earlier OA No.91/2003 has been placed on record by the applicant as Ann.A6. From the

material placed on record, it appears that case of the applicant for grant of compassionate appointment was considered in the year 2006 by the Committee constituted for the purpose pursuant to OM dated 5.5.2003 (Ann.A7) but he could not be offered appointment on compassionate grounds even after three years and accordingly the applicant was informed vide impugned letter dated 21.6.2006 (Ann.A1). It is this order which is under challenge before this Tribunal.

The grievance of the applicant is that denial of consideration for appointment on the ground that the matter is more than 3 years' old is erroneous, unjustified, unreasonable and arbitrary. It is further stated that the family is more indigent at present as the family pension has been reduced by 50% in the year 2003 and mother of the applicant is in receipt of family pension of Rs. 1275/- + DA per month. The applicant has also stated that provision of OM dated 5.5.2003 are against the provisions of the Constitution of India as every candidate has right of consideration and consideration cannot be denied on the ground of availability of vacancy.

3. The respondents have filed reply. The facts as stated above, have not been disputed by the respondents. However, the respondents in para 4.8 of the reply affidavit have categorically stated that case of the applicant was considered by the Committee

constituted for this purpose but the applicant could not be offered appointment on compassionate grounds even after 3 years and thus his case was finally closed and the applicant was informed vide letter dated 21.6.2006. According to the respondents, the maximum time a persons's name can be considered for offering appointment is 3 years, as such, compassionate appointment cannot be granted after a lapse of reasonable period and it is not a vested right which can be exercised in future. It was under these circumstances that case of the applicant was finally closed.

4. The applicant has filed rejoinder thereby reiterating that case of the applicant was never considered due to non-availability of the post of Sepoy. For that purpose, the applicant has placed reliance on Ann.A1 and A8. Alongwith rejoinder, the applicant has also placed on record, Govt. of India, Department of Personnel and Training OM dated 14.6.2006 whereby ceiling of 5% vacancy for compassionate appointment was modified which has to be calculated on the basis of total direct recruit vacancies of Group-C and D posts and not against 1/3 of total vacancies available for direct recruitment as was provision/policy prevalent prior to issuance of the notification dated 14.6.2006.

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5. I have heard the learned counsel for the parties and gone through the material placed on record.

6. The question whether case of the applicant was considered by the Committee before communicating the impugned order dated 21.6.2006 (Ann.A1) is not of much significance. Although the learned counsel for the applicant while drawing my attention to the letter dated 21.6.2006 (Ann.A1) has argued that from perusal of this communication it is evident that case of the applicant has been rejected solely on the ground that his representation/application can not be considered in the light of OM dated 5.5.2003, but on the contrary respondents have taken categorical and specific stand in the reply affidavit as can be seen from para 5 under the heading 'brief facts of the case' and also in para 1 and 4.8 of the main reply that case of the applicant was put up before the prescribed committee but the applicant could not be offered appointment on compassionate grounds even after 3 years and his case was finally closed and the applicant was informed accordingly.

7. The question which requires my consideration in this case is whether case of the applicant could have been kept pending indefinitely till post becomes available and whether OM dated 5.5.2003 is against the provisions of the Constitution of India as argued by

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the learned counsel for the applicant and further whether the applicant has got indefeasible right to consider his case for compassionate appointment. At this stage it will be useful to quote relevant portion of OM dated 5.5.2003 (Ann.A7). As can be seen from OM dated 5.5.2003 as per policy framed by the Government of India vide OM dated 9.10.98 and OM dated 3.12.1999 one year limit was prescribed for grant of compassionate appointment. The matter was considered by the appropriate authority and it was decided that period of one year especially when regular vacancy is not available, such policy require to be reviewed and the maximum time a person's name can be kept under consideration for offering compassionate appointment was enhanced to 3 years that too, only in deserving cases where the Committee certify that condition of the family is indigent. At this stage, it will be useful to quote para 3 of the aforesaid OM, which thus reads:

"3. The maximum time a person's name can be kept under consideration for offering Compassionate Appointment will be three years, subject to the condition that the prescribed Committee has reviewed and certified the penurious condition of the applicant at the end of the first and the second year. After three years, if Compassionate Appointment is not possible to be offered to the Applicant, his case will be finally closed, and will not be considered again."

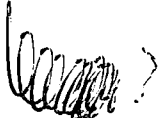
According to me, there is rationale in prescribing the time limit within which the case of

compassionate appointment has to be considered. The rationale behind the aforesaid provision is that the compassionate appointment which cannot be claimed as a matter of right and is violative of provisions contained under Article 14 and 16 of the Constitution of India has to be given in most deserving cases which requires immediate assistance on account of death of employee and where condition of the family is so indigent that members of the family are unable to survive but for immediate assistance. Thus, objective behind the scheme is that compassionate appointment cannot be granted in such cases where the family is able to survive for reasonable period and what should be the reasonable period has not been defined by the Government by issuing the aforesaid instructions. To the same effect is the view taken by the Hon'ble Apex Court in the case of Umesh Kumar Nagpal Vs. State of Haryana, JT 1994 (3) SC 515 whereby the Apex Court has held that compassionate appointment cannot be granted after a lapse of reasonable period and it is not a vested right which can be exercised at any time in future. Thus, viewing the matter in the light of OM dated 5.5.2003, I am of the view that the applicant has not made out a case for my interference. In this case father of the applicant died in the year 1996. The family has maintained to subsist for a period of one decade, as such, according to me, case of the

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applicant cannot be kept pending till the date when vacancy may become available in future.

8. For the foregoing reasons, there is no substance in the OA, which is accordingly dismissed with no order as to costs.


(M.L. CHAUHAN)
Judl. Member

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