

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDER SHEET

ORDERS OF THE TRIBUNAL


30.11.2006

OA 448/2006

Mr. Ishwar Tiwari, counsel for applicant.

Learned counsel for the applicant prays for adjournment.

Let the matter be listed on 9.1.2007.


(J.P. SHUKLA)
MEMBER (A)



(M.L. CHAUHAN)
MEMBER (J)


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OA 448/2006 to be MA 379/2006
9/1/2007 Mr. Ishwar Tiwari, Counsel for
applicant.

Heard the learned counsel for
the applicant.

For the reasons detailed separately,
the OA ^{as well as MA} is dismissed.


(J.P. Shukla)
M(A)


(M.L. Chauhan)
M(J)

N IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 9th day of January, 2006

ORIGINAL APPLICATION NO.448/2006
WITH
MISC. APPLICATION NO.339/2006

CORAM :

HON'BLE MR.M.L.CHAUHAN, JUDICIAL MEMBER
HON'BLE MR.J.P.SHUKLA, ADMINISITRATIVE MEMBER

Shailender Singh
S/o Late Shri Biri Singh,
R/o 29, Sitaram Colony,
Ram Nagar, Sodala,
Jaipur.

By Advocate : Shri Ishwar Tiwari

... Applicant

Versus

1. Union of India
Through Secretary,
Ministry of Defence,
New Delhi.
2. Chief Engineer (HQ),
Jaipur Zone Jaipur,
Power House Road, Bani Park,
Jaipur.
3. Commander Works Engineer,
Headquarters,
Jaipur.
4. Chief Dtmn. For Garrison Engineer,
Jaipur,
Khatipura Road,
Jaipur.

By Advocate : - - -

... Respondents

ORDER (ORAL)

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

12/1

- "i) That by an appropriate order or direction the impugned order dated 28.2.2003 (Ann.A/1) may kindly be quashed and set aside.
- ii) That the respondents may kindly be directed to consider the case of applicant for compassionate appointment within a reasonable time fixed by this Hon'ble Tribunal and to give appointment to the humble applicant from the date of making application with all consequential benefits."

2. Briefly stated, the facts of the case are that father of the applicant, Late Shri Biri Singh, who was working as Mate with respondent No.4, died on 2.6.2001 leaving behind the widow and two sons, though in this OA the applicant has pleaded that the family consists of the widow, two sons and one daughter. However, in the affidavit of the widow (Ann.A/4), in para-2, it has been specifically mentioned that in the family besides her there are two members namely; Shailendra Singh and Veerkant Singh and the widow has stated that Shailendra Singh may be given appointment in place of her husband as Shailendra Singh is fully dependent upon her. The case of the applicant was considered by the Committee and the same was rejected vide order dated 28.2.2003 (Ann.A/1). It is this order which is under challenge in this OA. Alongwith the OA, the applicant has also moved a Misc. Application (No.339/2006) praying for condonation of delay in the filing the present OA. The reason for condonation of delay given in the said MA is that after dismissal of the case on 28.2.2003 and after receiving copy of the judgement, opinion was given by the Advocate and notice for demand of justice was given to the respondents on 30.1.2005. Reply to the above notice was submitted by the respondents on 30.3.2006. It is on the basis of these averments,

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the applicant has sought condonation of delay in filing the present OA.

3. We have heard the learned counsel for the applicant at admission stage. We are of the view that the applicant has not made out any case for condonation of delay in terms of the provisions contained in Section-21 (3) of the Administrative Tribunals Act, 1985. The only reason given for approaching this Tribunal at belated stage is that the present OA is being filed on the basis of opinion given by the Advocate. According to us, this fact does not constitute sufficient cause. The applicant has not explained that in case they wanted to pursue the matter, why they did not immediately contact the Advocate for taking steps and why it took almost two years to give notice for demand of justice to the respondents. Thus, according to us, the present application is liable to be dismissed on this very ground and without going into the merit of the case.

4. Even otherwise also, the applicant has no case on merit, As can be seen from the impugned order (Ann.A/1) that the case of the applicant was considered alongwith other candidates and as per the merit position the applicant stands at S.No.21 and even the persons who were more deserving to the applicant could not be given appointment on compassionate ground due to non-availability of the vacancy. From the perusal of the impugned order, it is also clear that the case of the applicant was considered on four occasions after closing the same finally. At this stage, it will be relevant to quote para-4 to 6 of the impugned order (Ann.A/1), which thus read as under :

"4. According to the information available on record, the following is the position/status of the family of the deceased (MBO/Missing) government servant :-

(a) The death of the Government Servant occurred on 02 Jun 2001. His wife & two sons survive him. The deceased government servant's family received Rs.93,570/- as terminal benefit. At present they are in receipt of family pension @ Rs.1825/- per month plus dearness relief.

(b) Part of the terminal benefits received by the family may have been invested for meeting the future liabilities etc.

(c) The family has no liability of unmarried daughters.

5. The Board of Officers at this Headquarters after taking into account each aspect referred to above has considered your case along with other candidates. Your position stands at Sr. No.21, scoring 67 marks as per relative merit points. However, due to non-availability of vacancies, your case was not recommended by the BOO for appointment on compassionate ground. In view of this the competent authority is of the view that your case does not deserve employment assistance on compassionate grounds.

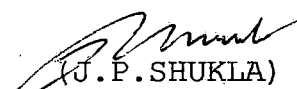
6. Therefore, after due circumspection and consideration in the light of the enclosed guidelines of DOP&T and various judgements of the Hon'ble Supreme Court and that the appointment on compassionate ground is not a matter of right and after a balanced, objective assessment of the totality of the circumstances of the case and non-availability of sufficient vacancy within 5% quota, low merit including the decision of Board of Officers at this Headquarters in Fourth and final look, the competent authority has finally rejected the employment assistance to Shri Shailender Singh s/o Late Shri Biri Singh, Mate, on the grounds and case finally closed."

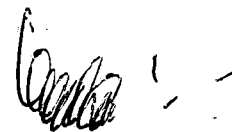
5. Thus, in view of the findings recorded by the Committee and the fact that while rejecting the case of the applicant the Board took into consideration the size of the family, amount of terminal benefits

and the amount of family pension etc. vis-à-vis the claim of the other candidates and the case of the applicant was not recommended by the Board of Officers for appointment of the applicant on compassionate ground. As such, we see no infirmity in the action taken by the Board while passing the impugned order (Ann.A/1).

6. Hon'ble the Supreme Court in number of decisions has held that appointment on compassionate ground is contrary to the provisions contained in Article-14 & 16 of the Constitution of India. Such appointment is exception to these provisions and it is only in deserving cases and where the vacancies are available that the appointment on compassionate ground can be given in most deserving cases where the family is in actual financial distress or more indigent in comparison to other similarly placed cases against the 5% quota of direct recruitment accruing within a year. The Apex Court has also repeatedly held that offering appointment on compassionate ground as a matter of course irrespective of the financial condition of the family of the deceased or medical retired government servant is legally impermissible.

7. Thus, in view of what has been stated above, we are of the view that the applicant has not made out a case even on merit. Accordingly, the OA as well as MA for condonation of delay are dismissed at admission stage. No order as to costs.


(J.P. SHUKLA)
MEMBER (A)


(M.L. CHAUHAN)
MEMBER (J)

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