

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 3rd day of August, 2010

Original Application No. 356/2009

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDL.)

Bhanwar Lal Mali
s/o late Shri Pokhar Lal Mali,
r/o Ghati, Post Doongari Kalan, Tehsil,
Malpura,
District Tonk.

.. Applicant

(BY Advocate: Shri Tanveer Ahmed)

Versus

1. Union of India
through Secretary,
Indian Council for Agriculture Research,
Krishi Bhawan,
New Delhi.
2. Director,
Central Sheep & Wool Research Institute,
Avika Nagar,
Malpura,
District Tonk.
(Rajasthan).

.... Respondents

(By Advocate: Shri V.S.Gurjar)

O R D E R (ORAL)

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



- (a) by an appropriate order or direction the respondent may kindly be ordered to consider the application of humble applicant for appointment on compassionate ground and accordingly looking to his pecuniary conditions he may be ordered to be appointed on a suitable post commensurate to his qualification.
- (b) Any other relief as the Hon'ble Tribunal may deem just and proper under the circumstances may be granted in favour of the applicant.

2. The grievance of the applicant in this case is that although cases of wards of persons who died subsequent to the death of father of the applicant were considered for appointment on compassionate grounds in the year 2007 whereas case of the applicant was not considered by the Committee despite the fact that his case was genuine and more deserving.

3. Notice of this application was given to the respondents. In the reply, the respondents have stated that the Committee constituted by the Director for screening the applications of the candidates seeking appointment met on 1.10.2007 and after deliberation and perusal of relevant documents and other record, it was decided that the latest two claimants on the issue may be considered for appointment on compassionate grounds in view of the financial condition/feasibility. Thus, according to the respondents, out of two latest cases, appointment to one candidate was given based on financial and economic condition of the family members.

4. When the matter was listed on 20.7.2010, this Tribunal directed the respondents to produce the relevant record which prevailed with the Committee to consider candidature of the latest

two claimants in preference to the applicant. The respondents have produced the record. From the record, it is evident that when the Committee met on 1.10.2007 in all 20 applications of dependents of the deceased employees were taken into consideration. Name of the applicant find mention at Sl.No.16. The date of death of father of the applicant has been shown as 16.7.2005 and against remarks column, it has been mentioned that the matter is under consideration (Sl.No.79). The Committee instead of considering cases of deserving candidates adopted its own criteria in flagrant violation of the instructions issued by the Government and only took up latest two cases for consideration without considering cases of other claimants. At this stage, I wish to reproduce the finding recorded by the Committee on 1.10.2007, which is in the following terms:-

"The committee constituted by the Director who screen the applications of candidates to make appointment on compassionate ground met on 01.10.2007 at 3.00 PM after deliberation and perusal of relevant documents and it was agreed that the latest two claimants on the issue may be screen-out for financial condition/feasibility. It was also decided that Dr. Dhirendra Singh, Prin. Scientist and Chairman of the Committee and Dr. F.A.Khan, Sr. Scientist and Welfare Officer will visit the both the parties for spot evaluation of the financial condition of the parties. They will submit their report at the earliest possible.

Sd/-
Member

Sd/-
Member

Sd/-
Member

Sd/-
Member

Sd/-
Chairman"

5. The findings given by the Committee was also approved by the Director and thereafter Chairman of the Committee and Welfare

Officer visited houses of two persons namely Shri Pramod Kumar Sharma s/o late Shri Mool Chand Sharma and Shri Rajendra Singh Rajawat s/o late Shri Prithvi Singh in order to spot evaluation of the financial condition/crisis of the family and thereafter recommended name of one Shri Rajendra Singh Rajawat s/o late Shri Prithvi Singh to the post of Supporting Staff Grade-I (SSG-I) under 5% quota for appointment on compassionate grounds. It may be stated that two candidates whose names were considered by the Committee, in their cases the death took place on 6.2.2006 and 18.2.2007 whereas in the case of the applicant date of death is 16.7.2005. I fail to understand on what basis this pick and choose method has been adopted by the Committee de-hors the Government instructions and the rules. When the Committee has considered case of Shri Pramod Kumar Sharma whose father died on 6.2.2006, I see no reason why name of the applicant was excluded where the death took place about one year prior to the death of father of Shri Pramod Kumar Sharma i.e. 16.7.2005 in the same year. It may be stated that in the case of persons mentioned at SL.No. 1 to 14, the death of Govt. employee took place in the year 1997 to 2003, prior to issuance of OM dated 5.5.2003. The policy of the Government as issued vide Ministry of Personnel, PG and Pensions OM No. 14014/19/2002-Estt. (D) dated 5th May, 2003 prescribes time limit for making compassionate appointment. It has been mentioned in that OM that in case a regular vacancy is not available within the prescribed period of one year and within the prescribed ceiling of 5% of direct recruit quota in the first year, the prescribed Committee

may review such cases to evaluate financial condition of the family to arrive at a decision as to whether a particular case warrants extension for one more year for compassionate appointment subject to availability of clear vacancy within 5% quota. The said instruction further stipulates that if on scrutiny a case is considered to be deserving, name of such a person can be continued for consideration for one more year and the maximum limit a person can be considered is three years. In the instant matter, case of the applicant has not been considered in the light of the DOPT OM dated 5th May, 2003. It was incumbent upon the Committee to evaluate the financial condition of the family in respect of such persons/wards where maximum time of 3 years has not lapsed. Admittedly, in the instant case, case of the applicant was never considered by the respondents and financial condition of the applicant was not evaluated at all.

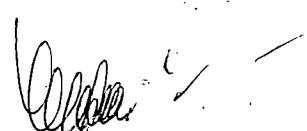
6. The applicant has categorically stated in Par-8 of the OA that father of the applicant has left behind his wife and five children including the applicant who are in distress and living under severe hardship. It is also admitted fact that case of the applicant for appointment on compassionate ground was never considered by the Committee keeping in view the financial condition of the family and also taking into account the assets and liability, earning members, size of the family and age of minor children, which was warranted under the scheme as formulated by the Department of Personnel and Training vide OM dated 9.10.1998. The decision taken by the Committee to consider only two persons is arbitrary and not

in consonance with the object sought to be achieved and the guidelines issued vide OM dated 9.10.1998 read with OM dated 5.5.2003 whereby maximum time limit during which matter can be considered is three years. Thus, the decision taken by the respondents that cases of only latest two claimants will be considered for the purpose of compassionate appointment is not only arbitrary but also show complete non application of mind, if viewed in the light of the policy decision i.e. OM dated 9.10.1998 read with OM dated 5.5.2003. It was incumbent upon the authorities to consider the cases of atleast those persons where maximum time limit of three years has not expired and to evaluate the financial condition of the family of each candidate and it was only thereafter recommendation regarding appointment on compassionate ground could have been made in respect of deserving candidates. Unless the authority concerned apply its mind on the basis of the policy decision dated 9.10.1998 and 5.5.2003 and consider the cases of eligible persons for appointment, contrary decision taken de-hors the aforesaid policy decision has to be held arbitrary and cannot be legally sustained. Thus, I am of the firm view that application of mind on the basis of the policy decision is essential for making of a valid order. Having not done so, the decision so taken by the respondent only to consider two latest cases without evaluating financial condition of eligible persons is arbitrary and not sustainable.

7. The next question which requires my consideration is whether the person who has been given appointment on compassionate

ground on the post of SSG-I in the year 2007 on the basis of arbitrary decision is required to be quashed and direction should be given to the respondent to consider case of the applicant in the light of the policy decision dated 9.10.1998 and evaluate financial condition of the applicant whether it is a deserving case for granting appointment on compassionate grounds. I am of the view that it will not serve any useful purpose to quash appointment of Shri Rajendra Singh Rajawat on account of fault on the part of the respondents and especially when he is not party before this Tribunal. I am of the view that ends of justice will be met if direction is given to the respondents to consider case of the applicant against next future vacancy as one time measure without taking into consideration the time limit prescribed vide OM dated 5.5.2003. Such consideration will be made in accordance with the guidelines issued by the DOPT in the light of the scheme for compassionate appointment as applicable and in accordance with law.

8. With these observations, the OA stands disposed of with no order as to costs.


(M.L.CHAUHAN)
Judl. Member

R/