

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

Date of Order: 03.01.2014

OA No. 446/2012

Mr. S.K. Singodiya, counsel for applicant.
None present for respondents.

Learned counsel for the applicant submits that he does not wish to file rejoinder. Thus, pleadings are complete.

Learned counsel for the applicant further submits that this case is covered by the order dated 27th July, 2012 passed by the Principal Bench of this Tribunal in OA No. 4340/2011 (Jitender Kumar & Ors. Vs. Union of India & Ors.).

Put up the matter on 10.01.2014 for hearing.

Anil Kumar
(ANIL KUMAR)
ADMINISTRATIVE MEMBER

Kumawat

10.01.2014

OA No. 446/2012

Mr. S.K. Singodiya, Counsel for applicant.
Mr. Mukesh Aggarwal, Counsel for respondents.

Heard learned Counsel for the parties.
O.A. is disposed of by a separate order - on the separate sheets for the reasons recorded therein.

Anil Kumar
[Anil Kumar]
Member(A)

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 446/2012

DATE OF ORDER: 10th January, 2014

CORAM

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

Vicky Kumar S/o Ex No. 14562865N late Hav Rampal of 188 FWC (7012 EME BN), R/o Sefraguwar, Tehsil Khetri, Dist. Jhunjhunu, Pin - 332716.

...Applicant

Mr. S.K. Singodia, counsel for applicant.

VERSUS

1. The Union of India through Secretary, Department of Defence, South Block, New Delhi - 110011.
2. The Directorate General of EME (Civ) Master General of Ord. Branch Integrated HQ of MOD (Army) DHQ PO, New Delhi - 110 105.
3. The Supdtg. Engr. (SG) Jt. Dir. EME (Civ.) for DG EME Branch Integrated HQ of MOD (Army) DHQ PO, New Delhi - 110 105.
4. The Commanding Officer, Directorate General of EME (Civ.) Master General of Ord. Branch Integrated HQ of MOD (Army) DHQ PO, New Delhi - 110 105.

...Respondents

Mr. Mukesh Agarwal, counsel for respondents.

ORDER

The applicant has filed this Original Application praying for the following reliefs: -

"That the applicant prayed that the impugned orders dated 25.07.2011, 06.09.2011, 21.09.2011 and 30.09.2011 deserves to be declared illegal and may kindly be quashed and set aside and further the respondents be directed to give appointment to the applicant on compassionate ground on the suitable post with all consequential benefits."

2. The brief facts of the case, as stated by the learned counsel for the applicant, are that father of the applicant was

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serving with the respondents since 10.01.1984. Unfortunately, he died while in service on 10.12.2007. He left behind her wife, two sons and two daughters. The mother of the applicant applied for giving appointment to the applicant (elder son) on compassionate grounds.

3. Learned counsel for the applicant further submitted that the applicant has been informed vide letter dated 30th September, 2011 (Annexure A/1) that his case for appointment on compassionate grounds has been rejected on the ground that his case was not found suitable in accordance with the provisions contained in Government of India order dated 09.10.1988, 05.05.2003, 09.03.2001 and 22.01.2010. The respondents have not allotted points properly to the applicant. Before allocating the points, the correct facts have not been gathered by the Boards of Officers.

4. Learned counsel for the applicant submitted that on the instructions of the respondents, the applicant has also attended so many rallies for the said purpose. The amount of terminal benefits is very meager for the survival of the family of the deceased Govt. servant. The financial position of the family of the applicant is very poor; therefore, the applicant is entitled to get appointment on compassionate grounds. The rejection of the claim of the applicant by the respondents is against the provisions of law.

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5. Learned counsel for the applicant also submitted that the controversy involved in the present O.A. is covered by the order dated 27th July, 2012 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in OA No. 4340/2011 (Jitender Kumar & Anr. Vs. Union of India & Ors.). Therefore, in view of the order dated 27th July, 2012 in OA No. 4340/2011 (Jitender Kumar & Anr. Vs. Union of India & Ors.), the respondents be directed to reconsider the case of the applicant for appointment on compassionate grounds.

6. On the other hand, learned counsel for the respondents submitted that the case of the applicant for appointment on compassionate grounds has already been considered by the Board of Officers in four consecutive Boards in accordance with the relevant OM/instructions issued by the Government of India regarding compassionate appointment but as he did not come in the relative merit against the ceiling of vacancies i.e. 5% quota available for compassionate appointment, therefore, the case of the applicant for appointment on compassionate grounds has been finally rejected vide order dated 30th September, 2011 (Annexure A/1).

7. Learned counsel for the respondents further submitted that compassionate appointment cannot be claimed as a matter of right beyond the provisions of scheme framed by the Government of India in this regard.

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8. Learned counsel for the respondents also submitted that the Board of Officers in four consecutive Boards considered 75, 80, 81 & 83 applications for compassionate appointment as per 100 points scale issued by the Government of India and in the merit list, the applicant was at Sl. No. 59, 68, 72 & 79 and obtained 57, 56, 47 & 46 per cent, respectively, whereas total number of vacancies within the ceiling of 5% meant for the purpose were 03, 04, 05 & 07 in the respective Board. Thus, the applicant did not find place in the relative merit and, hence, his application for appointment on compassionate grounds has been rightly rejected.

9. Learned counsel for the respondents further argued that the order dated 27th July, 2012 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in OA No. 4340/2011 (Jitender Kumar & Anr. Vs. Union of India & Ors.), as referred to by the learned counsel for the applicant, is not applicable in the facts and circumstances of the present case. In the O.A. before the CAT, PB, New Delhi, the case of the applicant was rejected by the respondents in terms of OM dated 05.05.2003, which provided for a maximum time limit for consideration of appointment on compassionate grounds, which was three years. However, that OM was quashed by the Hon'ble High Court of Allahabad and this fact was not taken into consideration by the respondents while deciding the case of the applicant for appointment on compassionate grounds in that OA. However, in the present OA, the case of the applicant has been considered on merit four times by the respondents and his case

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has been rejected because he secured relatively low merit. His case has not been rejected on the ground of limitation. Therefore, the ratio decided by the CAT, PB, New Delhi in the case of Jitender Kumar & Anr. Vs. Union of India & Ors. (supra) is not applicable in the present OA.

10. Heard learned counsel for the parties and perused the documents available on record and the case law referred to by the learned counsel for the applicant.

11. Learned counsel for the applicant argued that the respondents be directed to reconsider the case of the applicant because the financial condition of the family of the applicant is very poor. They have no source of income other than the pension.

12. I have carefully perused the order dated 30th September, 2011 (Annexure A/1). Relevant paras 5 & 6 of the order dated 30th September, 2011 (Annexure A/1) are quoted below: -

"5. AND WHEREAS, the case of compassionate appointment in your respect was considered by the Board of Officers in four consecutive boards i.e. QE Mar 2010-XXXXII, Jun 2010-XXXXIV, Sep 2010-XXXXIV & Dec 2010 XXXXV held on 18 to 20 Apr, 2011, 24 to 27 May, 2011, 21 to 24 Jun and 19 to 22 Jul 2011 respectively in accordance with the provisions contained in Govt. of India, DOP&T OM No. 14014/6/94-Estt (D) dated 09 Oct. 1998, 14014/19/2002-Estt(D) dt 05 May 2003 and Govt of India MoD ID No. 19(4)/824-99/1998-D(Lab) dated 09 Mar 2001 and MoD/D(Lab) OM No. 19(3/2009/D(Lab) dt 22 Jan 10 as amended from time to time. Merit of the cases are decided by the Board of Offrs by allotting points to the applicants based on various attributes like family pensions, terminal benefits, movable/immovable property, monthly

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income, No. of dependents, No. of minor children, No. of unmarried daughters and left over service.

6. AND WHEREAS, out of 75, 80, 81 & 83 applicants considered in the respective Board of Offrs, you were placed at serial Nos. 59, 68, 72 & 79 and obtained 57, 56, 47 & 46 percent respectively as per 100 points scale for these parameters, a total number of vacancies within the ceiling of 5% meant for the purpose was 03, 04, 05 & 07 in the respective board."

13. From the perusal of this order dated 30th September, 2011 (Annexure A/1), it is clear that the case of the applicant has been considered by the respondents on four occasions and as stated in para 6 of the said order, the applicant's comparative merit was low and, therefore, he could not be given appointment on compassionate grounds.

14. I agree with the averments made by the learned counsel for the respondents that appointment on compassionate grounds is not a legal right. The applicant was considered by the Board of Officers in four consecutive boards and on all the four occasions, his merit was comparatively low. The number of vacancies were limited, therefore, he could not be given appointment on compassionate grounds.

15. With regard to the submissions of the learned counsel for the applicant that this OA is covered by the order dated 27th July, 2012 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in OA No. 4340/2011 (Jitender Kumar & Anr. Vs. Union of India & Ors.), I am in agreement with the averments made by the learned counsel for the respondents. I have carefully perused the order of the CAT, PB, New Delhi

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dated 27th July, 2012 in OA No. 4340/2011 (Jitender Kumar & Anr. Vs. Union of India & Ors.). In the said OA before CAT, PB, New Delhi, the case of the applicant was rejected by the respondents on the ground of limitation in terms of OM dated 05.05.2003, which was already quashed by the Hon'ble High Court of Allahabad. Therefore, in that OA, the Hon'ble CAT, PB, New Delhi directed the respondents to reconsider the case of the applicant, but in the present OA, the case of the applicant has not been rejected on the ground of limitation, but the case of the applicant has been examined by the Board of Officers in four consecutive boards. The applicant has been adjudged on the basis of 100 points scale. He secured comparatively low merit; therefore, more deserving candidates were given appointment on compassionate grounds. Thus, I do not find any illegality or infirmity in the order dated 30th September, 2011 (Annexure A/1).

16. Consequently, the present Original Application being devoid of merit is dismissed with no order as to costs.



(ANIL KUMAR)
ADMINISTRATIVE MEMBER

kumawat