

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDER SHEET

ORDERS OF THE TRIBUNAL

13.08.2013

OA No. 492/2012

None present for the parties.

Since the Advocates are abstaining from work, the case be listed on 21.08.2013. In the meantime, the applicant may file rejoinder.

Anil Kumar
(Anil Kumar)
Member (A)

ahq

21.08.2013

OA No. 492/2012

None present for applicants.
Mr. D. C. Sharma, Counsel for respondents.

Heard.

O. A is disposed of by a
Separate order on the separate-sheet
for the reasons recorded therein.

Anil Kumar
[Anil Kumar]
Member (A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR.

ORIGINAL APPLICATION NO. 492/2012

Jaipur, the 21st day of August, 2013

CORAM :

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

1. Parmeshwar Meena son of Late Shri C.B. Meena (Ex., STA) (DO), Office of Dy. Director General, Geological Survey of India, Western Region, 15-16, Jhalana Dungri, Jaipur, aged 35 years, resident of Village Choru, Tehsil Uniara, District Tonk (Rajasthan).
2. Viendra Kumar son of Late Shri Dineshwar Prasad, aged 28 years, resident of F-8, Vigyan Nagar Extension, Village Mahal, Jagatpura, Jaipur.

... Applicants

(By Advocate: None)

Versus

1. Union of India through its Secretary to the Government, Department of Mines, Shastri Bhawan, New Delhi **(Deleted vide court order dated 25.07.2013)**.
2. The Director, G.S.I, HQ, JLN Road, Kolkatta (W.B.).
3. Dy. Director General, Geological Survey of India, Western Region, 15-16, Jhalana Dungri, Jaipur (Rajasthan).

... Respondents

(By Advocate: Mr. D.C. Sharma)

ORDER (ORAL)

The applicants have filed this OA claiming for the following reliefs:-

- (a) by an appropriate order or direction the impugned order dated 18.5.2012 (Annexure A/1) may kindly be quashed and set aside and further the respondents be directed to give appointment to the applicants on compassionate grounds as they have been found eligible and suitable.
- (b) by an appropriate order or direction the respondents be directed to implement and execute the recommendations of the appointment committee (Annexure A/4) and the applicants may

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- be issued appointments as mentioned in their recruitment application;
- (c) any other relief which this Hon'ble Tribunal deem fit and proper in the facts and circumstances of the case may also be awarded to the applicants.

2. This is the second round of litigation. Earlier the applicant had filed an OA No. 211/2012 in which the respondents were directed to decide the representation of the applicant for appointment on compassionate grounds vide order dated 26.04.2012 (Annexure A/2). In compliance of this order, the respondents have passed the order dated 18.05.2012 (Annexure A/1). The applicants being aggrieved from this order have filed the present OA. The respondents while passing the order dated 18.05.2012 (Annexure A/1) in the last Para have stated that "All cases of compassionate appointment including that of Parmeshwar Meena S/o Late C.B. Meena are under process and final decision will be communicated to Shri Parmeshwar Meena on receipt from the CHQ G.S.I. Kolkatta. This is in compliance of the directions passed by the Hon'ble CAT in OA No. 211/2012.

3. Brief facts of the case are that the father of the applicants died while in service. Thereafter, the applicants applied for appointment on compassionate grounds. The case of the applicants was considered by the Committee for appointment on compassionate grounds on 22.02.2011 (Annexure A/4). This Committee had recommended the case of the applicants for compassionate appointment but the applicants have not been given appointment so far.

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4. It has also been mentioned in the OA that the appointment of the applicants were with-held due to some complaint. That complaint has also been inquired into and has been found to be base-less (Annexure A/8).

5. That the respondents are taking the excuse that the vacancies had been reduced and, therefore, they are not able to issue appointment to the applicants. The applicants have mentioned in the application that the vacancy position as on 09.02.2011 for the year 2011-12 is 217 and even then the recommendations have not been implemented and as on date 414 vacancies exists. It has been mentioned in the OA that the applicants had been selected on the vacancies of 2010 and they will be governed by the rules ~~are~~ that are applicable at that point of time and by no stretch of imagination, the subsequent rules or vacancies can come in the way of the applicants so as to adversely affect their legitimate rights of offer of appointment. The vacancy position has been given at Annexure A/9.

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6. It has been stated by the applicant in the OA that for all other posts including the post of UDC, the old vacancies and old rules are still continuing as on date and only to oust the applicants, the illegal rider of vacancy has been erroneously saddled upon the applicants.

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7. It has been stated in the OA that the respondents have 41 vacancies still pending for want of recruitment even from the so called reduced 217 vacancies. Therefore, the applicants can be offered appointments against these 41 vacancies (Annexure A/10).

8. The applicants have further mentioned in the OA that the order dated 18.05.2012 (Annexure A/1), which is a rejection speaking order against the applicants, is baseless, misconceived and illegal. Therefore, it should be quashed and set aside and the respondents be directed to give appointment to the applicants on compassionate grounds.

9. On the other hand, the respondents in their reply have stated that the applicants were eligible for appointment. Therefore, the Committee for appointment on compassionate grounds had recommended their case. But due to reduction in revised sanctioned strength of Group 'C' and Group 'D' staff, it is not possible to accommodate any candidate for appointment on compassionate grounds.

10. In their reply, the respondents have further stated that the report of the above committee was received on 16.12.2011 but at this stage sanctioned strength of Group 'C' and Group 'D' has been drastically reduced by DG, GSI, Kolkatta. So 5% quota for compassionate appointment of available Group 'C' and 'D' (Direct recruitment) posts were equally reduced and

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presently WR office is not in a position to accommodate any candidate on compassionate grounds. However, clarification in this regard has been sought from the CHQ, Kolkatta, which is still awaited.

11. The respondents have mentioned about the vacancy position from 31.12.2006 to 31.10.2010 at Annexure R/1 and after receiving revised sanctioned strength of Group 'C' and Group 'D' from CHQ, vacancy position has been stated at Annexure R/2. The respondents have also stated that since there are no vacancies at present, therefore, the case of the applicants could not be considered.

12. No one was present on behalf of the applicants. The learned counsel for the respondents was present. Therefore, the case is being decided on the basis of the facts and material available on record and the pleadings of the applicants.

13. It is not disputed between the parties that both the applicants were found eligible for appointment on compassionate grounds by the Committee for appointment on compassionate grounds in their meeting held on 22.02.2011. It was not made clear by the learned counsel for the respondents that when the names of the applicants were recommended by the Committee for appointment on compassionate ground, why they were not offered appointment. One of the grounds taken by the respondents is that there was complaint against the

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recommendations of the Committee for appointment on compassionate grounds. From the perusal of the report of the Inquiry Committee (Annexure A/8), it appears that the complaint was only against one Shri Jugal Kishore and not against the applicants. Therefore, the case of other candidates who were recommended by the Committee could have been processed but the same was not done by the respondents. The Inquiry Committee has found the complaint baseless.

14. Learned counsel for the respondents argued that clarification in this regard has been sought from CHQ, Kolkatta, which is still awaited. A perusal of speaking order dated 18.05.2012 (Annexure A/1) also clearly states that all cases of compassionate appointment including that of Shri Parmeshwar Meena son of Late C.B. Meena are under process and final decision will be communicated to Parmeshwar Meena on receipt from the CHQ, GSI, Kolkatta. Thus, it is clear that no final decision has been taken by the respondents so far.

15. With regard to the appointment on compassionate grounds viz.a.viz to the applicants, the learned counsel for the respondents showed me a letter dated 14.02.2012, written by the Geological Survey of India, Western Region to the Director General, Geological Survey of India, Kolkatta. In this letter, it has been requested to convey the decision of CHQ as to whether vacancies identified for compassionate appointment on the basis of earlier years & panel is prepared by the

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Compassionate Appointment Committee, can still be filled. The decision of the Director General is still awaited on this letter.

16. This letter was written by the Geological Survey of India, Western Region on 14.02.2012. It is unfortunate that inspite of one year and 6 months , the office of the Director General has not sent any reply to its Western Region, Jaipur. The Western Region has also not followed up the case. The learned counsel for the respondents has not showed me any reminder sent to the Director General, Geological Survey of India, Kolkatta office.

17. The DOPT vide OM No. 14014/6/94-Estt.(D) dated 09.10.1998 issued a Scheme for compassionate appointment under the Central Government. Clause 16(d) provides that compassionate appointment should not be denied or delayed merely on the ground that there is reorganization in the Ministry/Department/office. The post should be made available to the person concerned if there is a vacancy meant for compassionate appointment and he or she is found eligible and suitable under the scheme.

18. Further under clause 16(f) of OM dated 09.10.1998, compassionate appointment will have precedence over absorption of surplus employees and regularization of daily wage/casual workers with/without temporary status.

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19. Similar provision is there in the consolidated instructions issued by the DOPT vide OM No. 14014/02/2012-Estt.(D) dated 16.01.2013 with regard to compassionate appointment. Clause 18(d) and 18(f) of these instructions are relevant.

20. Moreover Hon'ble Supreme Court in the case of **Balbir Kaur & Another vs. Steel Authority of India Ltd. & Others**, 2000 SCC (L&S) 767, has held in Para No 19 that the concept of social justice is the yardstick to the justice administration system or the legal justice and as Roscoe Pound pointed out the great virtue of law is in its adaptability and flexibility and thus it would be otherwise an obligation for the law courts also to apply the law depending upon the situation since the law is made for the society and whatever is beneficial for the society, the endeavour of the law court would be to administer justice having due regard in that direction.

Based on the concept of social justice, the Hon'ble Supreme Court directed the Steel Authority of India to consider the case of compassionate appointment in so far as the appellants were concerned.

21. Similar view was taken by the Hon'ble Supreme Court in the case of **Director General of Posts & Others vs. K. Chandrashekar Rao**, 2013 (1) All India Service Law Journal Page 218. Moreover, in Para No. 19 of the judgment, the Hon'ble Supreme Court has held that:-

"19. The above clauses clearly show that the Scheme of 1998 for compassionate appointment is a welfare activity

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carried out by the Government of India. It is a benevolent act on the part of the State. Keeping in view the dire economic and social crisis to which the family of a deceased Government employee in Class 'C' or 'D' is exposed, the Government through this Scheme offers a helping hand. This is a voluntary act of generosity on the part of the State. The generosity once extended in the form of exercise of a subordinate legislative power by formulating the said Scheme, will have the force of law. It is enforceable to its limited extent and within its prescribed parameters....."

22. Therefore, in the interest of justice, the respondent no. 2, the Director, Geological Survey of India, Kolkatta, (correct nomenclature being Director General) is directed to examine whether the vacancy for compassionate appointment existed on the date of the meeting of the committee for compassionate appointment and to decide this issue by passing a reasoned & speaking order according to the provisions of law within a period of two month from the date of receipt of a copy of this order.

23. Director General, Geological Survey of India is also directed to consider the provisions of Clause 18(d) of the DOPT OM No. 14014/02/2012-Estt. (D) dated 16.01.2013 while deciding this issue.

24. While deciding this issue, the Director General, Geological Survey of India will also consider the law laid down by the Hon'ble Supreme Court in the cases of Balbir Kaur & Another vs. Steel Authority of India & Others (Supra) and

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Director General of Posts & Others vs. K. Chandrashekhara Rao
(Supra).

25. It is made clear that the applicant would not be denied appointment on compassionate grounds merely on the ground that this case has been pending for more than three years with the respondents. Clause 8 of DOPT OM No. 14014/02/2012-Estt.(D) dated 16.01.2013 provides that any application for compassionate appointment is to be considered without any time limit and the decision taken on merit in each case.

26. The applicants will be at liberty to redress their grievances by filing a substantive OA if any adverse order is passed against them by the respondents.

27. Since the OA is being decided ex-parte, the Registry is directed to send a certified copy of this order to the applicants by Registered AD/Speed Post.

28. With these observations and directions, the OA is disposed of with no order as to costs.

Anil Kumar
(Anil Kumar)
Member (A)

AHQ