

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...
**O.A. No.060/00374/2014
(Reserved on 26.11.2014)**

Chandigarh, this the 28th day of November, 2014

Mandeep S/o Late Sh. Vasdev, age 21 years, r/o #88, Village Hallomajra, Chandigarh UT.

...APPLICANT

BY ADVOCATE: SHRI PARDEEP KUMAR

VERSUS

1. Union of India through through Secretary, Department of Home Affairs, Ministry of Home, New Delhi, Sansad Marg, New Delhi.
2. Chandigarh Administration through Secretary, Home Affairs, UT Secretariat, Sector 9, UT Chandigarh.
3. The Chief Engineer, Union Territory, Deluxe Building, Sector 9, Chandigarh.
4. Executive Engineer, C.P. Division No. 2(R), Sector 9, Chandigarh.
5. Regional Employment Officer, Regional Employment Exchange, Sector 17, new DC office, UT Chandigarh.

...RESPONDENTS

BY ADVOCATE: SH. ARVIND MOUDGIL

ORDER

HON'BLE MRS. RAJWANT SANDHU, MEMBER(A):-

1. This OA has been filed under Section 19 of the Administrative Tribunals Act, 1985, seeking quashing of the

As —

impugned orders dated 06.02.2012 and 14.03.2014 vide which the case of the applicant for appointment on compassionate grounds was not considered.

2. The background of the matter is that the father of the applicant joined the services of respondents No. 3 & 4 as Driver on 11.3.1983 at Chandigarh and his services were regularized. On 01.06.1996, the father of the applicant was transferred to the Municipal Corporation Chandigarh where he served till 28.2.2007. On 28.2.2007, the father of the applicant was called back by the Chandigarh Administration vide letter dated 27.2.2007 (Annexure A-1). Thereafter, he served the Chandigarh Administration till his death on 06.06.2008. The applicant requested for appointment on compassionate grounds vide letter dated 17.11.2011 (Annexure A-3), but he was informed vide letter dated 06.02.2012 that his case had been closed because of the three years cap policy of the Central Government for considering the cases for appointment on compassionate grounds. Aggrieved by this order, the applicant approached the CAT Chandigarh Bench in the OA No. 1230-CH-12 and the same was disposed of vide order dated 30.01.2013 with direction to the respondents for re-considering the case of the

M

72

applicant and it had specifically been stated at that time by counsel for the respondents that there would be no legal impediment on the part of the competent authority for undertaking fresh consideration of the case of the applicant (Annexure A-6).

3. Meanwhile, by Notification No.29/2/94-IH(7)-2012 dated 06.09.2012 (Annexure A-8) issued by the Government of India and forwarded by Superintendent for Advisor to the Administrator, Chandigarh Administation, notification No. 14014/19/2002-Estt.(D) dated 05.05.2003 has been withdrawn by the Government of India and hence the applicant became eligible for the appointment on compassionate grounds. Thereafter, the matter was considered by the Committee on Compassionate Appointments held on 14.03.2014 (Proceedings at Annexure A-1/B) wherein it had been recorded as follows:-

“Recommendations of the committee should be placed before the competent authority for a decision. If the competent authority disagrees with the committee’s recommendation, the case may be referred to the next higher authority for a decision.”

In view of the above i.e. Para 3 & 4 and Para 12(d) of the Scheme, the members of the committee are required to follow the instructions of D.O.P. issued from time to time and the provisions of the scheme to consider the cases of appointment on compassionate ground. The committee finds itself unable to decide the applicant who have been deleted from the Seniority List as no

As —

such provisions exists in the Scheme as well as instructions of DOP to decide the deleted applicant from the Seniority List. Accordingly, all the cases as mentioned from Serial No. 12 to 16 have already been considered, decided and deleted as per prevailing instructions of DOP. Hence, the deleted cases are beyond the purview of the Committee.”

Since the claim of the applicant for appointment on compassionate grounds was not considered by the respondent, hence this OA.

4. In the written statement filed on behalf of the respondents, it has been stated that all the pensionary benefits were paid as per Rules to the family of the deceased Sh. Vasudev, the father of the applicant. The cases for compassionate appointments pending for more than three years from the date of death of the deceased government employees are required to be deleted and the name of the applicant has been rightly deleted from the list as conveyed to the applicant vide order dated 06.02.2012. On the directions of this Court vide judgement and order dated 30.01.2013, the respondents reconsidered the case of the applicant and rejected the same vide order dated 14.3.2014. The Department of Personnel, Chandigarh Administration vide letter No. 29.12.94-IH(7)-2012/17038 dated 06.09.2012 conveyed the instructions of Government of India letter dated 26.07.2012 vide which three years time limit for appointment on

As —

compassionate ground was withdrawn. However, the DOP vide U.O. No. 1568 dated 24.01.2013 (Annexure R-1) has clarified that withdrawal so made is effective from prospective date which is reproduced below:-

“A.D. is informed that nowhere it has been mentioned in the OM No. 14014/3/2011-Estt.(D) dated 26.07.2012 of the Government of India that the O.M. is effective retrospectively. In other words, when no specific date has been indicated, in that case the applicability of the order/instruction is always from the date of issue of the same. In the instant case since the Government of India has not indicated the date from which these instructions are to be effective, it means that these have prospective effect and not retrospective effect.”

As such, the cases for compassionate appointments pending for more than three years from the date of death of the deceased government employee are required to be deleted and the name of the applicant has been rightly deleted from the list.

5. Rejoinder has been filed on behalf of the applicant stating that respondents are misinterpreting the Scheme of Compassionate Appointment circulated by the DOPT vide OM No. 14014/3/2011-Estt (D) dated 26.7.2012. Other departments of the Central Government such as Controller General of Defence Accounts had implemented the said policy vide Circular No. AN/VIII/19001/Circular dated 11.12.2012 (Annexure A-9). In para No. (ii) and (iii), it has been

As —

clearly mentioned that the cases which have already been considered as per OM No. 05.05.2003 and closed for want of vacancy can be considered again if the dependent of the deceased government servant prefer fresh application for compassionate appointment. Besides, the Court had directed the respondents vide order dated 30.1.2013 for considering the application for appointment on compassionate grounds as a fresh case and not as a deleted case, but the respondents had failed to comply with the directions of the Tribunal.

6. Arguments advanced by the learned counsel for the parties were heard. Learned counsel for the applicant stressed that the case of the applicant for appointment on compassionate appointment had never been considered on merits. The respondents had initially taken the shelter of the Circular dated 2003 imposing the three year limit for consideration and thereafter were taking the ground that the Committee could not decide the cases of such applicants whose names had been deleted from the seniority list as no such provision existed in the Scheme. Learned counsel for the respondents reiterated the content of the written statement.

7. I have carefully perused the pleadings of the parties, arguments advanced by the learned counsel as well as the content of

As —

the DOPT circular dated 26.7.2012. Paras 2, 3 and 4 of the Circular read as follows:-

“2. This Department's OM No. 14014/6/1994-Estt.(D) dated 09.10.1998 provided that Ministries/Departments can consider requests for compassionate appointment even where the death or retirement on medical grounds of a Government servant took place long back, say five years or so. While considering such belated requests, it was however, to be kept in view that the concept of compassionate appointment is largely related to the need for immediate assistance to the family of the Government servant in order to relieve it from economic distress. The very fact that the family has been able to manage somehow all these years should normally be taken as adequate proof that the family had some dependable means of subsistence. Therefore, examination of such cases calls for a great deal of circumspection. The decision to make appointment on compassionate grounds in such cases was to be taken only at the level of the Secretary of the Department/Ministry concerned.

3. Subsequently vide this Department's OM No. 14014/19/2002-Estt.(D) dated 5th May, 2003 a time limit of three years time was prescribed for considering cases of compassionate appointment. Keeping in view the Hon'ble High Court Allahabad judgement dated 07.05.2010 in Civil Misc. Writ Petition No. 13102 of 2010, the issue has been re-examined in consultation with Ministry of Law. It has been decided to withdraw the instructions contained in the OM dated 05.05.2003.

4. The cases of compassionate appointment may be regulated in terms of instructions issued vide OM dated 09.10.1998 as amended from time to time. The onus of examining the penurious condition of the dependent family will rest with the authority making compassionate appointment.”

Ne —

8. From a plain reading of the Circular dated 26.7.2012, it is clear that the claims of the applicants for appointment on compassionate grounds have to be considered on merit keeping in view the instructions issued vide OM dated 9.10.1988 as amended from time to time. The plea taken by the respondents in the written statement that since the name of the applicant had been deleted from the seniority list and the Committee cannot decide the cases of such applicants as there is no provision in the Scheme in this regard is wholly misconceived. The applicant is entitled to the consideration of his claim on merit and the respondents are directed to complete such consideration within three months of a certified copy of this order being served upon them.

9. The OA is allowed with the above observations. No costs.

Rajwant Sandhu
(RAJWANT SANDHU)
MEMBER(A)

Dated: November 28, 2014.

ND*