

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD.**

OA No.766/2016

This the 24th day of October, 2018

Vijay S/o. Jayantilal Vaghela
Aged : 29 years, Male
Occupation : NIL,
Residing at : Digvijay Plot No.39,
Samatvas, Jamnagar:361001. Applicant

(By Advocate : Shri Hasit H.Joshi)

VERSUS

1. Union of India,
Through Secretary
Ministry of Defence,
New Delhi 110 001.

***(Respondent Nos.2 & 3 are deleted as per Order of
the Tribunal dated 03.11.2017 passed in
MANo.227/2017)***

2. Chief Engineer (AF)
Office of the Chief Engineer (AF)
Camp Hanuman
Shahibaug, Airport Road,
Ahmedabad.

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3. Garrison Engineers (AF)
Military Engineer Service (MES)
Air Force Station
Jamnagar – 361 003.
4. 17 P& SU, Air Force
Komal Nagar,
Khodiyar Colony,
Jamnagar 361 006.
5. H.Q. Swap IAF
(Command PC)
Gandhinagar, Ahmedabad 380 061.... Respondents

(By Advocate : Ms. R.R.Patel)

ORDER – ORAL

Per : Hon’ble Shri M.C.Verma, Member (J)

Some glaring facts, which need to be noted at threshold are that present one is the second OA by applicant, on issue of his appointment on compassionate ground. Applicant firstly preferred OA No.14/2016 wherein his grievances were that his applicant dated 05.6.2009 for compassionate ground has not been considered by respondent of the OA. There were only three respondents in O.A. No.14/2016, namely, Union of India, Chief Engineer (AF) and Garrison Engineer (AF). OA No.14/2016 was disposed

of, on 13.01.2016, at notice stage without issuance of notice to respondents of that OA, directing the respondents to consider the application of the applicant, dated 05.6.2009.

2. Instant OA has been filed on 13/01/17 and initially numbers of respondents arrayed were five. Respondent Nos.4 &5 of instant OA were not in arena of respondents in OA No.14/2016. Chief Engineer (AF) and Garrison Engineer (AF), respondent of OA No. 14/2016 was arrayed as respondent Nos.2 & 3. After issuance of notice said respondent Nos.2 & 3 filed MA no. 227/17 for deletion of their name from arena of respondent on the ground that applicant was not their employee, he after order in OA No.14/2016 gave threat of contempt of court, they filed Review application of order of OA No.14/2016, RA No.47/2016 and during hearing of said RA counsel for applicant made statement that applicant has filed another (OA No.766/2016) and therefore, he is withdrawing lawyer notice of contempt of court dated 21.5.2016. That thereafter RA No.47/2016 was disposed of on 23.01.2017. In aforesaid background, MA No. 227/2017 for deletion of name of respondent Nos.2 & 3 of instant OA (OA No.766/2016), from arena of respondent was allowed and their name, as respondents

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were dropped. Presently it is only original respondents No. 1, 4 & 5 who are in arena of respondents and are in contest in the matter.

3. Applicant, mutates mutandis has pleaded in this OA that his father was the employee of the respondents and was working as Safaiwala and after serving so for thirty-six years, his father while still was in service of the respondents expired on 06.3.2008. That after death of his father, he gave application to respondents, on 05.6.2009, for appointment on compassionate ground. Applicant pleaded further that even after frequent visit to the office of the respondents, nothing was heard from the respondents and then he made representation, dated 03.7.2015, but the same gone in vain. That he preferred OA No.14/2016 and it was disposed of, on 13.01.2016, at notice stage directing the respondents to consider the application of the applicant, dated 05.6.2009 but still no decision on his application has been taken and hence is the OA.

4. Respondents No. 1, 4 & 5 who are in arena of respondents and are in contest in the matter filed their detailed reply, they pleaded that father of applicant was in service of AF as

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Safaiwala since 12.01.1972, and he died on 06.3.2008 while was in service of the respondents, they, however, denied of giving of application by applicant on 05.6.2009 and categorically pleaded that the applicant did not apply in 2009 and application of him, bearing date 17.4.2012 was received in the office of the respondents in April, 2012, it was considered in year 2012, 2013 and lastly in year 2014, but each time applicant could not find place in merit list as more indigent persons than him were there and vacancies were small in number and each time he was communicated the outcome of his application. It has been pleaded by respondents that applicant, suppressing material facts has preferred the OA and it may be dismissed. Respondents has placed on record copy of death DCRG pertaining to deceased employee, order of family pension having details of deceased employee and of other documents filed by applicant /applicant's family for family pension as Annexure R-1 to Annexure R-8 whereas copy of letter dated 30/4/12, vide which application of applicant for compassionate appointment, preferred in year 2012 was forwarded to Command Headquarter (having enclosed with it copy of applicant dated 17.4.2012) as Annexure R-9 and copy of letters, dated 24.8.2012, 26.6.2013 and 04.7.2014) whereby applicant

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was communicated the development relating to his application(having enclosed List of candidates which were considered for compassionate appointment in year 2013-14 and showing their position in merit) as Annexure R-10.

5. Have heard the learned counsels, representing the contesting parties. Learned counsel, Shri H.H. Joshi, who appeared for applicant urged that it is not disputed by the respondents that applicant is the son of employee of respondents and said employee has rendered 36 years of continuous service and died on 06.3.2008 while was in service of the respondents. He further urged further that that the applicant applied for compassionate appointment in June, 2009 but his application was not considered and therefore, applicant knocked the door of the Tribunal, vide OA No.14/2016 and said OA was disposed off at notice stage itself with direction to the Respondents of OA to consider the application dated 05.6.2009 of the applicant, as soon as possible, to take decision thereon but not later than three months from date of receipt of copy of that order and to communicate the decision taken to the applicant. He urged that when no decision was taken by the respondents, present OA was

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preferred. He requested to allow the OA and to direct the Respondents to appoint the applicant on compassionate ground.

6. Learned counsel, Ms. Prachi Upadhyay, who has appeared for Respondent Nos.1, 4 & 5 submits that conduct of the applicant since beginning is dubious one, the applicant did not apply in 2009 and only his application dated 17.4.2012 was received, in the month of April, 2012 in the office of the respondents, it was considered in 2012, 2013 and lastly in 2014, but in each year applicant could not find place in merit list as more indigent persons than him were there and vacancies were small in number. That each time he was communicated the outcome of his application. Ld. Counsel inviting the attention to Annexures R-9 & R-10 contended that with ulterior motive & suppressing material facts applicant preferred OA No.14/2016 before the Tribunal and respondent Nos.4 & 5 were not made party in OA No.14/2016. Learned counsel clarified that in OA No.14/2016, there were only three respondents and in addition to Union of India, the other two respondents were Chief Engineer (AF) and Garrison Engineer (AF), who initially were also made as respondent in instant OA as well as respondent Nos.2 & 3 but subsequently they were deleted and presently it is only Original

Respondent No.1. Respondent Nos.4 & 5 of OA who are in array of the respondents. As far as outcome of the OA No. 14/2016 relates, it is submitted by learned counsel that this OA was disposed off at notice stage and in that OA, directions were given to the respondents of that OA to consider the application of the applicant dated 05.6.2009, applicant gave threat of Contempt Proceeding to respondents of that OA, the father of the applicant was not the employee of the respondent Nos.2 & 3 of OA No.14/2016 and ultimately said respondents filed RA No.47/2016 and at the time of hearing of said RA statement was made by the counsel for the applicant that applicant has filed another (OA No.766/2016) and therefore and he is withdrawing lawyer notice dated 21.5.2016. That thereafter RA No.47/2016 was disposed off on 23.01.2017.

7. Learned counsel also added that present respondents have categorically has pleaded in their reply that no application was received in year 2009 and the application was received in year 2012 have duly been considered and when applicant was not found place in merit, he was communicated accordingly. Learned counsel urged that to fortify the said averment made in the reply, documents have also been annexed with the reply

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which reflects that the application was received by respondents on 17.2.2014, it was duly forwarded for consideration and same was considered and merit list of all prospective candidate for compassionate appointment was prepared. The merit list of all such candidates who were considered in 2013-14 has also been annexed with the reply. She urged that prayer in the OA is for direction to the respondents to consider the application of the applicant and in view of the categorical pleading, which has not been rebutted, application has been considered and has been disposed off, the instant OA has lost its sanctity and has become infructuous.

8. Learned counsel for applicant, at this stage contended that applicant never received any communication from the respondents regarding consideration of his application nor any decision taken by respondents on his application was ever communicated to him and for the first time he came to know about the same upon receiving copy of reply filed by the respondents. He took contention that situation in between 2009 and 2012 and therefore the decision of years 2012, 2013 and of 2014 may not be correct. Learned counsel for respondents

assailed the correctness of the statement that applicant was not informed again drew attention towards letter Annexure R-9 &10.

9. Considered the submission. Pleading of applicant in OA centred around the contention that application of respondent of year 2009 was not considered. Respondent has denied of receiving any application in year 2009. No clinching material by applicant to establish that any application was preferred by him to respondent Nos. 4 or 5 in year 2009 could be adduced. Further present one is the second OA by applicant, on issue of his appointment on compassionate ground. Applicant firstly preferred OA No.14/2016. Respondent Nos.4 & 5 of instant OA were not in arena of respondents in OA No.14/2016. Had any application has been given to them in that year, they ought to have been arrayed as respondent in OA No.14/2016.

10. Respondents has pleaded that application dated 17.4.2012 only was received, it was considered in 2012, 2013 and lastly in 2014, but each year applicant could not find place in merit list as more indigent persons than him were there and vacancies were small in number and each time he was communicated the outcome of his application. Copy of letter dated 30.4.2012, vide

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which application of applicant for compassionate appointment, preferred in year 2012 was forwarded to Command Headquarter (having enclosed with it copy of applicant dated 17.4.2012 and copy of letters, dated 24.8.2012, 26.6.2013 and 04.7.2014) whereby applicant was communicated the development relating to his application (having enclosed List of candidates which were considered for compassionate appointment in year 2013-14 & showing their position in merit) has been produced on record by respondents as Annexure R- 9 &10 . Applicant has not disputed genuineness of these documents much less seriously

11. Learned counsel for applicant has also contended that applicant never received any communication, from respondents regarding consideration or decision on his application nor any decision was ever communicated to him and he came to know about the same, for the first time upon receiving copy of reply filed by the respondents. Even if it is assumed to be correct, the applicant at least came to know about the fate of his application when he received the copy of reply and at that stage, if he was not aware already, it was needed on the part of the applicant to take necessary steps to challenge the correctness of Order of respondents that he was not found place in merit but he did

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nothing. This OA, in totality of fact has become infructuous and needs to be dismissed on this aspect as well for being devoid of merit and accordingly is dismissed. However, the applicant if intend and is advised to agitate the correctness of decision taken by respondents, he may agitate the same, before appropriate forum, provided that intended fresh proceedings is otherwise permissible under law and in that eventuality Order of dismissal of instant OA will not come in the way nor would operate as bar.

(M.C.Verma)
Member (J)

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