

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD

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Orders reserved on : 24.1.2018

Orders pronounced on : 8.2.2018

Hon'ble Mr. Justice Dinesh Gupta, Member(J)

O. A. No. 330/01149/2013

Smt. Zareena Khan aged about 50 years w/o Late Mohd. Afaq Khan resident of S-2/49-B, Dithori Mohal Ardali Bazaar Cantt. Varanasi.

..... Applicant

By Advocate: Sri Swamber Lal

Versus

1. Union of India, through Defence Secretary, Ministry of Defence, Govt. of India, South Block, New Delhi -110011.
2. Director General Ordnance Services (OS-8C), Army Headquarters, DHQ PO, New Delhi -110011.
3. Commandant, Central Ordnance Depot, Chheeki, Allahabad.  
..... Respondents

By Advocate : Shri D. S. Shukla

O R D E R

By Hon'ble Mr. Justice Dinesh Gupta, Member (J)

The Applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs: -

- i) To issue a writ, order or direction in the nature of certiorari to quash the impugned order dated 6 Jul 2010 (Annexure A-1 to the compilation No. 1) passed by respondent No. 3.
  - ii) To issue, a writ, order or direction in the nature of mandamus directing the respondents to approve the case of applicant for appointment against a Group C post with the respondents under the provisions of scheme for which her case was considered and appointment order be issued to her also.
  - iii) To issue another writ, order or direction in favour of the applicant as deem fit and proper in the circumstances of the case.
  - iv) Award the cost of application in favour of the applicant.
2. The brief facts emerging from the O.A. are that the applicant's husband Late Mohd. Afaq Khan while serving in COD Chheeki as Mazdoor died on 14.1.2003. Applicant submitted an application dated 7.5.2004 for employment with the respondents under harness rules. The applicant was granted family pension @ Rs. 1275/- per month.
- 2.1 Respondents asked the applicant for submission of several documents and in pursuance of the same applicant submitted all the required documents. Applicant was fully qualified for Group C post for which case of the applicant was considered by the Board of Officers. The case of applicant was considered third time by Board of Officers on 30.3.2010 and she was allotted 55 points. The information was given to the applicant by order dated 6.7.2010 by which claim of applicant was rejected.
- 2.2 Vide letter dated 25.5.2013, the applicant was provided the information under RTI Act 2005 in reply to the letter dated 13.5.2013 enclosing a copy of order dated 6.7.2010 through which it was informed that case of applicant has been considered three times and the case has been closed finally. There is no provision for consideration of the applicant's case for fourth time.
3. Notices were issued to the respondents who in turn filed the Counter reply through which it is stated that as per Integrated headquarter of MOD (Army), New Delhi Circular dated 8.6.1989, issued for compassionate appointment, after death of a Govt. employee/medically boarded out Govt. servant, a set of application form

'Part A' is called for from the dependent of deceased/medically boarded out Govt. servant and on receipt of the same, the same is placed before a Board of Officers held yearly at Integrated Headquarter of Ministry of Defence (Army) New Delhi for consideration for employment in relaxation of normal rules, against 5% vacancies of total wastage which have occurred due to superannuation, death, medically boarded out Govt. employees released by Screening Committee, Ministry of Defence. As a large number of application forms in comparison to limited number of vacancies are received, a merit list is prepared by the Board of officers showing the relative hardship of deceased/medically boarded out Govt. servant as per norms laid down in Ministry of Defence ID dated 9.1.2001. This includes size of family, minor children, unmarried daughters, monthly income, residual service of the deceased employee/ medically boarded out govt. employee, terminal benefits paid to the family members of the deceased and movable/immovable properties of the family with latest market value. The top meritorious candidates who are most in need are selected and provided employment. Remaining applications are rejected and again considered up to a maximum of 3 chances. After the third rejection, the case is finally rejected in terms of Integrated Headquarter of Ministry of Defence (Army) New Delhi circular dated 8.6.1989 and revised circular dated 30.7.1999, 27.7.2000 and Ministry of Defence ID dated 9.1.2001.

3.1 The case of applicant was considered by the Board of officers on 28.4.2006 but the applicant could not be selected. The case of applicant was again placed before the Board of Offices on 17/18-1-2008 for second occasion and again she could not be selected. The case of applicant was again placed before the Board of officers on 30.3.2010 for third and final time but she again could not be selected. Since as per existing rules, the case of the applicant was considered three times and rejected due to low in the merit list, as such her case for compassionate appointment stands rejected finally and closed. Accordingly, a speaking order containing all the facts was issued on 6.7.2010 which has been challenged by the applicant in this O.A.

4. Rejoinder reply is filed by the applicant through which he has reiterated the facts as stated in the O.A. and denied the contents of the counter reply.

5. Heard the learned counsel for the applicant Sri Swamber Lal and learned counsel for respondents Sri D.S. Shukla.

6. The only contention of the applicant's counsel is that the candidature of the applicant for compassionate appointment was rejected by the respondents only the on ground that since the case of the applicant was considered three times as per old O.M. dated 5.5.2003 of DOP&T.

7. The counsel for respondents submitted that the case of the applicant was considered three times at prevailing norms and there is no illegality in the impugned order passed by the respondents and the O.A. has no force.

8. I am unable to accept the contentions raised by the learned counsel for respondents.

9. It is admitted fact that the aforesaid O.M. dated 5.5.2003 has now been withdrawn vide O.M. dated 26.7.2012 issued by the DOP&T.

10. In the case of Hari Ram Vs. Food Corporation of India and others reported in (2009) 3 UPLBEC 2212, Hon'ble High Court has observed that scheme of compassionate appointment has to be made on human and sympathetic consideration. The instructions contained in O.M. issued vide DOP&T O.M. No. F.14104/19/2002-Estt (D) dated 5.5.2003 fixing time limit of three years for offering compassionate appointment was declared irrational, arbitrary and violative of Article 14 and 16 of Constitution of India.

11. This Tribunal in the case of Manoj Kumar Vs. Union of India and others (O.A. No. 1622/2010 decided on 28.1.2014) has already quashed the impugned order and directed the respondents to reconsider the case of the applicant ignoring the limitation of number of chances an applicant can be considered and in the light of O.M. dated 26.7.2012 issued by the DOP&T. It is also observed that the order must contain the details such as number of vacancies in the year/years in which applicant's case was considered, names of the candidates who were considered and their relative merit in the selection process.

12. After considering the facts and circumstances of the case as well as observation of the Hon'ble Court and this Tribunal and also considering the new O.M. dated 26.7.2012 issued by the DOP&T, order dated 6.7.2010 is liable to be set aside. Accordingly, the O.A. is allowed and the order dated 6.7.2010 is quashed and

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respondents are directed to reconsider the case of the applicant for appointment on compassionate ground on merit along with other candidates in the light of O.M. dated 26.7.2012 issued by the DOP&T ignoring the limitation of number of chances an applicant can be considered and in the light of O.M. dated 26.7.2012 issued by the DOP&T. It is also observed that the order must contain the details such as number of vacancies in the year/years in which applicant's case was considered, names of the candidates who were considered and their relative merit in the selection process. No order as to costs.

(Justice Dinesh Gupta)  
Member (J)  
HLS/-