

**Central Administrative Tribunal
Principal Bench**

OA No.758/2016

New Delhi, this the 26th day of October, 2017

Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Ms. Nita Chowdhury, Member (A)

Sh. Rohtash, Designation - Trainee

Age – 48 yrs,

S/o. Late Sh. Harbajan

R/o. House No. A-1/84,

East Gokal Pur,

Delhi – 110 094.

...Applicant

(By Advocate : Shri Vishal Chaudhary)

Versus

1. Indian Council of Agricultural Research

Through its

Secretary (DARE) & Director General (ICAR)

Krishi Bhavan, New Delhi-110 001.

2. ICAR-Central Institute of Fisheries Technology

Through its

Senior Administrative Officer

CIFT Junction, Willingdon Island,

Matasyapuri,

P.O. – Cochin-682 029, Kerala, India.

3. Veraval Research Centre of CIFT,

Through its

Scientist Incharge

Matsya Bhawan,

Bhidiya, Veraval, Gujarat.

...Respondents

(By Advocate : Shri Gagan Mathur)

ORDER (ORAL)

Mr. V. Ajay Kumar, Member (J) :-

Heard both sides.

2. The applicant's father died in harness while working as Group 'D' employee in the respondents, Central Institute of Fisheries Technology and on making a representation seeking compassionate appointment, the respondents vide Memorandum dated 13.07.2010, following the recommendations of the Screening Committee for compassionate appointment, had engaged the applicant as a trainee, subject to certain terms and conditions. Admittedly, as per the Office Memorandum issued by the Ministry of Personnel & Training, DOP&T, a person appointed as a trainee on compassionate appointment is required to acquire minimum qualification i.e. Matriculation within five years from the date of his appointment. Though opportunity was given to the applicant, he failed to acquire the same within the said period of five years. As a result, the respondents after following due procedure terminated the services of the applicant vide impugned Memorandum dated 09.07.2015.

3. The learned counsel appearing for the applicant would submit that the applicant having lost his father all of a sudden and due to his family problems could not acquire the qualification within the prescribed time, however, he acquired the said requisite qualification and passed the Secondary School Examination vide Annexure-P/1 (Annexure to the rejoinder) on 09.06.2016.

4. Shri Gagan Mathur, learned counsel appearing for the respondents submits that there is no illegality or irregularity in the action of the respondents as they have done everything in accordance with rules and since the applicant admittedly failed to acquire essential qualification, within the prescribed period of five years, his services were rightly terminated by issuing the impugned order.

5. O.M. dated 11.12.2009 of the DOP&T reads as under :-

The modification of the existing Scheme for Compassionate Appointment has been considered in the light of the recommendation of the 6th CPC as contained in para 2.2.9 and 2.2.10 of its Report. Accordingly, in partial modification of the Scheme for Compassionate Appointment issued by this Department vide O.M.No.14014/6/94-Estt.(D) dated 9th October, 1998, as amended from time to time, it has been decided in consultation with the Department of Expenditure that for appointment on compassionate grounds, in exceptional circumstances Government may consider recruiting persons not immediately meeting the minimum educational standards. Government may engage them as trainees who will be given the regular pay bands and grade pay only on acquiring the minimum qualification prescribed under the recruitment rules. The emoluments of these trainees, during the period of their training and before they are absorbed in the Government as employees, will be governed by the minimum of the - 1S pay band of Rs. 4440-7440 without any grade pay. In addition, they will be granted all applicable Allowances, like Dearness Allowances, House Rent Allowance and Transport Allowance at

the admissible rates. The same shall be calculated on the minimum of - 1S pay band without any grade pay. The period spent in the - 1S pay band by the future recruits will not be counted as service for any purpose as their regular service will start only after they are placed in the pay band PB-1 of Rs.5200-20200 along with grade pay of Rs.1800.

2. The above decision may be brought to the notice of all concerned for information, guidance and necessary action.”

6. Relevant paragraph of O.M. dated 03.04.2012 of the DOP&T reads as under :-

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S. No	Point of Reference/ Doubt	Clarification
2.	What will be the maximum time period allowed for a person appointed as 'Trainee' to acquire minimum education qualification.	A person appointed as a 'Trainee' on compassionate grounds has to acquire minimum educational qualifications in 5 years.

7. As per the above OMs, a ward/legal heir of a deceased employee, though not possessing the minimum qualification, can be appointed on compassionate grounds, in exceptional circumstances, in 1S Pay Band of Rs.4440-7440 without any Grade Pay. After they acquire the minimum qualification, they will be placed in the Pay Band PB-1 of Rs.5200-20200/- along with grade

pay of Rs.1800. The period spent in the 1S Pay Band will not be counted as service for any purpose. However, a person appointed as such in 1S Pay Band, shall have to acquire the minimum qualification within 5 years. The appointment on compassionate grounds, is an exception to the rule of regular recruitment as per rules. It is not in dispute that the condition of the applicant and his family, in view of the sudden death of the sole bread winner, deserves compassionate appointment. That is why the respondents appointed him in the year 2010. Though the applicant could not acquire the minimum qualification, within time, but possesses the same as on today. Even as per the above referred OMs, on which the respondents placed reliance, provides for appointment in regular Pay Band after acquisition of minimum qualification. Hence, we are of the considered view that this is a fit case where respondents are required to consider appointment of the applicant in the regular Pay Band, by condoning the delay in acquiring the minimum qualification.

8. In these peculiar circumstances and in view of acquiring of the requisite qualification by the applicant, we dispose of the OA by permitting the applicant to make appropriate fresh representation seeking compassionate appointment by duly enclosing the certificates of the essential qualification within four weeks from the date of receipt of a certified copy of this order and on receipt of the

same, the respondents may consider the case of the applicant for fresh appointment on compassionate grounds sympathetically, in the regular Pay Band, as per rules, within 12 weeks therefrom. No costs.

(Nita Chowdhury)
Member (A)

(V. Ajay Kumar)
Member (J)

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