

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A No. 1539/2014

New Delhi this the 12th day of May, 2017

HON'BLE MR. P.K. BASU, MEMBER (A)

Ruksana Makwa

W/o Late Shri Mohd. Umar Ismail Makwa, Mate (FGM)

r/o House No. 22-G 8/1,

Room No.8, Ratiya Marg, Sangam Vihar,

New Delhi.

.. Applicant

(By Advocate: Shri Lalit Kumar)

Versus

1. Military Engineering Services,
Through Engineer-in-Chief,
Integrated HQ of MoD (Army)
Kashmir House, Rajaji Marg,
New Delhi-110011.

2. Ministry of Defence,
Head Office,
104, South Block,
Government of India,
New Delhi-110001.

.. Respondents

(By Advocate : Dr. Ch. Shamsuddin Khan)

ORDER (ORAL)

The applicant is the wife of Late Shri Mohd. Umar Ismail, who was working as Mate (FGM), Garrison Engineer (AF) at Tughlakabad, New Delhi. He expired on 13.09.2009 due to illness. Soon thereafter, the applicant requested the respondent - Garrison Engineer to give her employment on compassionate grounds.

2. The applicant received a letter dated 28.12.2010, the contents of which are reproduced below:

- “1. Reference your application dated 10 Dec. 2010.
2. Your case has been considered for compassionate appointment as per policy/instructions on the same for the QE Dec 2009, Mar 2010, Jun 2010 and Sep 2010 for Maz, Chow and Peon as per choice received from you, but appointment could not be offered due to non availability of vacancies.
3. Your case has been closed after 4th consideration and final speaking order issued to you by Chief Engineer (AF) WAC Palam letter No.11031/SO/59/E1B dated 09 Dec 2010.
4. We sympathize with you, but after due consideration of your case in the light of guidelines and policies laid down by the Government, we are not in a position to offer appointment due to the reasons explained above”.

According to this letter, the applicant could not be offered appointment due to non-availability of vacancies.

3. The applicant received another letter dated 26.07.2012, again expressing regret that she could not be appointed on compassionate ground after consideration in the Board of Officers held during the quarters ending December 2009, March 2010, June 2010, September 2010 and June 2011 as no vacancy was available during the above quarters. It is further stated that on receipt of vacancies for appointment on compassionate ground for the year 2009-10, 2010-11 and 2011-12, her case was reopened and considered for appointment on compassionate ground in 2009-10, then in 2010-11 and again in 2011-12 and the applicant was informed that due

to non-availability of sufficient vacancies and being low in merit, her name could not be approved for appointment on compassionate ground. She was further informed through this letter that her case is finally closed and will not be considered again as the case is more than three years old.

4. In this O.A., the applicant has challenged this letter dated 26.07.2012 and prayed as follows:

- “A) That the Hon’ble Tribunal may graciously be pleased to set direct the Respondent to consider the representation of the Petitioner and grant her employment for the post of Mazdoor/Chowkidar/Peon or any other suitable post that the Respondent considers fit under the facts and circumstances of the Petitioner’s case.
- B) Any other relief that this Hon’ble Tribunal may deem fit and proper in the facts and circumstances of the case”.

5. The grounds on which such prayer is made are the following:

(i) In para 4.14 of the O.A., the applicant has mentioned that 7 persons, who had obtained 35, 37, 38, 45 (2 persons), 47 and 55 marks, were given appointment on compassionate ground after relaxation of temporary educational qualification, whereas the applicant was denied compassionate appointment though she had obtained 60 marks out of 100.

Learned counsel for the applicant states that in reply to this para, the respondents have not made even a whisper on this

contention of the applicant that 7 persons, who had obtained less marks than her, have been appointed by relaxing educational standard. Reply to paras 4.14 to 4.17 is quoted below:

“Paras 4.14 to 4.17: That the contents of the corresponding paras, except those being matter of record and/or for want of knowledge, are wrong misleading and misconceived and hence vehemently denied. The case of compassionate appointment in respect of applicant herein was considered by the Board of Officers in four consecutive boards, i.e., QE Dec 2009, Mar 2010, Jun 2010, Sep 2010 and Jun 2011 respectively during the consecutive yearly Board of Officers for the year in 2009-10, 2010-11 and in 2011-12 for the post of Maz, Chow and Peon in accordance with the provisions contained in Govt. of India, DOP&T OM No.14014/6/94-Estt(D) dated 09 Oct 1998, Govt. of India and MOD ID No. 19(4)/824-99/1998-D(Lab) dated 09 Mar 2001 and MoD/D (Lab) OM No. 19(3)/2009/D(Lab) dated 22 Jan 2010 as amended from time to time. Merit of the cases is decided by the Board of Officers by allotting points to the applicants based on various attributes like family pensions, terminal benefits, movable/immovable property, monthly income, No. of dependents, No. of minor children, No. of unmarried daughters and left over service. The Board of Officers considered the case of the applicant taking all the above mentioned aspects into account and came to the conclusion that under the circumstances, due to non-availability of sufficient vacancies and being low in merit, the name of the applicant could not be approved for appointment on compassionate grounds in this case and therefore rejected the application of the applicant on its merits and non-availability of sufficient vacancies as per the guidelines/instructions issued by Government of India on this subject and the applicant was apprised of the same through office letter No. 30522/Comp Appt/221/E-1C(1) dated 28 Dec 2010. It is submitted here that after considering the name of the applicant for three consecutive yearly Board of Officers for the year in 2009-10, 2010-11 and in 2011-12, the same was finally closed as per Govt. policy in vogue and cannot be considered again being more than three years old and the applicant was apprised of the same through office letter No. 11031/TKD/51/E-1B (NB) dated 26 Jul 2012”.

(ii) The learned counsel for the applicant has produced before us a list of candidates approved for compassionate appointment for quarter ending March 2009. This is the list containing the names of

4 persons, who have been recommended for appointment as LDC, and 3 persons as SK-II. It is his contention that this could demonstrate that the respondents had indeed appointed 7 persons in the year 2009, which contradict their stand that they had not appointed anyone in the year 2009.

(iii) Learned counsel for the applicant has placed before me letter dated 11.02.2011, which is a reply to an application under RTI Act, 2005 by Shri A.K. Sharma, CE, JT DG (Pers) to the applicant, in which the following statement has been made by the respondents:

(b) Para 3: The info asked by you can be perused at this HQ on any working day after depositing requisite fee i.e. no fee for the first hour and a fee of Rs. 05/- for each hour (or fraction thereof) thereafter with prior intimation. Your interpretation of our referred letter Para 2 (e) is not correct. It is again confirmed that BOO for compassionate appointment are being held regularly every quarter i.e. three months and due to non availability of vacancy no appointment on compassionate grounds have been made since Apr 2009. Your contention that appointment has been made is not agreed to. You may peruse the documents for your clarification if desired”.

(iv) During the course of the arguments, the learned counsel for the respondents has produced two letters dated 19.11.2013 and 29.05.2014, which pertain to the request for compassionate appointment of one Shri Rohit Kumar, S/o Late Shri Kailash Nath, Pipe Fitter. In these two letters, the following two tables have been mentioned:

Letter dated 19.11.2013

Period	Pts Awarded	No. of Vacancy released	Marks obtained by the last candidate (Cut off Marks)	Rejected with reasons	Remarks
QE Jun 10	58/100	Nil	88	Nil vacancy	
2009-10	58/100	17	85	Low Merit	
2010-11		26	81	Low Merit	
2011-12		24	78	Low Merit	

Letter dated 29.05.2014

Ser No.	Year of vacancies	No. of vacancies	Marks secured by you	Your merit list Ser No.	Marks secured by last selected candidate	Merit list Ser No of last selected candidate
(a)	2010-11	26	58	197	81	27
(b)	2011-12	24	58	206	78	24
(c)	2012-13	33	58	117	72	33

Based on these letters, it was his contention that the minimum marks secured by the last selected candidates in 2009-10, 2010-11, 2011-12 and 2012-13 were 85, 81, 78 and 72, respectively, which is much more than the applicant had secured.

The learned counsel for the applicant contended that though the respondents have now taken a stand that no appointment was made in 2009, which has also been reiterated in their letter dated 11.02.2011, these tables clearly show that in 2009-10, number of

vacancies released were 17. According to him, this clearly shows that the respondents are shifting their stand from time to time.

6. Per contra, the stand of the respondents is as follows:

(a) The statement made by the applicant in para 4.14 about 7 persons being appointed after relaxation of temporary educational qualification is not substantiated by providing names of the persons and in which year they were appointed and, therefore, it is contended that such assertion has no basis and, therefore, deserves to be rejected.

(b) The case of the compassionate appointment in respect of applicant was considered by Board of Officers consecutively in quarters ending December 2009, March 2010, June 2010, September 2010 and June 2011 and she could not be recommended for compassionate appointment due to non-availability of sufficient vacancies and being low in merit.

(c) Finally, she was apprised vide letter dated 26.07.2012 that her case is now more than three years old and, therefore, it is closed.

7. Learned counsel for the applicant pointed out that though the respondents claim that the matter was closed in 2012, the applicant had been invited to appear before them for interview in

2014 and, in fact, in their counter affidavit dated 17.03.2016, the respondents have stated that in July 2015, they had sent her case to higher authorities for consideration. It is the contention of the learned counsel for the applicant that again the respondents have tried to mislead the Tribunal that the matter has been closed in 2012.

8. In response, the learned counsel for the respondents stated that whenever a matter is pending before the Tribunal or a court of law, it is taken up for review and it is in that context that she had been called for interview in 2014 and her case sent to higher authorities for consideration.

9. Heard the learned counsel for both sides and perused the various documents placed before me.

10. The applicant is the wife of late Shri Mohd. Umar Ismail, who was working as Mate, which means that he was holding a post in the lowest possible rung in the Govt. Her husband died prematurely due to illness leaving behind his widow, a step son and a daughter, both under 20 years of age. She belongs to a minority community. What would be the financial condition of this widow can be easily imagined.

11. From the facts of the case presented before me, it is clear that the respondents appointed at least 7 people in 2009. In fact, from the documents, it appears that there were 17 vacancies in 2009-10 and further 26 vacancies in 2010-2011, 24 vacancies in 2011-12 and 33 vacancies in 2012-13. It is hard to believe that the respondents did not find her to be indigent. In fact, the respondents have not so far produced before me any document or calculation to show how they came to this conclusion that she is not indigent and needed help. From the list of compassionate appointments in 2009, I find that dependent of CMD, Late Shri Stephen and JE (Civil), Late Shri Bawa Singh, have been approved for compassionate appointment. Apparently, the respondents thought that the applicant is less indigent than the families of CMD and JE (Civil), which does not lend itself to credibility.

12. I have also noted that the respondents have been shifting their stand from time to time. At one time, they state that no appointment was made in 2009, in another correspondence they state that 17 vacancies were filled up in 2009-10 and in another letter, it is stated that the applicant could not be appointed because of insufficient vacancies and has been low in merit.

13. Considering all the above facts together, I am convinced that the respondents have not treated the applicant fairly and she has been made to run around from 2009 till 2017, i.e. a period of 8 years, giving her hope from time to time, the last being when she was called in 2014, and at the end of the day rejected her claim. In fact, in their counter affidavit, the respondents state that they have sent her case in July 2015 for consideration of higher authorities. I am convinced that this matter has to be brought to a close and spare this poor lady from further harassment at the hands of the respondents.

14. The O.A. is, therefore, allowed and orders dated 26.07.2012 and 28.12.2010 are quashed and set aside, with a direction to issue appointment letter to the applicant for anyone of the post of Mazdoor/Chowkidar/Peon or Multi Tasking Staff, within a period of 30 days from the date of receipt of a certified copy of this order. No order as to costs.

(P.K. Basu)
Member (A)

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