

Central Administrative Tribunal
Principal Bench: New Delhi

OA No.2401/2014

Reserved on: 21.09.2017
Pronounced on: 25.09.2017

Hon'ble Mr. Uday Kumar Varma, Member (A)

1. Smt. Parmali aged about 70 years,
w/o late Shri Suggan Chand, Ex-Elect.
2. Shri Sanjay Kumar, aged about 36 years,
s/o late Shri Suggan Chand, Ex-Elect.
(Both of the applicants are R/o Vill. Salempur,
Rajputan, PO Roorkee Distt. Haridwar)
Seeking employment assistance in Gp. 'C'
Post on demise of the Govt. employee who had
Died on 20.1.2000 while last posted in GE
Roorkee a Sub Office of CWE Hills Dehradun
Under CE (MES) Bareilly Zone E-in-C's
Branch, AHQ Ministry of Defence,
New Delhi.Applicants

(By Advocate: Shri V.P.S. Tyagi)

Versus

Union of India through

1. Secretary,
Ministry of Defence,
South Block, New Delhi.
2. The Engineer-in-Chief,
E-in-C's Branch AHQ,
Kashmere House, Rajaji Marg,
New Delhi – 110 011.
3. The Chief Engineer MES
HQ Bareilly Zone,
PIN No. 900496 C/o 56 APO.
4. The Commander Works Engineer
(CWE) Hills, Dehradun (U.A.)
5. The Garrison Engineer,
Roorkee Distt. Haridwar (UA)
PIN-247667.Respondents

(By Advocate: Sh. A.K. Singh)

O R D E R

The instant Original Application has been filed by the applicants under Section 19 of the Administrative Tribunals Act, 1985 challenging the rejection of the claim of applicant no.2 for appointment on compassionate ground vide orders dated 23.05.2002 and 22.11.2013 [Annexure A-1 Colly].

2. The case of the applicants is that the husband of applicant no.1 and father of applicant no.2 Suggan Chand died in harness on 26.01.2000. The applicants approached the respondents for granting compassionate appointment to Sanjay Kumar, applicant no.2 herein. Their request was rejected in 2002. However, on the ground that the applicants did not receive any response from the respondents, applicant no.2 made a representation and appeal to the Chief Engineer HQ, Bareilly Zone on 10.11.2013. This representation was decided by the Chief Engineer (NF) vide order dated 22.11.2013, (Annexure A-1), relevant paragraph whereof reads as under:-

“2. In this connection it is intimated that your case of appointment on compassionate ground had already been considered by the Board of Office at this HQ and based on the recommendations and as per the then policies/ instructions, due to non-availability of sufficient vacancy within 5% quota, case for compassionate appointment has been considered and rejected the employment assistance by the competent authority and accordingly outcome of the board proceedings had already been intimated to you vide this HQ letter

No.815502/RR/137/E1C2) dated 23 May 2002 (photocopy attached)."

The applicants are before the Tribunal basically against the above order dated 22.11.2013.

3. The respondents in their written statement have stated that late Suggan (MES-447083), while working as Elect (SK) expired on 26.01.2000 leaving behind him his wife, three sons and two daughters. It is also submitted that all terminal benefits were paid to Smt. Parmali (wife of the deceased employee), who is applicant no.1 in this case. The applicant no.2 applied for compassionate appointment vide application dated 29.01.2001. After due process and even after recommendations at the Board level for compassionate appointment for the post of Group 'C' or 'D', the case of the applicant no.2 amongst others was considered by the Board constituted at HQ Chief Engineer, Central Command, Lucknow. The competent authority, after taking into account the recommendations of the Screening Committee at Central Command HQ, rejected the request of applicant no.2 for providing employment assistance vide letter dated 23.05.2002. The applicants had again made a representation on 27.11.2013 which has also been duly considered by the respondents and rejected on the ground that the case of applicant no.2 has already been considered and rejected way back on 23.05.2002. The

respondents claimed that the order dated 23.05.2002 (Annexure A-1) contains a detailed analysis of the merit of the case of the applicant no.2 and after due consideration by taking into account all the relevant factors and due consideration in the light of guidelines of the DOPT and various judgments of the courts, the competent authority rejected the claim of the applicant no.2 for compassionate appointment. The respondents have, therefore, pleaded for dismissal of the OA.

4. I have given thoughtful consideration to the case, perused the records and carefully heard the arguments of the counsels of both sides.

5. There is no dispute with regard to the fact that the claim of the applicant no.2 for compassionate appointment was rejected way back in 2002 and also that the applicants kept quiet for a period of almost 11 years and approached the respondents again on 27.11.2013 by way of a representation. Learned counsel for the applicants submitted that the reason why the applicants did not approach the Tribunal or the respondents was that there were some court cases with respect to appointments made under this quota during those years and the matter was subjudice. Therefore, this peculiar circumstance, the applicant claims, offers satisfactory explanation for delay in

approaching the respondents or the Tribunal. However, it is seen from the record that the details of these cases are not available in the record. Admittedly, the applicants were not a party to any of these court cases.

6. This OA suffers from series lacuna of limitation and even does not seek any condonation of delay. However, the applicants maintain that there is no delay in approaching the Tribunal. It is difficult to agree with this line of argument. It is seen that the case of the applicant no.2 was decided in 2002 and he filed his representation after a gap of 11 years on 27.11.2013. On record, there appears a letter written by applicant no.2, which is dated 02.12.2013 addressed to Engineer-in-Chief's Branch, Army HQ, Kashmir House, New Delhi wherein the ground taken by him in paragraph 'c' is that he is regularly contacting GE, Roorkee for providing him a suitable compassionate appointment, however, GE Roorkee neither provided him the job nor suitable/convincing reply. There is no mention of any court cases being subjudice in this letter and, therefore, it appears that the ground of court cases being subjudice is an afterthought after the representation of the applicant was rejected by the respondents. In any case, merely approaching the respondents and not getting a

suitable reply cannot be the ground for condoning the delay of almost 11 years.

7. In my view, therefore, this OA deserves to be dismissed on the ground of limitation alone. However, I would also like to consider the merits of the case as well.

8. Learned counsel for the applicants largely pointed out two defects in the impugned order dated 22.11.2013, firstly that the calculations on various parameters at the time of consideration has not been done properly and secondly, that the case of the applicant no.2 should have been considered for at least three times. However, he has not pointed out as to which parameters for calculation in his case have been ignored by the respondents and how wrong calculation has jeopardized the case of applicant no.2 vis-à-vis other claimants. Likewise, it is not pointed out by the applicants' counsel as to under what provisions of rules, the case of the applicant no.2 should have been considered by the respondents continuously for three years. As regards the argument of the counsel for the applicants that the case of the applicant no.2 should have been considered for three years, the respondents have vehemently argued that this provision was made under DOP&T letter no.14014/19/2003-Est.D dated 05.05.2013 whereas the case of applicant no.2 was decided in 2002 and such a

provision in rules was not in existence at that point of time and could not have been applied retrospectively. Therefore, it was not possible to consider his case for three continuous years.

9. As is clear from the above discussion, the applicants do not appear to have any case. They have neither been able to establish the defects committed by the respondents in making assessment of the financial position of the family of the applicants nor have they been able to show as to how the case of applicant no.2 was more deserving than any other cases considered by the respondents. The ground of consideration for continuous three years also cannot be accepted as it has rightly been pointed out by the respondents that such a provision was incorporated in the Scheme much later by the Department of Personnel & Training.

10. I am convinced that it is not a fit case for interference as the OA is not only hopelessly time barred but also equally deficient in merit at the same time. I have, therefore, no option but to dismiss this OA both on ground of limitation as well as on merit.

(Uday Kumar Varma)
Member (A)

/Ahuja/