

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

OA 2849/2011
MA 2820/2013

Reserved on: 27.09.2016
Pronounced on: 30.09.2016

Hon'ble Mr. P.K. Basu, Member (A)

Shri Arun Pal Singh S/o Late Shri Sumru Singh
R/o A/16/2, Chandra Vihar, IP Extension
Delhi-110092 ... Applicant

(Through Shri E.J. Verghese, Advocate)

Versus

1. The Union of India through
The Secretary
Ministry of Defence
South Block, New Delhi-110011
2. The Controller General of Defence Accounts
Ulan Battar Road, Palam
Delhi Cantt - 110010
3. The Controller of Defence Accounts
Army, Meerut
4. The Principal Controller of Defence Accounts
HQ, G Block, New Delhi-110011
5. Smt. Sushila W/o Late Shri Anil Kumar
Through the Office of CGDA, West Block
Palam, Delhi Cantt-110010
6. Shri Girish Kumar S/o Late Shri Kastoori Lal
7. Shri Atul Arora S/o Late Shri S.C. Arora
8. Ms. Sujata D/o Late Shri V.C. Avadhanalu
9. Shri Amit Kumar S/o Late Shri M.S. Verma
10. Ms. Hemata W/o Late Shri Hari Shanker
11. Shri Jaipal Singh S/o Late Shri Joginder Singh

12. Ms. Shilpi Seth D/o Late Shri Renu Seth
13. Ms. Sushma Pandey D/o Late Shri Balram Pandey
(respondents from 6-13, through PCDA, (HQ) G Block,
K. Kamaraj Marg, New Delhi-110011 ... Respondents
(Through Shri D.S. Mahendru, Advocate)

ORDER

The applicant has filed this OA seeking compassionate appointment. His father, who was a Farash with the respondents, died on 5.12.1999. In OA 777/2001 filed by the applicant, the Tribunal made the following observations:

"I feel that the ends of justice would be met to direct the respondents to consider the claim of the applicant for grant of compassionate appointment, having regard that he has already been found fit and eligible as per the criteria laid down by the DOP&T in their Scheme for grant of compassionate appointment against the available vacancy to be filled under direct recruitment meant for compassionate appointment against 5% quota in accordance with merits. I direct accordingly."

Thereafter, in another OA No.1368/2002 filed by the applicant, the Tribunal gave the following directions to the respondents on 29.10.2001:

- "(i) Respondents should make it clear whether a waiting list of the candidates seeking appointment on compassionate basis is maintained in their department. If 'Yes', they should indicate the status of the present applicant in that list;
- (ii) Based on the applicant's status in such list, the respondents should indicate the possible time frame within which he could be appointment in his turn;

- (iii) If the respondents on the other hand, have not been maintaining any waiting list of this kind, they will state reasons for not doing so and quote instructions, if any relied upon for this purpose; and
- (iv) The method followed in preparing and maintaining waiting lists if any for this purpose will also be explained.”

2. The respondents thereafter passed order dated 19.08.2002. The order mentions that the case of the applicant was considered denovo by the Board of Officers on 15.02.2002, which did not recommend the case due to non availability of such appointment within a year that too, within the ceiling of 5% meant for the purpose. It further states that after examining the OA as representation again the position remains unaltered regarding the availability of the vacancy in Group C & D post and the case is, therefore, finally disposed of as per instruction of DoP&T contained in their OM F.No.14014/23/99-Estt dated 3.12.1999 and MOD ID No.9(I)/2000-D (Lab) dated 12.02.2001 on the subject.

3. Thereafter, order dated 5.07.2006 was issued on the representation of the applicant communicating that his case was not recommended by the competent authority due to non-availability of vacancy.

4. The grounds raised by the applicant are as follows:

- (i) That in reply dated 18.11.2009 to an RTI application (Annexure A-8), the respondents have indicated that they have appointed

Hari Shankar, Juginder Singh and Renu Seth in the year 2000 and N.K. Bhutani and T.P. Singh in 2008/2009, which indicates that there were vacancies;

(ii) In the Scheme for compassionate appointment circulated vide OM dated 9.10.1998, under clause 7 the following is provided:

"(e) Employment under the scheme is not confined to the Ministry/Department/ Office in which deceased/ medically retired Government servant had been working. Such an appointment can be given anywhere under the Government of India depending upon availability of a suitable vacancy meant for the purpose of compassionate appointment.

(f) If sufficient vacancies are not available in any particular office to accommodate the persons in the waiting list for compassionate appointment, it is open to the Administrative Ministry/Department/ Office to take up the matter with other Ministries/ Departments/ Offices of the Government of India to provide at an early date appointment on compassionate grounds to those in the waiting list."

It is contended that the respondents have not complied with the above provisions. It is further stated that in OA No.1286/2006 before the Allahabad Bench of the Central Administrative Tribunal, in a similar case, because of inadequate action by the

respondents under para 7 (e) and 7 (f) of the relevant Scheme, inter alia, the OA was allowed.

- (iii) The respondents have appointed less deserving candidates having lesser points and also the children of deceased employees on attaining the age of 18 years after more than 5 years of period;
- (iv) On the question of delay in filing this OA, it is stated that the matter was pending before the Hon'ble High Court and, therefore, the OA could not be filed earlier and OA 3049/2010, which was filed by him was withdrawn on 26.04.2011 to implead the private respondents.

5. The applicant drew my attention to letter dated 11.12.2012 issued by Controller General of Defence Accounts whereby three years time limit for consideration of request for compassionate appointment has been stated to be withdrawn. The applicant further relied on the judgment in **Abhishek Kumar Vs. State of Haryana and others**, (2006) 12 SCC 44 where the Hon'ble Supreme Court held as follows:

"Service Law – Compassionate appointment – Denial of, on ground of non-existence of vacancy – On death of appellant's father while posted as Kanungo in District Yamuna Nagar, appellant applied for appointment on compassionate ground in Yamuna Nagar of Karnal district – In terms of Statewise list maintained by State of Haryana, appellant was

entitled to obtain an appointment by the State, District Magistrate concerned refused to provide for the post – Appellant in his written statement categorically stated that he was ready and willing to join anywhere in the State – Held, when a Statewise list was prepared District Magistrate or any other officer could not disobey the order passed by a higher authority – Further, even if no post was available at Karnal, such a post would be available in some other district within the State of Haryana or else such an appointment could not have been made.”

6. The respondents case is that there is a restriction on number of compassionate appointments which could be made in one year according to DoP&T OM dated 3.12.1999, mainly that there should be vacancies and only 5% direct recruitment vacancies can be utilized for the purpose. It is stated that the applicant's case was considered by the Board of Officers meant for evaluating each case of compassionate appointment and the applicant's case could not be considered as there were more deserving candidates who had higher point score in the 100 point scale prescribed in the instructions. Further, it is stated that the case of the applicant was considered twice by the Board of Officers, firstly on 2.06.2000 when the Board recommended the case for appointment in Group 'D' but due to non-availability of vacancy, the case was referred to headquarters vide letter dated 6.07.2000 with the request that the case of the applicant be taken up with other ministries/ departments/ offices of the Government of India as provided in OM dated 9.10.1998. The headquarters office did not accede to this request and the same was intimated to the mother of the applicant vide letter dated 7.02.2001. The case of the applicant was again

considered on 15.02.2002 and again due to non-availability of vacancy, he could not be appointed.

7. The respondents have further stated that sub para (e) and (f) of para 7 of DoP&T letter dated 9.10.1998 has since been modified vide DoP&T letter dated 22.06.2001 wherein it has been maintained that in view of the 5% ceiling prescribed for compassionate appointment under the extant instructions, there are not enough vacancies to accommodate even requests for compassionate appointment from family members of government servants belonging to the same Ministry/Department/ Office. Consequently, there are no spare vacancy left to accommodate the requests from other Ministries/ Departments/ Offices for such appointment. Therefore, no useful purpose is being served by taking up the matter with other Ministries/ Departments/ Offices. It has, therefore, been decided that in future the committee prescribed in para 12 of OM dated 9.10.1998 for considering a request for appointment on compassionate ground should take into account the position regarding availability of vacancy for such appointment and it should limit its recommendation to appointment on compassionate ground only in really deserving cases and only if the vacancy meant for compassionate appointment will be available within a year in the concerned administrative Ministry/ Department/ Office, that too within the ceiling of 5% vacancy falling under DR quota in any Group C and D posts prescribed in this regard in para 7 (b) of OM dated 9.08.1998.

8. Regarding the cases of compassionate appointment cited by the applicant, it is contended that each case is unique and the orders of the Tribunal/ Courts are only applicable to that case and these are not mutatis mutandis applicable in other cases.

9. Regarding allegation of the applicant in para 10 of the OA that less deserving candidates have been appointed, it is stated that no specific instance has been given of any person less deserving who has been appointed and, therefore, this cannot be replied to.

10. Regarding RTI reply, the respondents have clarified that they do not deny that appointments on compassionate grounds have been made. All the respondents state is that those appointed were more deserving than the applicant and there were no vacancies available for the applicant to be appointed.

11. I have heard the learned counsel for the parties, gone through the pleadings available on record and perused the judgments/ orders cited.

12. The respondents have clarified that they have considered the case of the applicant twice. Various cases were evaluated as per instructions regarding 100 point scale. The more deserving cases were offered appointment. Unfortunately, there were not enough vacancies to accommodate the applicant and there was shortage of vacancy right across ministries/ departments/ offices. Therefore, though we sympathize with the applicant, under the existing facts, I do not find any illegality or malafide or

arbitrariness or irregularity by the respondents and, therefore, the OA does not succeed and is dismissed. No costs.

(P.K. Basu)
Member (A)

/dkm/