

**Central Administrative Tribunal
Principal Bench**

OA No.4306/2015

Order reserved on: 15.11.2016

Order pronounced on: 14.12.2016

Hon'ble Mr. V. N. Gaur, Member (A)

Amit,
S/o Sh. Mahabir Singh
(Ex. HC No.7089/DAP)
R/o H.No.724/29, Vikas Nagar,
Main Gali, Kakroi Road,
Sonapat,
Haryana.

- Applicant

(By Advocate: Mr. Sudhir Naagar)

Versus

Delhi Police through
Commissioner of Police
Delhi Police Head Quarters,
I.T.O., New Delhi-110001.

- Respondents

(By Advocate: Mr. P.K.Singh for Ms. Pratima Gupta)

ORDER

Hon'ble Mr. V.N.Gaur, Member (A)

The applicant in this OA is aggrieved by rejection of his request of compassionate appointment in Delhi Police vide letter dated 19.12.2014.

2. The father of the applicant Sh. Mahabir Singh was Head Constable, who retired on invalidation pension on 17.09.2010. The applicant submitted his application for compassionate

appointment on 27.09.2010 and at that time his age was about 22 years. The age limit for appointment to the post of Constable on compassionate grounds is 25 years. The request of the applicant, however, was not processed by the respondents as there was an issue relating to outstanding amount/overpayment made to his father by the department while he was in service. The respondents had written on 17.10.2011 to Ex HC Sh. Mahabir Singh to deposit the outstanding amount so that the case of appointment of his son on compassionate grounds could be sent to Police Headquarter for consideration. Father of the applicant, however, approached this Tribunal against the demand raised by the respondents and finally vide order dated 03.04.2013 in OA No.2809/2012 the order of the respondents seeking recovery was quashed and the respondents were directed to release pension and other retirement benefits to him. The compassionate appointment of the applicant which was kept pending initially due to the outstanding amount against his father, and later because of the case (ostensibly OA No.2809/2012, RTI reply dated 02.04.2012 – Annexure A-10) pending in this Tribunal, was finally processed in the year 2013 and vide letter dated 29.05.2013 father of the applicant was asked to submit the correct date of birth of his son for processing the appointment of his son, i.e., the applicant. After getting the records corrected and obtaining the certificate from National

Institute of Open Schooling, the necessary documents were submitted on 10.10.2014 showing the correct date of birth as 25.07.1988. The case of the applicant for compassionate appointment was considered by the Police Establishment Board (PEB) in its meeting held on 20.11.2014 but not approved on the ground of overage. According to the Standing Order No.39/2014 the upper age limit for compassionate appointment to the post of constable (Exe.) is 25 years while the age of the applicant was 25 years 5 months as on 01.01.2014.

3. According to the learned counsel for the applicant the reference date for determining the age of the applicant would be the date on which the applicant applied for compassionate appointment and not the date on which his case was considered. In this connection, he referred to Note 1 below para 6.B (a) of the Scheme For Compassionate Appointment circulated by the DOP&T vide OM dated 16.01.2013, a copy of which has been placed on record at Annexure A-14 of the OA. He further submitted that the respondents illegally kept the request of the applicant pending because of the overpayment made to his father, which had no link with the compassionate appointment. The delay, if any, had been caused only due to laxity on the part of the respondents because of which the applicant's father had to approach this Tribunal twice. Even the judgment of the Tribunal in OA No.2809/2012 was pronounced on 03.04.2013, when the

applicant had not attained the upper age limit of 25 years but the respondents did not proceed with the consideration of his compassionate appointment. The respondents have, therefore, no justification for rejecting the case of the applicant on the ground of overage.

4. Counsel for the respondents, on the other hand, stated that the case of applicant could not be approved by the PEB since on the cut of date of 01.01.2014 the applicant had already crossed the upper age limit of 25 years and according to Standing Order No.39/2014 the applicant had become ineligible for the post of Constable (Exe.). Further, there was a discrepancy in the date of birth of the applicant. The corrected documents were finally submitted by the applicant only in the year 2014 and by the time his case was considered PEB on 07.11.2014, he had already become overage.

5. We have heard the learned counsel for the parties and perused the record. The issues that fall for consideration are:

- (i) What is the reference date for determining the age of the applicant for compassionate appointment and
- (ii) If there is a discrepancy in the date of birth and the corrected documents are submitted at a later stage, what will be the reference date for determining the age; whether the date on which the request for compassionate

appointment was made for the first time or when the corrected documents are submitted by the applicant.

6. There is no ambiguity with regard to the first issue as the OM dated 16.01.2013 issued by the DOP&T stipulated that the age of eligibility shall be determined by the date of application and not the date of appointment. The relevant clause from the compassionate appointment scheme annexed to the OA is reproduced below:

“B. RELAXATIONS

- (a) Upper age limit could be relaxed wherever found to be necessary. The lower age limit should, however, in no case be relaxed below 18 years of age.

Note I **Age eligibility shall be determined with reference to the date of application and not the date of appointment.”**

7. With regard to the second issue, it is noticed that the request for compassionate appointment was submitted by the applicant for the first time on 27.09.2010 when his age was about 22 years 7 months. His case was not processed because of the litigation in respect of the recovery of overpayment made to father of the applicant. The respondents eventually lost that case when this Tribunal quashed the order of the recovery from father of the applicant. It therefore follows that the action of the respondents in keeping the petition of the applicant for compassionate appointment pending for about three years had no justification as

the two issues cannot be linked. Further the time taken in deciding that case cannot be held to the detriment of the applicant. Additionally, the applicant was still within the age limit of 25 years on the date the Tribunal had delivered its order on 03.04.2013. Had the case of the applicant been processed in time in 2010, or even in 2013, the discrepancy with regard to the date of birth would have been detected at that time and there was sufficient time to make necessary correction. The time taken in correction in the document or obtaining any certificate will not alter the reference date for determining the age of eligibility.

8. In the above background, I am of the view that the age of the applicant for the purpose of determining age of eligibility has to be calculated with reference to the date of submission of application, i.e., 27.09.2010 and not 01.01.2014 as was done by the respondents.

9. For the aforesaid reasons, the OA succeeds and the respondents are directed to consider the candidature of the applicant for compassionate appointment by considering his age eligibility as on 27.09.2010, the date on which he applied for the post for the first time and place his request before PEB for consideration in accordance with the rules. The outcome of consideration by PEB may be intimated to the applicant within

three months from the date of receipt of certified copy of this order. No costs.

(V.N. Gaur)
Member (A)

‘sd’

14th December, 2016