

Central Administrative Tribunal Principal Bench, New Delhi

OA No. 375/2018

New Delhi this the 11thOctober, 2018

Hon'ble Sh. Pradeep Kumar, Member (A)

Madan Pal
Age 33
Group 'C'
Designation : Compassionate Appointment
S/o Late Sh. Udai Singh
R/o Village Jaunchana
Post Mohamadur, Jadon
Dist. Gautambudh Nagar
Uttar Pradesh ... Applicant

(By Advocate :Sh. R K Shukla)

Vs.

1. The Govt. of NCT of Delhi
Through the Chief Secretary
Delhi Secretariat
I.P. Estate, New Delhi.
2. The Joint Secretary (Services)
Govt. of NCT of Delhi
Service-II, Department
5th Level, A-Wing, Delhi Secretariat
New Delhi.
3. The Superintendent (Services-II)
Govt. of NCT of Delhi
Service-II, Department,
5th Level, A-Wing, Delhi Secretariat
New Delhi.
4. The Superintendent
Department of Revenue
Govt. of NCT of Delhi
(Delhi Administration Branch)
5, Sham Nath Marg,
Delhi.

(By Advocate :Sh.Awadesh Kumar with Sh. Deepak Kumar)

ORDER (ORAL)

The applicant brought out that his father was working as bailiff and while in service he unfortunately died on 15.11.2010 when he was of 53 ½ years of age. The applicant applied for compassionate ground appointment which was rejected by the respondents on the ground that the applicant was married and hence not dependent on deceased father. This decision was challenged in OA No. 4048/2015 wherein the judgment was pronounced on 04.10.2016 with a direction to the respondents to consider the case of the applicant for compassionate ground appointment as per rules in the next Screening Committee.

2. Thereafter, the respondents have passed an order dated 21.11.2017 wherein the following was communicated :-

“And whereas, there were 184 vacancies of different categories under Group “C” and erstwhile Group “D” posts available for appointment on compassionate grounds, accordingly, the Screening Committee recommended 184 candidates for compassionate appointment. As per point based system the last candidate recommended by the committee has scored 40.18 points whereas **Sh. Madan Pal S/o Lt. Sh. Udai Singh** has scored **32.8** points.

And whereas; the committee after consideration of facts of the case and points scored by the applicant did not recommend the case of **Sh. Madan Pal S/o Lt. Sh. Udai Singh** for appointment on compassionate grounds due to non availability of sufficient number of vacancies.

Now, therefore; this order is issued in compliance of the directions of Hon'ble Central Administrative Tribunal dated 4th October, 2016, in **OA No. 4048/2015** titled as **Madan Pal Vs. Govt of NCT of Delhi & Ors.**”

3. Thus, the applicant's case once again considered and was rejected on account of non-availability of the vacancies.

4. The applicant drew attention to the Notification issued by DOP&T in respect of frequently asked questions on compassionate ground appointment. The item 26 of the same is as under:-

"Question

If compassionate appointment cannot be given in a year, can it be considered in the next recruitment year?

Answer

Yes. There is no time limit for compassionate appointment. A request for compassionate appointment can be carriedforward to next or more years, but the total compassionate appointment made in a year should not exceed 5% limit of the direct recruitment Group C quota.

5. Keeping in view this clarification, the applicant pleaded that now there is no limit in respect of consideration for compassionate ground appointment and orders to this effect have also been issued by DOP&T vide OM dated 26th July, 2012. In accordance with this OM, following provisions have been kept:

"1.0. The primary objective of scheme for compassionate appointment circulated vide O.M. No. 14014/6/94-Estt(D) dated 09.10.1998 is to provide immediate assistance to relieve the dependent family of the deceased or medically retired Government servant from financial destitution i.e. penurious condition. The Hon'ble Supreme Court in its judgment dated 05.04.2011 in Civil Appeal No. 2206 of 2006 filed by Local Administration Department vs M. Selvanayagam @ Kumaravelu has observed that an appointment made many years after the death of the employee or without due consideration of the financial deprivation caused to the dependents as a result of his death, simply because the claimant happened to be one of the dependents of

the deceased employee would be directly in conflict with Articles 14 & 16 of the Constitution and hence, quite bad and illegal. In dealing with case of compassionate appointment, it is imperative to keep this vital aspect in mind.

2.0. This Department's O.M. No. 14014/6/1994-Estt. (D) dated 09.10.1998 provided that Ministries/Departments can consider requests for compassionate appointment even where the death or retirement on medical grounds of a Government servant took place long back, say five years or so. While considering such belated requites it was, however, to be kept in view that the concept of compassionate appointment is largely related to the need for immediate assistance to the family of the Government servant in order to relieve it from economic distress. The very fact that the family has been able to manage somehow all these years should normally be taken as adequate proof that the family had some dependable means of subsistence. Therefore, examination of such cases for call for a great deal of circumspection. The decision to make appointment on compassionate grounds in such cases was to be taken only at the level of the Secretary of the Department/Ministry concerned."

6. Thus, the rejection of claim for compassionate ground appointment vide order dated 21.11.2017, has been challenged with a request that now there is no limit on number of times a case can be considered and as such the case of the applicant be considered for all future recruitment cycles.

7. The respondents brought out that prior to 2013 a married son was not taken to be dependent and accordingly earlier orders were passed wherein the applicant's case was rejected on the ground of his being not a dependent person as he was married. That order came under challenge in OA no. 4048/2015. In compliance to Tribunal's order in this OA, the applicant's case for CG appointment

was considered once again. However, the same was not found acceptable as by this time the policy directive in respect of awarding certain marks to all such candidates, to assess relative merit, came into force and there were more deserving candidates, and such appointment can be given up to 5% of open recruitment only. As per this marking, the applicant secured 32.8 points, whereas the last candidate recommended had secured 40.18 points, and accordingly the applicant could not be given CG appointment.

8. The respondents also drew attention to the same OM dated 26th July, 2012 as already been quoted in para 5.0 above and subsequent paras 3 & 4 as under :

“3.0. Subsequently vide this Department's O.M. No. 14014/19/2002-Estt. (D) dated 5th May, 2003 a time limit of three years time was prescribed for considering cases of compassionate appointment. Keeping in view the Hon'ble High Court Allahabad Judgment dated 07.05.2010 in Civil Misc. Writ Petition No. 13102 of 2010, the issue has been re-examined in consultation with Ministry of Law. It has been decided to withdraw the instructions contained in the O.M. dated 05.05.2003.

4.0. The cases of compassionate appointment may be regulated in terms of instructions issued vide O.M. dated 09.10.1998 as amended from time to time. The onus of examining the penurious condition of the dependent family will rest with the authority making compassionate appointment.”

It was pleaded that while consideration can be for many cycles but cases more than five years old may not fall in the realm of CG appointment.

9. In the instant case the father of the applicant had died in the year 2010 and 8 years have already passed. At the time of his death the employee was of 53 ½ of age i.e. he had about 6 ½ years of service left. In the event, even though limit has been done away with, it is not appropriate that the case of any candidate should be considered for eternity.

10. The respondents also drew attention that the total quantum of CG appointment is only 5% of the general recruitment and all candidates cannot be accommodated as there are many other deserving cases also.

11. The respondents pleaded that in the instant case, the applicant had already been considered many times and towards this, drew attention to a letter which was issued by Joint Secretary on 20th March, 2014 and which has been annexed by the applicant himself in the OA. It indicates that the case of the applicant for CG appointment was considered on 9/11-7-2014, 6.8.2014 and 18.9.2014. Thereafter, the case was considered once again in compliance to the orders passed by the Tribunal in OA no. 4048/2015. Hence, there is no further possibility of case being considered. The respondents pleaded that the instant application needs to be dismissed.

11. Matter was heard at length. As is already indicated in the Office Memorandum dated 26.07.2012, the scheme for CG appointment is only to grant relief to the dependent family to take

care of the immediate needs and avoid financial penury and it is not a vested right. However, sympathetic and genuine consideration needs to be extended in such cases. This consideration has already been extended by the respondents earlier but he could not be offered CG Appointment. Even subsequent to the order passed by the Tribunal, the case was considered once again but was not found fit. In the event it could not be anybody's case that it should be considered for indefinite period. The OA is dismissed being devoid of merits. No order as to costs.

(Pradeep Kumar)
Member (A)

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