

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00576/2014

Wednesday, this the 15th day of March, 2017

CORAM:

Hon'ble Mr. U. Sarathchandran, Judicial Member

P.S. Sujithkumar, S/o. Late P.B. Sureshkumar, aged 19 years,
 Vaikath Puthen Veedu House, Kunjattukara, Aluva,
 Edathala – 683 561.

Applicant

(By Advocate : Mr. R. Sreeraj)

V e r s u s

1. Union of India, represented by its Secretary,
 Ministry of Defense, South Block, New Delhi – 110 001.
2. The Engineer-in-Chief, Military Engineer Services,
 Army Head Quarters, DHQ PO, New Delhi – 110 011.
3. The Chief Engineer, Military Engineer Services,
 Head Quarters, Southern Command, Pune – 411 001.
4. The Chief Engineer (Naval Works) Kochi,
 Kataribagh, Naval Base, Kochi-682 004.

Respondents

[By Advocate : Mr. N. Anilkumar, Sr. PCGC ®]

This application having been heard on 27.02.2017, the Tribunal on 15.03.2017 delivered the following:

O R D E R

Hon'ble Mr. U. Sarathchandran, Judicial Member -

In the amended OA the applicant seeks a direction to the respondents to consider him for appointment on compassionate grounds in accordance with law and for quashing the impugned documents. He has also sought for a declaration that the refusal on the part of the respondents to consider his

case in accordance with law is illegal, arbitrary, unjust, irrational, unreasonable and violative of Article 14 of the Constitution.

2. His father the late Shri.P.B. Sureshkumar died on 22.11.2011 while working as Lower Division Clerk under respondent No. 4. Though the family of the deceased received the terminal benefits dues, the amount so received was insufficient to meet the outstanding liabilities. Even though the widow receives family pension the family is in a penurious condition. The respondents have been sleeping over the request made by the applicant for appointment on compassionate grounds despite there being sufficient number of vacancies of Lower Division Clerk in the Southern Naval Command. As there was delay in considering his request the applicant had filed OA No. 741 of 2013 seeking a direction to the respondents to consider his case for appointment on compassionate grounds within a time frame to be fixed by this Tribunal. The OA was disposed of by Annexure A1 order dated 18.11.2013 with a direction to respondents Nos. 2 & 3 to take appropriate action. Respondent No. 4 issued Annexure A2 'speaking order' even before Annexure A1 order was communicated. Thereafter the applicant sent Annexure A3 representation dated 23.12.2013 to respondent No. 3 seeking review of his case for compassionate appointment as LDC as vacancies of LDC were available. Disregarding Annexure A3 representation, respondent No. 4 vide Annexure A4 communication informed the applicant that his case has already been considered as per the court's direction but he could not be selected due to low merit and limited vacancies. During the pendency of this OA the respondents sent Annexure

A6 communication dated 9.10.2015 turning down the the applicant's request for appointment on compassionate grounds for the second time.

3. According to the applicant the inaction on the part of the respondents to process the application submitted by him and to consider his case was arbitrary, unjust and unreasonable violating Articles 14 & 16 of the Constitution of India. According to him his application was not considered immediately on receipt of the same and he had been pitted for consideration against later claimants, without considering him for appointment against the vacancy year 2011-2012 also. His father was the sole breadwinner of the family and the landed property where their small residential house is situated yields no income. The family is presently pulling on with the family pension which will eventually get reduced. He laments that he and his mother are living in a penurious condition. He had applied for the post of Lower Division Clerk only; but suppressing that fact the respondents considered him against the vacancies of Peon, Chowkidar, Safaiwala, etc. and hence his case became low in merit. His case should have been considered against the vacancies of LDC alone. The statement of respondent No. 4 in Annexures A2 and A4 that no vacancies have been released for the post of LDC during 2012-2013 is incorrect. As per Annexure A5 administrative instructions of the DOP&T the respondents ought to have considered 5% of the direct recruitment vacancies arising in a particular year for the purpose of compassionate appointment. There is no impediment of 'releasing the vacancies' for the purpose of appointment on compassionate grounds.

4. Respondents filed reply statement. According to them the candidature of the applicant has been evaluated for the year 2012-2013 along with 396 candidates against 51 vacancies under 5% direct recruitment quota released by Ministry of Defence. His candidature was evaluated by the Board of Officers as per the marking system laid down. As he got only 51 marks 51 he became low in merit vis-a-vis the selected candidates. He was recommended for consideration in the next year 2013-2014. His case was considered again in accordance with the relevant rules, and that too widening the scope of consideration, not only in the category of LDC but also in the category of Peon, Chowkidar, Safaiwala, etc. But being low in merit he could not come up in the list of most deserving candidates against the vacancies in all the categories out of the 5% direct recruitment quota.

5. In the rejoinder filed by the applicant it is stated that there is no need for 'releasing the vacancies' as the concept of 'releasing vacancy' was given up long ago. Only 5% of the total number of vacancies under the direct recruitment quota need to be set apart for compassionate appointment. Had the respondents took into account 5% of the total number of direct recruitment vacancies of Safaiwala, Peon, etc. for the year 2013 and direct recruitment vacancies of LDC for the year 2012-2013, the applicant could have been selected.

6. During the final hearing of this OA after completing his arguments applicant's counsel produced a copy of the information obtained under the

RTI Act 2005 by another person regarding the vacancies of LDC under the respondents. The copy of that document i.e. No. 200301/TR Mohana/I/08/RTI Cell, dated 16.8.2016 issued by the RTI Cell of respondent No. 3. was taken on the file as it revealed that there was in fact a large number of vacancies of LDCs existed during the years 2012, 2013, 2014, 2015 & 2016.

7. Heard Mr. R. Sreeraj, learned counsel for the applicant and Mr. N. Anilkumar, learned Sr. PCGC ®, for the respondents. Shri Anilkumar submitted a detailed argument note also. Perused the record produced by both sides.

8. One of the core issues to be considered in this case is whether the applicant's request for appointment on compassionate grounds was indeed considered by the respondents against the 5% of the total number of vacancies available for direct recruitment? Pleadings of the respondents indicate that only 5% of the vacancies 'released' by the Ministry of Defence for direct recruitment alone were considered for appointment on compassionate grounds.

9. Shri Sreeraj learned counsel for the applicant vehemently argued that the approach of the respondents for considering only 5% of the vacancies for direct recruitment 'released' by the respondents was absolutely wrong and was against the policies of the Government of India. In this regard he referred to Annexure A5 OM issued by DOP&T on 14.6.2006. It reads :

"OFFICE MEMORANDUM

Subject Scheme for Compassionate Appointment under the Central Government - Determination of vacancies for.

The undersigned is directed to say that the existing Scheme for Compassionate Appointment is contained in this Department's O.M. No.14014/6/94-Estt.(D) dated the 9th October, 1998 as amended from time to time. Para 7(b) of this O.M. provides that compassionate appointment can be made upto a maximum of 5% of vacancies under Direct Recruitment quota in any Group 'C' or 'D' post.

2. After coming into effect of DOP&T instructions No.2/8/2001-PIC, dated the 16th May, 2001 on optimisation of direct recruitment to civilian posts, the direct recruitment would be limited to 1/3rd of the direct recruitment vacancies arising in the year subject to a further ceiling that this does not exceed 1% of the total sanctioned strength of the Department. As a result of these instructions, there has been a continuous reduction in the number of vacancies for direct recruitment, consequently resulting in availability of very few vacancies or no vacancy under 5% quota for compassionate "appointment. Because of this, the various Ministries have been facing difficulty in implementing the Scheme for Compassionate Appointment even in the most deserving cases.

3. On a demand raised by Staff Side in the Standing Committee of the National Council (JCM) for review of the compassionate appointment policy, the matter has been carefully examined and taking into account the fact that the reduction in the number of vacancies for compassionate appointment is being caused due to operation of the orders on optimization of Direct Recruitment vacancies, the following decisions have been taken:-

While the existing ceiling of 5% for compassionate appointment may not be modified but the 5% ceiling may be calculated on the basis of total direct recruitment vacancies for Group' C' and 'D' posts (excluding technical posts) that have arisen in the year. Total vacancies available for making direct recruitment would be calculated by deducting the vacancies to be filled on the basis of compassionate appointment from the vacancies available for direct recruitment in terms of existing orders on optimization.

4. The instructions contained in the O.M. No.14014/6/94-Estt(D) dated 9th October, 1998, as amended from time to time, stand modified to the extent mentioned above.

5. The above decision may be brought to the notice of all concerned for information, guidance and necessary action.

6. Hindi version will follow." (underlining supplied)

As admitted by the respondents in their pleadings, the aforequoted OM issued by the DoP&T has not been followed by the respondents for reckoning the 5% of the available vacancies for appointment on compassionate grounds. Instead they reckoned only 5% of the vacancies 'released' for direct recruitment, as a measure of optimisation of posts.

10. The next issue in this case centered around the claim of the applicant for the post of LDC for appointment on compassionate grounds. It is the case of the applicant that he had applied for the post of LDC only.

11. Respondents in Annexure A2 (Annexure A-2/3, at page 11 of the amended OA) state :

“4. As per qualification your case is considered for the post of Peon, Chowkidar, Safaiwala, since no vacancies has been released for the post of LDC/SK-II in the year 2012-13..”

(emphasis supplied)

12. Shri R. Sreeraj contradicted the above statement made by the respondents in Annexure A2 by producing a copy of the communication No. 200301/TR Mohana/I/08/RTI Cell, dated 16.8.2016 issued by the RTI Cell of respondent No. 3. The aforesaid communication addressed to the Chief Engineer (NW), Naval Base PO, Kataribagh, Kochi-4 states that there were vacant post of LDC. The relevant portion of the said communication reads:

“1. Ref your letter No. 136724/PVS/45/LC dt 30 Jul. 2015 read as 30 Jul 2016.

2. It is submitted in response to Para 3 of your letter under ref that Shri TR Mohana Krishnan, OS (Retd) has asked for certain info vide RTI application No. TRM/PF/RTI/01/2016 dt 23 Apr 2016 in a self created performa. Under the provision of RTI Act 2005 and GOI, Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training New Delhi letter No. 11/2/2008-IR dt 10 Jul 2008, info shall ordinarily be provided in the form as available. However this office has furnished info as asked for by the applicant in his self created performa. Due to oversight column No 03 to 05 & 07 to 09 has erroneously been filled up. The same may be amended as under:-

	FOR (COLUMN 03 TO 05)				FOR (COLUMN 03 TO 05)		
YEAR	Auth as per E-in-C's Br Distr letter 3	Held str as on 01 April 4	Total No. of vacant post of LDC 5	YEAR	Auth as per E-in-C's Br Distr letter 3	Held str as on 01 April 4	Total No. of vacant post of LDC 5
As on 01 Apr				As on 01 Apr			
2010	1216	438	(-) 778	2010	1216	438	(-) 778

2011	1189	631	(-) 558	2011	1189	631	(-) 558
2012	1189	594	(-) 595	2012	1189	594	(-) 595
2013	1023	587	(-) 506	2013	1073	567	(-) 506
2014	1073	501	(-) 572	2014	1073	501	(-) 572
2015	1073	446	(-) 526	2015	972	446	(-) 526 **
2016	831	447	(-) 384	2016	831	447	(-) 384 **

** Held position given (excluding CE (AF) Gandhinagar, CE (N) Vizag, DGNP Vizag & CE (I) (DM) (ND) Vizag”).

13. Shri Anilkumar learned Central Government counsel submitted that the aforequoted document was produced in connection with another OA (OA No. 180/288/2014) filed by Smt. Shana P.V. and others who were aggrieved by the inaction on the part of the respondents in considering them for promotion as LDCs. Nevertheless, the aforequoted communication undoubtedly take wind out of the sails of the respondents in relation to their statement that 'no vacancy had been released for the post of LDC/SK-2 in the year 2012-2013'. If the aforequoted information regarding the vacancy of LDC is read with Annexure A5 OM issued by the DoP&T on 16.6.2006, actually there was no need for "releasing the post". Therefore, the misfeasance on the part of the respondents in not considering the applicant's case for LDC was absolutely unjustified and was against the extant administrative instructions of the Government of India. This Tribunal is conscious that applications for compassionate appointment are not considered for the posts of Group-B and Group-A [see Annexure R1(f) FAQ on compassionate appointment produced by the respondents along with the additional reply statement]. Therefore, it goes without saying that the applicant's request was considered by the Board of Officers for the year 2012-2013 not in accordance with Annexure A5 DoP&T OM and hence all the

communications impugned in this OA need to be quashed and set aside.

14. Respondents contend that the applicant's request was considered for the year 2013-14 also and that vide Annexure A6 impugned order he was informed that his request will be considered for the 3rd look for the year 2014-2015.

15. During arguments Shri Anilkumar submitted that the request was considered four times by the Board of Officers and that on account of the low merit in the marks obtained by way of relative merit points he could not be considered for appointment as there were more deserving candidates than him. Annexure R1(a) produced by the respondents is a copy of the relative merit points to be awarded for the different attributes like family pension, terminal benefits, monthly income, value of moveable and immoveable properties, etc. for the purpose of evaluating the relative indigence of the different applicants for appointment on compassionate grounds and also for identifying the "real deserving candidates for compassionate appointment". Applicant states that he lives in a small house in an immoveable property which yields no income.

16. As per Annexure R1 if there is no moveable/immoveable properties 10 marks is to be awarded. For properties having a market value of up to Rs. 50,000/- 8 marks; for properties having value above Rs.50,000/- to Rs.1,00,000/- 6 merit points and for those above Rs.1,00,000/- up to Rs.2,00,000/- 3 merit points and for properties having a market value of

more than Rs.2,00,000/- 1 relative merit point. This Tribunal is of the view that awarding of merit points for possessing immoveable properties as stipulated in Annexure R1(a) instructions issued by the Ministry of Defence is fundamentally opposed to the Scheme for appointment on compassionate grounds promulgated by the nodal department of Government of India i.e. DoP&T. The object of awarding merit points for the different badges of indigency is not for simply assigning marks but is meant for ascertaining the relative indigency of the different applicants for compassionate appointment. No doubt, having a house of one's own will carry a negative merit point because such a candidate need not be considered as an unsheltered person which attribute would have exacerbated his impecunious circumstances. Having immoveable property also will carry a negative merit point because it is considered that having immoveable property will enable the applicant to cultivate the land and earn his livelihood from the income generated therefrom. But if the land is barren or un-cultivable, there is no point in awarding the negative / reduced merit points. If the property is not capable of generating agricultural or other income for the sustenance of the family of the deceased employee, certainly having such property cannot be treated as a negative indicator for the purpose of determining indigence.

17. In this case there is nothing to prove that the immoveable property owned by the family of the deceased employee was capable of generating income. Curiously, in Annexure R1(a) instructions the market value of the land is taken into consideration for the purpose of awarding merit points. This Tribunal is at a loss to understand how the market value of the

property owned by the family is going to improve the financial condition of the family, because a family cannot be expected to sell its landed property and to eke their livelihood out of such sale proceeds. That is not the objective of the Scheme for compassionate appointment. Therefore, this Tribunal is of the view that awarding negative/reduced marks for possessing a land which is not capable generating income or agricultural produce is absolutely against the Scheme for compassionate appointment notified by the DoP&T to be followed by the other Departments of Government in India. Hence, this Tribunal directs the respondents to treat the land owned by the family of the applicant as “No land” if it is incapable of generating agricultural or other income.

18. It appears that the respondents have not taken into consideration of the pre-existing liabilities of the deceased employee while reckoning the terminal benefits the family had received while awarding relative merit points on that attribute. Respondents ought to have inquired into the pre-existing liabilities of the deceased employee including the expenses incurred in the family for meeting his medical expenses etc. rather than merely awarding the marks based on the merit points indicated in Annexure R1(a) based on the quantum of terminal benefits. Similarly the respondents have failed to ascertain the income generated from the landed property owned by the family of the applicant while determining the relative merit points in respect of the attribute of having immovable properties.

19. In the light of the above discussion it appears to this Tribunal that the respondents have dealt with the request of the applicant for appointment on compassionate grounds in a mechanical manner, not based on the ground realities, which tantamounts to arbitrariness in the eye of law. There ought to have been a judicious application of mind while considering the request for appointment on compassionate grounds rather than adopting a pedantic and arithmetical approach. The fact that the respondents have not considered Annexure A5 administrative instructions itself vitiates the decision making process adopted by the Board of Officers. All these matters persuade this Tribunal to come to the conclusion that the respondents shall re-consider the case of the applicant for the vacancies of 2012-2013 and also for the subsequent years afresh vis-a-vis other candidates considered and selected during all the relevant years of such consideration, in accordance with the legal position discussed above. By adopting that procedure if the applicant is found to have secured higher relative merit points than the last person appointed on compassionate grounds a post should be kept aside from 5% of the forthcoming vacancies arising for direct recruitment for the post of LDC or other Group C posts and shall consider the applicant for being appointed in such vacancy. If he cannot be appointed by adopting the above course, he shall be considered repeatedly for the forthcoming vacancies, in the light of the legal position as explained above. Ordered accordingly. It is made clear that Annexures A2, A4 & A6 impugned orders are quashed and set aside.

20. Original Application is allowed to the extent as above. Parties shall suffer their own costs.

(U. SARATHCHANDRAN)
JUDICIAL MEMBER

“SA”