

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No. 040/00189/2017

Date of Order: This, the 03rd day of September 2018

THE HON'BLE SMT. MANJULA DAS, JUDICIAL MEMBER

Shri Biplov Sarkar
S/o Late Sunil Chandra Sarkar
Ex-Mate Pipe, Military Engineering Service
Office of the Garrison Engineer
Tezpur, Assam, a resident of Village – Samdhara
P.O. – Panchmile, Dist – Sonitpur
(Assam), Pin – 784025.

...Applicant

By Advocates: Mr. S.N. Tamuli, Ms. P.K. Zannat & Ms. A. Begum

-Versus-

1. The Union of India
Represented by the Secretary
To the Government of India
Ministry of Defence, Sena Bhawan
South Block, New Delhi – 110001.
2. The Chief Engineer (HQ)
Eastern Command
Engineer's Branch, Fort William
Kolkata – 21.
3. The Chief Engineer (HQ)
Shillong Zone, Spread Eagle Falls
Shillong – 11.
4. The Commander Works Engineer
Tezpur, P.O. – Dekargaon
District – Sonitpur, Assam
Pin – 784501.

5. The Garrison Engineer
 Tezpur, P.O. – Dekargaon
 District – Sonitpur, Assam
 Pin – 784501.

...Respondents

By Advocate: Mr. R. Hazarika, Addl. CGSC

ORDER (ORAL)

MANJULA DAS, JUDICIAL MEMBER:

By this O.A., applicant makes a prayer to set aside and quash the decision contained in the impugned letter dated 11.01.2017 (Annexure-15, page 42 to the O.A.) and for a direction to the respondent authority for fresh consideration after assigning proper merit points as per the scheme.

2. Ms. A. Begum, learned counsel appearing on behalf of the applicant submits that applicant's father Late Sunil Ch. Sarkar, Ex. Mate, Office of the GE, Tezpur, Assam died while in service on 21.07.2009. Thereafter, the applicant applied for appointment on compassionate ground in the year 2010. According to Ms. Begum, initially, all such cases for compassionate appointment were kept pending till 2012 as the Board of Officers was not convened. Applicant made representation on 28.08.2014 praying for his appointment on

compassionate ground. Ultimately, vide letter dated 21.09.2016, the applicant was provided with the combined merit list for compassionate appointment with breakup of marks secured by him and other candidates.

3. Ms. Begum further submits that as the marks were not allotted as per the scheme, the applicant submitted representation to the respondent No. 2 with a copy to respondent No. 3 for correction of merit points. But the respondents have failed to take action on the same. Thereafter, vide impugned letter dated 11.01.2017 issued by the respondent No. 3, the applicant was informed that his case for compassionate appointment was considered for the years 09-10, 10-11, 11-12 & 13-14 and was rejected as he had secured only 56 merit points which is below the cut off marks/points. According to Ms. Begum, on being made RTI application before the appropriate authority, the marks allotted to the applicant earlier were corrected and his total marks came to 70.

4. Ms. Begum has drawn my attention to the RTI application as well as corrected sheet that is Anneuxre-18, page 45 to the O.A. and according to Ms. Begum, the case of

the applicant was considered by awarding terminal benefits inspite of 1092972, it was corrected as 539594 and income of earning came to 3000 and movable/immovable property shown as NIL. Thus the applicant got 19 points which was added and accordingly, he got 70 points. Hence, applicant's case should have been considered for giving appointment on compassionate ground.

5. On the other hand, Mr. R. Hazarika, learned Addl. CGSC appearing on behalf of the respondents by denying the correct one submits that the same was in fact not correct one inasmuch as the respondent authority has annexed Annexure-R/1, page 8 of the written statement showing the points obtained by the applicant where comes to 51 only. According to Mr. Hazarika, the correction so made in the correct list showing page 45, Annexure-18 to the O.A. is over written and cannot be taken into account for the decision.

6. In reply to that, the learned counsel for the applicant vociferously submits that the correct point was displayed in the Notice Board. Hence submission made by the learned Addl. CGSC is not correct. To substantiate her argument, Ms. Begum

submits the following grounds for which the case of the applicant was to be considered afresh:-

- (i) That the case of the applicant was never decided by the Board of Officers in proper prospective by awarding proper merit points.
- (ii) That the applicant was never assigned proper points as per the scheme for compassionate appointment.
- (iii) That the case of the applicant was a deserving one and was rejected on flimsy ground by the respondents for lapse on their part.
- (iv) That the respondent No. 4 has failed to forward the corrected merit position of the applicant to the Board of Officers in time for active and proper consideration.
- (v) That the Hon'ble Apex Court has time and again held that employee should not be made to suffer for the lapse on the part of the employee.
- (vi) That for the lapse on the part of the respondents in placing the case of the applicant before the Board of Officers in proper prospective the applicant should not be made to suffer.

7. Having heard the learned counsel for the parties, perusal of the pleadings and material placed before me, I find that the issue of merit points to be decided relating to assessment of merit point for compassionate appointment on

the basis of confusion on two papers, that is, one is Annexure – 18, page 45/46 to the O.A. submitted by the applicant and another paper is Annexure-R/1, page 8 to the written statement submitted by the official respondents. More so, from the impugned rejection order dated 11.01.2017, it appears that the case of the applicant was considered not only for one but also for thrice where the applicant against LRS 2009-10, 2010-11, 2011-12 and 2013-14, obtained 56 each marks respectively.

8. From the said rejection order, it is also clear that cut-off marks in 2009-10, 2010-11, 2011-12 and 2013-14 are 79, 72, 71 and 66 respectively. In view of that, I deem fit and proper to send back the matter to the department to verify the correct points where the applicant disputed the Annexure-R/1 and tried to establish his case by showing RTI reply where the applicant got 70 points. At the same time, I am also not ignoring the submission made by the learned Addl. CGSC for the respondents that the correction is not a fresh one but it is overwritten.

9. After taking into entire conspectus of the case, I direct the applicant to produce this O.A. before the appropriate authority within fifteen days from the date of

receipt of this order. On being receipt the said O.A., the respondent authority shall go on verification in regards to the RTI reply, Annexure-18, page 45/46 to the O.A. as well as Annexure-R/1, page 8 of the written statement come to a logical conclusion as to which one is correct and decide accordingly within a period of two months thereafter.

10. Needless to mention that the respondent authority further go for an enquiry into the RTI reply dated 24.03.2017 where the Annexure – 18 was annexed by stating correct one by the learned counsel for the applicant and shall come to a finding on the issue of overwritten as per law.

11. With the above observation and direction, the O.A. stands disposed of. No order as to costs.

**(MANJULA DAS)
MEMBER (J)**

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