

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

OA./21/1520/2014

Dated: 31/1/2018

BETWEEN:

K. Suri Babu,
S/o. Late Kadu Naidu,
aged about 29 years,
Occ: Unemployed,
R/o. D.No.7-2, Narva Village,
Pendurthi Mandal, Visakhapatnam.

..... Applicant

AND

1. The Union of India rep. by its
Secretary, Ministry of Defence,
South Block, Post DHQ,
New Delhi – 110 011.
2. The Engineering-in-Chief,
Rajaji marg, Kashmir House,
Post Army Headquarters,
DHQ, New Delhi – 110011.
3. The Chief Engineer (Navy),
Station Road, Walteir,
Visakhapatnam – 530 005.
4. The Chief Engineer,
Head Quarter, Southern Command,
Pune – 411 001.
5. The Garrison Engineer (Naval Services),
Naval Base Post, Visakhapatnam – 530 005.

..... Respondents

Counsel for the Applicant : Mrs. Anita Swain, Advocate

Counsel for the Respondents : Mr. M. Brahma Reddy, Addl. CGSC

CORAM

Hon'ble Mrs. Minnie Mathew, Administrative Member

ORAL ORDER

{Per Hon'ble Mrs. Minnie Mathew, Administrative Member}

Heard Mrs. Anita Swain, learned counsel for the applicant and Mr. Bheem Singh representing Mr. M. Brahma Reddy, learned Standing counsel for the Respondents.

2. The applicant is aggrieved by the rejection of his case for employment assistance on compassionate grounds vide the impugned Annexure-A1 orders dated 18.01.2011, 30.04.2013, 31.05.2013 and 27.07.2013. He prays for a direction to the 4th respondent to appoint him by taking into consideration his blindness and the penurious condition of his family.

3. Briefly stated, the facts of the case are that the applicant's father late Kadu Naidu Ex- Civilian Motor Driver died on 19.01.2007 while working under the 4th Respondent leaving behind a family consisting of his wife, a dependent mother, the applicant who is totally blind and two sons who are daily wage workers. During the life time of his father the applicant's two brothers got married and separated themselves from the family and are surviving by doing casual work. After the demise of his father, the applicant submitted several representations on 19.05.2007, 06.12.2007, 17.02.2008, 17.09.2008, 10.02.2009, and 22.06.2009 which were rejected by the 4th Respondent on 18.01.2011 stating that his candidature cannot be considered due to non availability of sufficient vacancies within 5% quota. Thereafter, he received a letter on 18th July, 2013 informing him that his case will be considered in the next board of 2011-2012. However finally

the rejection letter dated 27.07.2013 was issued conveying the screening

committee's decision that his case was not considered for employment assistance as the marks secured by him are less in merit as compared to others.

4. In their reply statement the Respondents have submitted that the Suitability Board convened to recommend the cases for appointment on compassionate grounds had recommended the applicant's case for the post of Cane Weaver as he was blind. He has also submitted his willingness certificate for the post of Cane Weaver. His case was thereafter considered in the Command Compassionate Boards for the years 2009-10, 2010-11 & 2011-12 by the Chief Engineer, Southern Command, Pune. As the applicant had secured only 56 marks which is less than the cut off marks, he could not be considered for employment assistance under compassionate grounds even after giving chances for 3 years as laid down in DOP&T OM dated 05.05.2003. Therefore, the case was finally closed and the applicant was conveyed the decision on 30th April 2013, 31st May 2013 and 27th July, 2013. The Respondent have submitted the tabular form of the cut off marks for each category such as LDC SK-II, Safaiwala Peon, Chowkidar, Mate (SSK) for the years 2009-10, 2010-11, 2011-12. In all the 3 years the marks that have been secured by the applicant show as 56 whereas the cut off marks were 73 for Safaiwala and 74 for Mate(SSK) in 2009-10 and 72 for M/reader and 71 for Mate (SSK) in 2010-2011, 70 for Safaiwala and 71 for Chowkidar in 2011-12. They also pointed out that the marks are awarded as per the marking system taking into consideration family size

including age of children, amount of terminal benefits, amount of family

pension, liability in terms of unmarried daughter(s), minor children movable / immovable properties left by the deceased at the time of death to find out cases of acute financial distress / most deserving cases on relative merit. The Board recommends only the really deserving cases and that too only if clear vacancy meant for appointment on compassionate grounds exists within the ceiling of 5% Direct Recruitment quota. The applicant has not come up in merit even after considering his case in three consecutive years by the Command Board in the year 2009-10, 2010-11, and 2011-12.

5. It is also submitted by the respondents that there is no provision in the scheme of compassionate appointment for considering an individual for employment assistance separately on the basis of his blindness or disability as per policies in vogue on the subject. Therefore, his case has been considered in the 3 yearly Command Boards along with other candidates awaiting for such appointment. As the applicant had secured only 56 marks which are less than the cut off marks, his case had not be considered and he was accordingly informed through a speaking order.

6. The respondents have cited the judgment of the Jodhpur Bench in OA.25/2011 dated 22.02.2012 wherein the OA was dismissed holding that the condition of the family is not such from which it can be inferred that the family is in penurious condition or indigent condition. It was also held that the deceased died in 2003 and the family is surviving after the death of the deceased and the applicant and his brother can earn their own livelihood. In this case also applicant's father expired on 19.01.2007 and the wife of the

deceased Government servant had submitted an application for

compassionate appointment only on 31st March, 2009 after 2 years of death of her husband, instead of submitting the same within one year. However, her application was considered and the case was placed before the Command Compassionate Board along with others for 3 years consecutively i.e. for the years 2009-10, 2010-11 & 2011-12. The very object of providing compassionate appointment is to give immediate relief to the family of the deceased employee to meet the indigent conditions caused due to the sudden demise of the Government servant. They have also relied on the judgment of CAT Ernakulam Bench, in OA.18/2011 which is also a case of a similar nature filed by one K. Raghu, Malappuram Dist which was dismissed on 20th October, 2011 holding that the case of the applicant had been fully considered and no legal lacuna could be discerned from the impugned order. Further, the scheme of compassionate appointment does not necessarily imply that the dependent of every deceased Government employee will be offered appointment on compassionate grounds. It is further submitted that all the cases received from various units are considered by the Board of Officers constituted at the Command level as per the Govt. policy, to find out the most deserving cases. They have also relied on the judgment of the Hon'ble Apex Court in the case of Umesh Kumar Nagpal V/s State of Haryana 1994 (4) SCC 138 in which it has been held that "offering appointment on compassionate grounds as a matter of course irrespective of the financial condition of the family of the deceased or medically retired Government servant is legally impermissible and compassionate appointment cannot be

granted after lapse of a reasonable period and it is not a vested right which can be exercised at any time in future”. They have also pointed out that in OM No.36035/3/2009 Estt. (RES) dated 29th December, 2005 read with OM No.36012/24/2009/Estt. (RES) dated 03 December, 2013 it has been clearly stated that the provision for considering blindness or disability is for direct recruitment only, and not for compassionate appointment cases.

7. The respondents have also refuted the contention of the applicant that his family does not have any source of income. They submitted that the family of the deceased had received Rs.4,52,241/- towards terminal benefits and that they are drawing pension of Rs.3,202/- per month. Besides as per the documents submitted by the applicant they were having a monthly income of Rs.1000/- from property and also own movable and immovable property/ Land worth of Rs. 80,000/-. They further point out that the family could survive even after eight years of the death of the Government servant due to the source of income as stated by the applicant.

8. When the case was taken up for hearing on 05.12.2016, this Tribunal observed that the applicant had given his willingness to accept the post of Cane Weaver and that the reply statement does not give information as to whether the applicant has been considered for the post of Cane Weaver by the Command Compassionate Board for the years 2009-2010, 2010-2011, 2011-2012. The Respondents were therefore directed to file Additional Affidavit regarding the availability of vacancies of Cane Weaver in the relevant years and also the marks secured by the last selected candidate.

Accordingly, the Respondents have filed an Additional Affidavit and

enclose a letter of Chief Engineer, Southern Command, Pune in which it has been stated that during the years 2009-10, 2010-11, 2011-12 Cane Weaver vacancies were not allotted.

9. During the course of the arguments, learned counsel for the applicant argued that the applicant has not been assessed properly as can be seen from the varying marks that have been allotted in the impugned order 18.01.2011 in which it has been shown that he has secured 35 marks and was recommended for final look. She also pointed out that subsequently the marks were shown as 56.

10. The main reasons for rejecting the applicant's case is due to non availability of sufficient vacancy within 5% quota and the fact that he had secured marks which were less than the cut off marks for the various categories of posts such as LDC/ SK-II Group D category which includes Mate (SSK), Peon, Chowkidar and Safaiwala. Marks have been awarded based on certain parameters such as minor children, unmarried daughter, quantum of family pension and terminal benefits, movable and immovable properties etc. The applicant was assessed on the basis of comparative merit and the marks secured by the applicant's were below the cut off marks of even the lowest Gr.D category posts. Thus in terms of comparative merit there are more deserving candidates than the applicant. It is not the case of the applicant that the marks were wrongly awarded to him or that any less meritorious candidate has been appointed while ignoring his higher merit. The respondents have cited Office Memorandum dated 29.12.2005 and 03.12.2013 in support of their contention that factor such as blindness

or disability can be considered for Direct Recruitment only and not for compassionate appointment. On the other hand, the applicant has not brought any material evidence to show any special quota or consideration for candidates suffering from blindness for employment assistance under the scheme for compassionate appointment. Further, the respondents have also categorically stated that there were no vacancies of Cane Weaver for the years 2009-10, 2010-11, 2011-12.

11. In the result the applicant has failed to establish that he has been denied compassionate appointment in spite of availability of vacancies and in spite of having higher comparative merit when compared to the other candidates for compassionate appointment. I therefore, hold that the OA is devoid of merit and is liable to be dismissed. Ordered accordingly. No costs.

(MINNIE MATHEW)
ADMN. MEMBER

Dated the 31st January, 2018
(Dictated in the Open Court)

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