

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH

...

OA No.290/00077/2017

Pronounced on : 31.08.2018
(Reserved on : 14.08.2018)

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CORAM: HON'BLE SMT. HINA P. SHAH, MEMBER (J)

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Manish Vyas S/o late Shri Harish Chandra Vyas, aged about 31 years, R/o 17-E-392, Chopasani Housing Board, Jodhpur. Applicant's father Shri Harish Chandra holding the post of Superintendent in the O/o The Deputy Commissioner, Central Excise Department, Jodhpur, Rajasthan.

...APPLICANT

BY ADVOCATE : Mr. S.K. M. Vyas.

VERSUS

1. The Union of India, through the Secretary, Ministry of Finance, Department of Revenue, Central Board of Excise & Customs, HUDCO Vishala Building Bhikaji Cama Palace, New Delhi.
2. The Secretary, Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training, North Block, New Delhi.
(Respondent no.2 is deleted vide order dated 03.07.2018)
3. The Chief Commissioner, Central Excise (Jaipur Zone), NCR Building, Statue Circle, C-Scheme, Jaipur, Rajasthan.
4. The Deputy Commissioner, Central Excise Department, Jodhpur, Rajasthan.

RESPONDENTS

BY ADVOCATE: Mr. B.L. Tiwari for R1 to R3.

ORDER

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HON'BLE SMT. HINA P. SHAH, MEMBER (J):-

1. The present Original Application (O.A.) has been filed by the applicant under Section 19 of the Central Administrative Tribunal's Act, 1985, wherein the applicant seeks the following reliefs:

- "i) The impugned order/letters dated 10.06.2016 may kindly be quashed and set aside.

- ii) The respondents may kindly be directed to consider the case of the applicant for granting appointment on compassionate grounds in accordance with his qualification with all consequential benefits.
- iii) The exemplary cost be imposed on the respondents from causing undue harassment to the applicant.”

2. The brief facts of the case are as under:-

i) The father of the applicant expired on 12.04.2012 while he was in service leaving behind him two sons i.e. the present applicant and Shri Nitin Vyas, who is elder brother of the applicant. The elder brother of the applicant is suffering from physical disability of more than 40%. After the sudden demise of his father, the applicant had submitted an application form to the respondents with a request to consider his appointment on compassionate grounds (Annexure A4). Respondent no.3 informed the applicant vide order dated 20.09.2012 that his case on compassionate grounds was considered by the prescribed Committee on 29.08.2012 and the Committee did not recommend his case being a married son (Annexure A5). Thereafter, the applicant submitted a representation to the respondents on 09.10.2012 stating that after the death of his father, he is sole bread earner of his family and also having liability of his elder brother who is handicapped. The applicant states that the copy of the said representation is not with him. He states that the rejection of the case of the applicant for appointment on compassionate grounds on the basis of the letter dated 28/30.09.2010, is bad in law being violation of Article 14 of the Constitution of India. The applicant states that he deserves compassionate appointment due to his financial crisis and also he is suffering from starvation. The applicant states that after he got married, there is a change in family circumstances, and now he has to take care of his wife/daughter as well as his handicapped elder brother. The respondents vide the letter dated 26.02.2013 (Annexure A8) informed the applicant that his request for compassionate appointment was examined but the same cannot be acceded to in view of the existing instructions on the subject. The applicant

states that inaction on the part of the respondents is ex-facie a bundle of malafides and arbitrary exercise of powers and so he had approached this Tribunal by filing OA No.525/2013. This Tribunal vide order dated 12.05.2015 had directed the respondents to reconsider the case of the applicant for appointment on compassionate grounds in the light of DoP&T clarification dated 25.02.2015 within a period of three months' from the date of receipt of the copy of the order.

ii) The applicant states that the respondents have not considered his case as per the directions given by this Tribunal, the refusal on the ground that he being a married son of the deceased employee. The respondents should have considered his case on the said grounds in view of the clarification dated 25.02.2015. But now suddenly the stand of the respondents have changed and now they have added two more grounds for rejection of his case on compassionate grounds. Now the respondents have taken into consideration the fact that the family is getting monthly pension of Rs.35,900/- and the said amount is sufficient for livelihood and the family is also having a residential house at Jodhpur. After this assessment of the family condition and liabilities of the family, the Committee did not find any merit in the case of the applicant and his case for appointment on compassionate grounds was closed finally vide order dated 10.06.2016.

iii) The grounds raised by the applicant are that the impugned order dated 20.09.2012 as well as the letter dated 26.02.2013 are illegal, arbitrary and unconstitutional. Also the rejection of the case of the applicant on the ground of he being married son vide order dated 28/30.09.2010 is highly unreasonable and objectionable. The respondents should have considered his case since there is a handicapped brother in the family, his wife and daughter also to be taken care of. Keeping in mind the circular / clarification dated 25.02.2015, the applicant's case should have been reconsidered on the ground of married son and mere rejection of the case on new grounds that the applicant is having

residential house as well as the family is getting monthly pension of Rs.35,900/- is highly unjust and unfair to reject his case for compassionate appointment. The applicant states that mere rejection of his case on compassionate grounds without assigning any justifiable reasons leaves no option but to approach this Tribunal for quashing and setting aside the impugned order dated 10.06.2016 and therefore the respondents may be directed to consider his case for granting appointment on compassionate grounds in accordance with his qualification with all consequential benefits.

3. The respondents have filed the reply dated 12.07.2017 and has stated that as per DoP&T OM dated 16.01.2013, the case of the applicant was considered for compassionate appointment. In compliance of the order dated 12.05.2015 passed in OA No.525/2013, the selection committee had considered the case of the applicant along with 19 such cases in its meeting held on 31.05.2016 for three vacancies and the most deserving and eligible candidates were selected for compassionate appointment.

i) The respondents further state that the case of the applicant was considered for the first time by the committee in its meeting held on 29.08.2012 in the light of Ministry's letter dated 28/30.09.2010 as well as DoPT's opinion received through UO note dated 21.09.2010 and the same was rejected as the applicant was married at the time of death of late employee. The applicant, thereafter, had submitted his letter dated 09.10.2012 requesting for grant of relaxation from marriage rule of compassionate appointment but since there was no such relaxation available in the then existing instructions, the applicant was duly informed about the rejection of his said prayer vide office letter dated 26.02.2013. Thereafter as per the order passed by this Tribunal dated 12.05.2015 in OA No.525/2013, the impugned order dated 10.06.2016 has been passed. The case of the applicant was considered by the Committee in its meeting held on 31.05.2016 on merits after making a balanced and

objective assessment of the financial conditions and liabilities of the deceased families including the applicant.

ii) The respondents stated that as held by the Hon'ble Apex Court and other Courts in catena of judgments on the issue of compassionate appointment, the same cannot be claimed as a matter of right and therefore there is no violation of Article 14 and 16 of the Constitution of India as the case of the applicant has been considered by the Committee keeping in view various parameters and accordingly his case was rejected.

iii) The respondents have relied on judgment of the Hon'ble Apex Court i.e. Umesh Kumar Nagpal vs. State of Haryana, 1994 SCC (4) 138, Sanjay Kumar vs. State of Bihar, 1994 SCC (L&S) 930, PNB vs. Ashwini Kumar Taneja, 2005 (1) SLJ 30, Rajiv Kumar Adak vs. State of West Bengal, 2015 (3) SLR; Mukesh and ors. vs. State of Bihar and Ors., 2017 (2) SLJ 256, Gurpreet Kaur and Ors. vs. State of Punjab and Ors. 2017 (6) SLR 763 (PB and Hary.)

4. Considering the grounds raised by the applicant, the respondents submit that the rejection of the case of the applicant earlier on the ground of married son was considered in the latest meeting but keeping in view that the applicant is possessing a residential house and as the family is also getting monthly pension, the case of the applicant was not found to be one of deserving cases and therefore he could not be considered for grant of appointment on compassionate grounds. Therefore, the grounds raised by the applicant have no substance and the same cannot be relied upon.

5. Heard Shri S.K.M. Vyas, learned counsel for the applicant and Shri B.L.Tiwari, learned counsel for respondents no.1 to 3 and perused the material available on record.

6. After hearing learned counsel for the parties and perusing the material available on record, it is found that in the earlier round of litigation, the case of

the applicant was not considered as he was a married son and as per the existing rules on the subject, his case could not be considered on the ground that he was a married son and therefore his case was rejected vide order dated 26.02.2013. Thereafter, the applicant filed OA No.525/2013 which was decided by this Tribunal vide order dated 12.05.2015 with a direction to the respondents to reconsider the case of the applicant for appointment on compassionate grounds in the light of DoP&T clarification dated 25.02.2015.

7. It is seen that the case of the applicant was first rejected on the ground of he being a married son and now in the impugned order dated 10.06.2016, it is seen that the case of the applicant on compassionate grounds is rejected on the ground that the applicant is having a residential house as well as the family is getting monthly pension. Though these grounds were earlier also available but still the respondents have failed to consider the case of the applicant and have merely rejected on these two new grounds.

8. In view of the above aforesaid position, I hereby direct the respondents to reconsider the case of the applicant for appointment on compassionate grounds in the next available meeting along with other such candidates and thereafter the applicant may be informed accordingly by passing a reasoned and speaking order.

9. Accordingly, the O.A. is hereby disposed of, with no order as to costs.

(HINA P. SHAH)
MEMBER (J)

Dated: .08.2018
Place: Jodhpur

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