

CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH

...

Original Application No.290/00394/2016

Reserved on : 08.08.2018  
Pronounced on : 20.08.2018

CORAM:

HON'BLE MRS. HINA P.SHAH, MEMBER (J)

Bharat Jain s/o Shri C.R.Lalwani, aged about 35 years, r/o 135, Jawahar Society, Mahaveer Nagar, Guro Ka Talab Road, Jodhpur, Rajasthan.

...Applicant

(By Advocate: Shri K.P.Singh, proxy counsel for Shri Kuldeep Mathur)  
Versus

1. Union of India through Secretary, Ministry of Personnel Public Grievances and Pensions, Department of Personnel and Training, North Block, New Delhi.

2. The Chief Commissioner, Central Excise (Jaipur Zone), NCR Building, Statute Circle, C-Scheme, Jaipur, Rajasthan.

3. The Deputy Commissioner, Central Excise Department, Jodhpur  
...Respondents

(By Advocate: Shri Nimesh Suthar)

ORDER

The applicant has filed the present OA u/s 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

- (i) That record of the case may kindly be called for
- (ii) That the impugned letter dated 10.06.2016 passed by the respondent No.3 (Annexure-A/1) may kindly be quashed and set aside.
- (iii) The non-applicant may kindly be directed to consider the case of applicant No.1 for granting the appointment on compassionate grounds in accordance with his qualification.
- (iv) The non-applicants may kindly be directed to grant appointment to applicant No.1 on compassionate grounds.
- (v) Any other relief, which this Hon'ble Tribunal deems fit and proper in favour of the applicant any be granted. The original application may kindly be allowed with costs and all circumstantial benefits may be granted in favour of the applicant.
- (vi) Costs of this application be ordered to be awarded in favour of the applicant.

2. Brief facts of the case are as under:-

The applicant's father late Shri Chandra Raj Lalwani was working on the post of Administrative Officer in the respondent department. He expired on 20th March, 2012 while in service. Immediately on 30.03.2012, the applicant's mother moved an application and requested the respondents to consider candidature of her son for appointment on compassionate grounds, and submitted the application in the prescribed proforma (Ann.A/2). Certain requisite information was still required to be sought from the applicant by the respondents and the same was duly supplied by

the applicant on 22.5.2012. Thereafter, the respondents neither took any action nor communicated to the applicant on the application made by the applicant's mother for compassionate appointment. On 20th September, 2012, the respondent No.3 informed the applicant that the case of the applicant seeking appointment on compassionate grounds was considered by the prescribed committee on 29.8.2012. It was stated that in the office letter dated 28/30th September, 2010 of the Central Board of Excise and Customs, New Delhi read along with copy of DOPT's U.No. dated 23.9.2010, the married son/daughter have been considered ineligible for appointment on compassionate grounds. Therefore, the committee has recommended to close the case of the applicant being a married son, for consideration of appointment on compassionate grounds.

The applicant immediately vide letter dated 5.10.2012 addressed to respondent No.3 sought information about the rejection of his case for appointment on compassionate grounds. He also stated in the said letter that after the death of his father, he is having liability of his younger brother as well as his mother, therefore, he seeks compassionate appointment since the condition of the family is indigent. He also sent two more letters dated 18.10.2012 as well as 15.11.2012 but the same remained un-answered. Being aggrieved by the action of the respondents, in not submitting further reply on his correspondence, the applicant preferred OA No.424/2013 before this Tribunal whereby appointment on compassionate grounds was rejected by the respondents on the grounds that applicant is a married son of the deceased Shri Chandraraj Lalwani. Though after passing order dated 20th September, 2012, the applicant again moved application to the respondents under RTI Act seeking copies/information pertaining to his matter.

The applicant was surprised to receive letter dated 10.06.2016 (Ann.A/1) whereby the committee had closed his case finally. The applicant after rejection of his candidature for appointment on compassionate grounds made representation vide letter dated 17.6.2016 (Ann.A/8) but since no reply was received from the respondents, he has preferred the present OA.

3. The respondents have replied stating that the DOPT vide OM dated 9.10.1998 as well dated 16.1.2013 have issued consolidated instructions on compassionate appointment and as per para 11(a) of OM dated 16.1.2013, it is very clear that in deserving cases even when there is already an earning member in the family, the dependent family member may be considered for compassionate appointment with prior approval of the Secretary of the Department/Ministry concerned, who, before approving such appointment will satisfy himself that the grant of compassionate appointment is justified having regard to the number of dependents, assets and liabilities left by the Government servant, income of the earning member as also his liability including the facts that the earning member is residing with the family of the Government servant and whether he should not be source of support of the other members of the family. The respondents have also relied upon DOPT note dated 21.9.2010 (Ann.R/3) which states that compassionate appointment is a concession and not a right and considering married son/daughter of the deceased Government employee for appointment on compassionate grounds would be against well established law on compassionate appointment. Therefore, a married son/daughter should not be considered for appointment on compassionate grounds. Same was the case in DOPT's FAQ dated 30.05.2013 and specific reliance has been placed on question No.13 i.e. whether married son can be considered for compassionate appointment ?, it was clearly replied that 'No'. A married son is not considered dependent of the deceased Government servant. Thereafter the DOPT vide FAQ dt. 25.2.2015 (Ann.R/5) modified the FAQ dated 30.5.2013 in reply to question No.60 i.e. "whether

married son can be considered for compassionate appointment ? ". It has been replied, 'Yes' if he otherwise fulfills all the other requirement of the scheme. The case of the applicant was considered alongwith other cases by the Committee in the meeting held on 29.8.2012 based on then existing instructions/guidelines of DOPT and Ministry of Finance and case of the applicant was rejected on the ground of being married son, hence not being eligible. The case of the applicant was recommended for final closure and the applicant was informed vide letter dated 20.9.2012. Being aggrieved by the said communication, the respondents state that the applicant preferred OA No.424/2013 before this Tribunal and the Tribunal directed the respondents to reconsider the case of the applicant in the light of the FAQ dated 25.2.2015. In compliance of the order of the Tribunal, the case of the applicant was reconsidered. The case of the applicant for grant of compassionate appointment was placed before the prescribed Committee whose meeting was held on 31.5.2016 alongwith other cases on such issue. The Committee in its meeting held on 31.5.2016 observed that it did not find any merit in the case of the applicant and recommended for final closure of the request of the applicant for compassionate appointment (Ann.R/8). Accordingly, the applicant was informed vide impugned order dated 10.6.2016 about the same. The respondents have also relied on several Apex Court judgments and stated that as the case of the applicant has already been considered, therefore, there is no merit in the submissions of the applicant to re-open the said case.

4. Heard Shri K.P.Singh, proxy counsel for Shri Kuldeep Mathur, counsel for the applicant and Shri Nimesh Suthar, counsel for the respondents and have perused the material available on record.

5. During the arguments, it is noted that there is a DOPT OM dated 5.9.2016 pertaining to review of FAQ's dated 30.5.2013/25.2.2015 with regard to married son. As per Para-4 of the said OM, it clearly states that "the cases of compassionate appointment rejected solely on the grounds of marital status in terms of FAQ 13 dated 30.5.2013 during the intervening period i.e. w.e.f. 30th May, 2013 to 25.2.2015 in respect of married son may be re-opened/re-considered against vacancy occurring after issue of the OM dated 5th September, 2016.

6. After going through the material available on record, it is clear that the case of the applicant was reconsidered by the committee held on 31.5.2016 and the said committee did not recommend the case of the applicant for compassionate appointment and recommended for final closure. The applicant has relied upon the judgment of this Tribunal passed on 21st August, 2017 in OA No.397/2016, where in an identical situation, this Tribunal has remitted the matter back to the respondents to reconsider the claim of the applicant in the light of the observations made therein. I agree that this judgment squarely covers the present matter in hand and in my considered view ends of justice will be met, if the matter is remitted back to the respondents to reconsider the case of the applicant in the light of OM dated 5th September, 2016.

7. Accordingly, the impugned order dated 10.6.2016 (Ann.A/1) is hereby quashed and set aside and the matter is remitted back to the competent authority of the respondent department to reconsider the case of the applicant in the light of the DOPT OM F.No.No.14014/02/2012-Estt.(D) dated 5th September, 2016 in the next meeting of the committee to be convened for considering the cases for compassionate appointment along with other candidates and thereafter the applicant may be informed accordingly by passing a reasoned and speaking order.

8. The OA is accordingly disposed of. No costs.

(HINA P.SHAH)  
MEMBER (J)

