

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH

...

Original Application No.290/00453/2016

Reserved on : 08.08.2018

Pronounced on : 14.08.2018

CORAM:

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

Bharat Jawa s/o late Shri Kana Ram Jawa, aged about 28 years, r/o Plot No.81, Digari Kalla, Vishnu Nagar, Jodhpur. Ward of Ex. Lab Attendant K.V.No.(1), Army, Jodhpur

...Applicant

(By Advocate: Shri S.K.Malik)

Versus

1. Kendriya Vidyalaya Sangathan (HQ) through its Commissioner, 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi-16.
2. Deputy Commissioner, Kendriya Vidyalaya Sangathan (Regional Office), 92, Gandhi Nagar Marg, Bajaj Nagar, Jaipur
3. Principal, Kendriya Vidyalaya No. 1 (Army), Military Area, Ajmer Road, Jodhpur.

...Respondents

(By Advocate: Shri Avinash Acharya)

ORDER

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

(i) By an appropriate writ order or direction impugned orders dated 28.01.14 at Ann./1, impugned order dated 4.12.14 at Annx.A/2 and impugned order dated 28.03.16 at Annx.A/3 be declared illegal and be quashed and set aside.

(ii) By an order or direction respondents may be directed to consider the case of applicant for compassionate appointment on any Group 'D' or 'C' post if found eligible be provided appointment with consequential benefits.

(iii) By an order or direction respondents may be directed to provide minutes of committee for compassionate appointment and comparative merit list of all years in respect of applicant along with other candidates who have been given appointment on compassionate ground.

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

The father of the applicant late Shri Kana Ram expired on 24.4.2012. He was working on the post of Lab Attendant Group-D staff with the respondent department. He was survived by his widow, two sons and one daughter. The respondents vide letter dated 2.8.2012 issued family

pension order to the widow of late Shri Kana Ram amounting to Rs. 6325/-. Vide order dated 2.8.2012 widow of the deceased was also granted gratuity amounting to Rs. 6,88,809/-. Thereafter, mother of the applicant submitted an application for compassionate appointment in respect of the present applicant, who is 12th class pass with all requisite documents. Respondent No.3 vide letter dated 5.11.2012 forwarded the application alongwith the documents to respondent No.2 for forwarding the same to respondent No.1. As per letter dated 7.11.2012 respondent No.2 forwarded the same to respondent No.1.

The respondent vide letter dated 28.1.2014 (Ann.A/1) informed the applicant that his request for appointment on compassionate grounds has been considered by the Committee constituted for the said purpose, but as per the parameters prescribed by the Government of India and adopted by the Kendriya Vidyalaya Sangathan, his name has not been shortlisted in the merit list. Similarly, two more orders had been passed by the respondents i.e. order dated 4.12.2014 (Ann.A/2) and 28.3.2016 (Ann.A/3) whereby his name was considered for compassionate appointment along with others, but his name could not be shortlisted in the merit list. The applicant stated that the said three orders passed by the respondents are non-speaking orders and are stereo type. As the applicant belongs to SC category and his family is in penurious condition, the applicant has no alternative but to approach this Hon'ble Tribunal.

The grounds raised by the applicant are that no reason has been provided in the impugned order as to how the case of the applicant has not been shortlisted in the merit list for appointment on compassionate grounds. Submission made by the applicant is that after death of the deceased employee, application for compassionate appointment was moved by the mother of the applicant. The family is suffering from financial crisis and they did not have any other source of income other than meagre family pension. The applicant states that his case for compassionate appointment has been ignored since he belongs to down trodden family and the impugned order is totally non-speaking and stereo type order and, therefore, action of the respondents is clearly illegal, arbitrary and contrary to the provision of law as well as violative of Article 14 and 16 of the Constitution of India.

3. The respondents have filed their reply dated 4.5.2017 submitting that the action of the respondents is just and proper and the impugned orders passed are perfectly legal and valid and in consonance with the provisions of law. The respondents state that the case of the applicant alongwith such other cases for compassionate grounds has been considered by the Compassionate Appointment Committee for recommending the case for appointment on compassionate grounds in its meeting held on 24.1.2013, 13.12.2013, 4.9.2014, 2.12.2015 and 26.5.2015 but the committee did not recommend his case for appointment on compassionate grounds since his position was low in merit as compared to other cases. All the cases for appointment on compassionate grounds have been considered as per the points allocated based on various attributes of 100 point scale as per Ministry of communication and IT (Dept. Of Post) Circular No. 37/36/2004-SPB-I/C dated 20.1.2010 regarding scheme for compassionate appointment and relative merit point and procedure for selection. As per rules, the appointment on compassionate grounds is limited to 5% of total vacancies of LDCs and sub Staff under direct recruitment. The respondents further state that the case of the applicant had been taken into consideration for compassionate appointment, but due to lower rank of the applicant in the point list prepared as per the parameters, appointment could not be granted. The respondents, therefore, state that case of the applicant has been considered as per rule and as he was lower in merit, he could not be given compassionate appointment as persons who have been given

appointment were higher in merit compared to the applicant. Therefore, action of the respondents requires no interference.

4. In rejoinder, the applicant stated that the respondents have adopted pick and choose policy by throwing away the scheme giving appointment to the persons of dependent of high officials who do not fall within the parameters in the scheme for compassionate appointment. He relied on Ann.A/9 filed in the rejoinder stating that one such appointment has been given to wife of Shri K.P.Chamola, Ex. Assistant Commissioner, KVS (RO), Jaipur. The applicant further stated that in the scheme for compassionate appointment and more particularly in the OM dated 16th January, 2013 in the consolidated instructions on compassionate appointment at instruction No.7 sub clause-(b) it is clearly pointed out that a person selected for appointment on compassionate ground should be adjusted in the recruitment roster against appropriate category viz. SC/ST/OBC/General, depending upon the category to which he belongs. For example, if he belongs to SC category, he will be adjusted against SC reservation, if he is ST/OBC, he will be adjusted against ST/OBC point and if he belongs to General category, he will be adjusted against the vacancy point meant for General category. The said OM has been annexed at Ann.A/10. Therefore, the applicant submitted that as per 100 point scale, he should have been given more points and, therefore, stated that it would suffice if the respondents be directed to produce the minutes and record pertaining to the meeting held on 24.1.2013, 13.12.2013, 4.9.2014 and 26.5.2016 wherein the case of the applicant was considered alongwith other candidates. He also submitted that the number of vacancies filled from the reserved category are not as per the roster reservation.

5. Heard Shri S.K.Malik, counsel for the applicant and Shri Avinash Acharya, for the respondents and perused the material available on record and also the record produced by the respondents i.e minutes of the meeting held on 24.1.2013, 13.12.2013, 4.9.2014, 9.12.2015 and 26.5.2016.

6. After going through the record, it is clear that no injustice has been done to the applicant. His case was considered alongwith all other candidates in the meeting held on the above mentioned dates. Perusal of the record also show that there is no malafide action or any bias towards any particular candidate for giving appointment on compassionate grounds.

7. It is settled proposition of law that compassionate appointment cannot be claimed as a matter of right. The same can be granted only when the family of the deceased employee is in indigent condition and deserves relief to overcome its financial distress. The Hon'ble Supreme Court in Umesh Kumar Nagpal vs. State of Haryana and ors. [JT 1994 (3) SC 525] has held that the whole object of granting compassionate appointment is to enable the family to tide over the sudden crisis and to relieve the family of the deceased from financial destitution and to help it get over the emergency. Offering compassionate appointment as a matter of course irrespective of the financial condition of the family of the deceased or medically retired Government servant is legally impermissible. The Hon'ble Apex Court in Life Insurance Corporation of India vs. Mrs. Asha Ramchandra Amdekar and Ors. [JT 1994 (2) SC 183] held that the High Court or the Administrative Tribunals cannot give direction for appointment of a person on compassionate grounds but can merely direct consideration of the claim of such appointment. The Hon'ble Supreme Court in its judgment dated 5.4.2011 in Civil Appeal No.2206/2006 filed by Local Administration Department vs. M.Selvanayagam @ Kumaravelu has observed that an appointment made many years after the death of the employee or without due consideration of the financial resources available to his/her dependents and the financial deprivation caused to the dependents as a result of his death, simply because the claimant

happened to be one of the dependents of the deceased employee would be directly in conflict with Articles 14 and 16 of the Constitution, hence quite bad and illegal.

8. In view of above proposition of law settled by the Hon'ble Apex Court in various judgments cited supra, in my opinion, the case of the applicant has already been considered several times for compassionate appointment as per rules. However, in the interest of justice, considering one of the prayers made by the applicant in his relief clause, I deem it proper to direct the respondents to provide the applicant relevant information regarding the points scored by him on different attributes as well as by other candidates when his case for compassionate appointment was considered in various meetings by the committee within a period of six weeks from the date of receipt of the copy of the order.

9. Accordingly, the OA stands disposed of in above terms. No order as to costs.

(HINA P.SHAH)

Member (J)

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