

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
KOLKATA

O.A.No.350/449/2016

Date :26.10.2017

Coram : Hon'ble Ms. Manjula Das, Judicial Member

Smt. Munni Devi Pashi,
Wife of Sri Naresh Kumar Pashi
Residing at quarter No. 11/11(II),
New Jheel Road Estate, Gun & Shell
Factory, P.O & P.S. Cassipore,
Kolkata – 700002.

..... Applicant

-Versus -

1. Union of India,
Service through the Secretary,
Ministry of Defence, South Block,
New Delhi – 11

2. The Chairman,
Ordinance Factory Board,
10, Auckland Road, Kolkata – 700001

3. The Senior General Manager,
Gun & Shell Factory, Cossipore,
P.O & P.S. Cossipore, Kolkata-
700002.

.....Respondents

For the applicant : Mr. A. Roy, counsel

For the respondents : Mr. B.P. Manna, counsel

ORDER(ORAL)

Ms. Manjula Das, Judicial Member

The applicant has approached this Tribunal seeking the following reliefs:-

"a) The Senior General Manager, Gun & Shell Factory, Cossipore, Kolkata – 700002 is directed to absorb your applicant in a suitable job due to voluntary retirement of her husband for his physical ground as per decision of Medical Board of the Gun and Shell factory, Cossipore Kolkata-700002 where previously on the same self ground one Chandan Mitra, son of



Sudhir Mitra was absorbed by the respondent no.3 where the case of the applicant is more painful and sensitive than the case of Chandan Mitra as per her present condition with her minor children that should be carefully and sympathetically considered by this Hon'ble Tribunal at the time of passing order/orders, direction/directions and judgments in favour of the applicant;

b) Leave may be granted to file this application before the Central Administrative Tribunal(Procedure) Rule, 1987;

c) Such any other order/orders, relief/reliefs as the Hon'ble Tribunal may deem fit and proper for the ends of justice."

2. Heard Mr. A. Roy, Id. counsel for the applicant and Mr. B.P. Manna, Id. counsel for the respondents.

3. Brief facts of the case as narrated by the applicant is that her husband Late Naresh Kumar Pashi made an application for voluntary retirement on medical incapacity which was not under the knowledge of the applicant because from 24.08.2014 her husband did not come back to his Government service quarter. After knowing this fact the applicant sent a demand of justice notice to the General Manager through her advocate on 09.03.2015 with a prayer inter alia for giving her appointment against a suitable post as her husband was allowed to go for voluntary retirement on medical grounds. The respondents did not pay any heed to the said demand of justice notice. Therefore, again the applicant sent a demand of justice notice through her advocate on 27.07.2015 to the Respondent No.2 and 3 with a request to offer her appointment in a suitable post.

4. It was submitted by the Id. counsel for the applicant that the husband of the applicant, Late Naresh Kumar Pashi did not reside with his legally married wife i.e. the applicant. It was further submitted that at present applicant is staying with her children in the Government quarter allotted to her husband. It was submitted by the Id. counsel for the applicant that the respondent authorities more particularly the Respondent No.2 and 3 did not consider the grievance of



the applicant and finding no other alternative the applicant has filed this O.A. seeking the aforesaid reliefs.

5. Mr. B.P. Manna, Id. counsel appearing for the respondents vehemently objected to the submissions advanced by the Id. counsel for the applicant and submitted that the husband of the applicant did not retire from service voluntarily but by way of compulsory retirement as a penalty which was imposed on him for unauthorised absence from duty for a long period. As such, the applicant is not entitled to get any compassionate appointment under the scheme for compassionate appointment. It was further submitted by the Id. counsel that even the applicant never applied for compassionate appointment directly to the authorities concerned in due format but sent her request by way of demand of justice notice dated 09.03.2015 and 27.07.2015 through her advocate. Mr. Manna, Id. counsel for the respondents further submitted that the applicant's husband accepted the punishment order dated 04.08.2014 and the same has not been challenged either before the appellate authority or before any legal forum. Hence, the punishment imposed upon the applicant enforces and thus the circumstances does not warrant any compassionate appointment to the applicant.

6. In reply to the arguments advanced by the Id. counsel for the respondents Mr. A. Roy, Id. counsel for the applicant submitted that the husband of the applicant died on 16.01.2016 and the applicant was not aware of the punishment imposed upon her husband and she came to know the facts of the case as regards the punishment only when reply has been served upon the Id. counsel for the applicant by the Id. counsel for the respondents on 23.09.2016, hence, the



applicant prays for liberty to make an appeal before the Appellate Authority against the punishment imposed upon her husband .

7. I have considered the submissions made by Id. counsel for both sides and perused the pleadings and materials placed before me.

8. The issue before me to decide is as to whether the applicant is entitled for appointment in a suitable post being the wife of Late Naresh Kumar Pashi, an employee of Gun & Shell Factory, Cossipore, Kolkata-700002 who retired from service by way of punishment of compulsory retirement. Id. counsel for the respondents has drawn my attention to the memorandum of charge dated 25.10.2012 issued by the Disciplinary Authority, relevant portion of which reads as follows:-

"ARTICLE OF CHARGE-I

That Shri Naresh Kumar Pasi, Fitter Hy. Skilled Gr.II, T.No. 159/CM, P.No.005566 of Gun & Shell Factory, Cossipore, Kolkata-2 is charged with gross misconduct of absenting from duty for a long time which amounts to an act of indiscipline and conduct unbecoming of a Govt. Servant in violation of Rule – 3(a)(iii) of the Central Civil Services (Conduct) Rules.

ARTICLE OF CHARGE-II

The Shri Naresh Kumar Pasi, Fitter Hy. Skilled Gr.II, T.No. 159/CM, P.No. 005566 of Gun & Shell Factory, Cossipore, Kolkata-2 is charged with gross misconduct of unauthorizedly absenting from duty, causing loss of manhours to the management and inconveniences in managing the routine works of CM Section. This tantamounts to wilful negligence and lack of devotion to Govt. duty and conduct unbecoming of a Govt. servant in violation of Rules – 3(1)(ii) and 3(1)(iii) of Central Civil Services (Conduct) Rules."

An enquiry was conducted and after enquiry the Inquiry Officer held as under:-

"Assessment of the case

The first hearing of the case were held on 18.11.2013. The undersigned explained the charges framed against the CO and asked whether CO accepts the charges or otherwise;



The CO accepted all the charges framed against him.

Hence, the conclusive documents/witnesses are available to establish the charges framed against the CO.

Findings

Based upon the above facts, the undersigned concludes that –

Charge – Established.”

9. It is noticed that the punishment order of compulsory retirement dated 04.08.2014 was issued to the applicant. However, the Id. counsel for the applicant submitted that the applicant became aware of the said punishment order issued against her husband only on 23.09.2016 when reply was filed by the respondents annexing the said order. It is an admitted fact that the applicant's husband/applicant never challenged the said punishment order before the authority concerned.

10. After scrutinising all the documents including the Inquiry Report(Annexure R-3) and the punishment order dated 04.08.2014(Annexure R-4) produced before me, I am not convinced with the arguments advanced by the Id. counsel for the applicant regarding grant of compassionate appointment in favour of the applicant because the scheme for compassionate appointment did not support the case of the applicant. The applicant's husband was given the punishment of compulsory retirement vide order dated 04.08.2014 and there is no provision for granting compassionate appointment to the widow of such an employee. As per the extant scheme compassionate appointment can be granted only in case of “dying in harness” or in case of retirement on medical grounds. In the present case, the applicant's husband was given the punishment of compulsory retirement, therefore, it cannot be said that he retired on medical ground. As



such the present case is not covered by the scheme for compassionate appointment. Hence the prayer of the applicant regarding grant of compassionate appointment against a suitable post is not accepted and the same is rejected.

11. Ld. counsel for the applicant fairly makes a prayer before the court for a liberty to make an appeal before the Appellate Authority against the punishment imposed upon her husband as she was not at all aware of the punishment imposed upon her husband. Moreso, the husband of the applicant died on 16.01.2016. Therefore, in the interest of justice, she may be allowed some time to knock the door of the Appellate Authority by way of appeal.

12. By considering the prayer made by ld. counsel for the applicant, I hereby give liberty to the applicant to make an appeal before the Appellate Authority within a period of 10 days from the date of receipt of this order. If so filed, the Appellate Authority shall take a decision thereof as per rules in existence.

(MANJULA DAS)
Judicial Member

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