

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

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1. O.A. No.60/480/2018
M.A. Nos.1359 & 1360/2018
2. O.A. No.60/565/2018

Date of decision: 02.4.2019

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CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J).
HON'BLE MRS. P. GOPINATH, MEMBER (A).

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1. O.A. No.60/480/2018
M.A. No.1359/2018 and 60/1360/2018

Abhinav Verma, aged about 30 years, S/o Late Sh. Ashok Kumar, Resident of # 1294, Sector 41-B, Chandigarh. Group C.

... APPLICANT

VERSUS

1. The Comptroller and Auditor General of India, 9 Deen Dayal Upadhayay Marg, Delhi.
2. The Principal Accountant General (A&E), Haryana, Lekha Bhawan, Sector-33, Chandigarh.
3. Sh. Sandeep Sandal S/o Late Sh. Sham Lal, R/o H. No.1104, Sector 41-B, Chandigarh.
4. Sh. Gogi Ram, S/o Late Sh. Ratti R/o Village Nada, P.O. Naya Gaon, Tehsil Kharar, District Mohali, Punjab.
5. Sh. Himanshu Kaushal, S/o Late Sh. Raj Kumar, R/o H. No.1208, Sector 41-B, Chandigarh.
6. Sh. Karan S/o Late Sh. Baldev Raj Sharma, R/o H. No.1350, Sector 41-B, Chandigarh.

... RESPONDENTS

PRESENT: Sh. Hemender Goswami, counsel for the applicant.
Sh. Barjesh Mittal, counsel for the respondents No.1 and 2.

2. O.A. No.60/565/2018

Bhanu Partap aged 23 years, son of late Sh. Mohamad Riaz, resident of House No.1328-A, Sector-41 B, Chandigarh. Category C.

... APPLICANT

VERSUS

1. Union of India through the Comptroller and Auditor General of India (CAG), Deen Dayal Upadhayay Marg, New Delhi.
2. The Principal Accountant General Punjab, Department of Audit and Accounts, Sector-17, Chandigarh.
3. The Pay and Accounts Officer, Department of Audit and Accounts, Office of Accountant General, Punjab, Sector-17, Chandigarh.

... RESPONDENTS

PRESENT: Sh. Sandeep Arora, counsel for the applicant.
Sh. Barjesh Mittal, counsel for the respondents.

ORDER (Oral)

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SANJEEV KAUSHIK, MEMBER (J):-

1. This order will dispose of both the above captioned OAs as point of facts and law involved therein and challenge to orders therein are identical and likewise is also requested by learned counsel for the parties.
2. For convenience facts are being taken from O.A. No.60/480/2018 (Abhinav Verma vs. CAG & Ors.).
3. The applicant assails order dated 25.4.2017 (Annexure A-1), whereby he has been informed that his case for appointment on compassionate grounds has been rejected.
4. Father of the applicant Sh. Ashok Kumar, who was working as Senior Accountant with respondent department, died on 25.7.2016, leaving behind widow and two sons. On 17.8.2016, mother of the applicant moved application for appointment of her elder son on compassionate grounds. Respondents adopted policy dated 28.9.2017 (Annexure A-4) i.e. Revised Evaluation System for Shortlisting Applications for Appointment on Compassionate Ground. Based upon that, applicant was awarded 80 marks that despite that, person who has secured lesser marks of 75 namely Sh. Karan S/o Sh. Baldev Raj Sharma, has been offered appointment against which the applicant is before this Court.
5. We have heard learned counsel for the parties.
6. Learned counsel for the applicant drew our attention to Annexure A-5, which is evaluation sheet for appointment on compassionate grounds for the year 2016-17 and 2017-18, where respondents have considered as many as 9 candidates, where name of the applicant is at serial no.5

and respondents no.6 has been shown at serial no.9 with 75 marks and he has been offered appointment ignoring claim of the applicant. It has also been informed by learned counsel for the applicant that other person respondent no.4, who has also secured 80 marks but is younger than the applicant in age has also been offered appointment without considering that applicant is senior to them though they are having equal marks. Therefore, it is submitted that impugned appointment be quashed and respondents be directed to consider claim of the applicant on compassionate grounds.

7. Respondents have filed written statement resisting the claim of the applicant but have not come with a plea as to how they have come to the indicated decision. They have not spelt out any reason as to why they have chosen to give appointment to a person securing lesser marks than the applicant. Learned counsel for the respondents draws our attention to para 6 of Annexure A-4, where it has been mentioned that evaluation system cannot be only criteria for recommending a case for appointment on compassionate grounds, therefore, he prayed that the O.A. may be dismissed. The same reads as under:-

"6. Further, the marks obtained in the evaluation system cannot be the only criteria for recommending a case for appointment on compassionate grounds. The marks in the evaluation system only help the DSC to prima facie judge the applicant being considered under scheme for compassionate appointment. Ultimately, recommendation or rejection of a case by the DSC should be through a speaking order only. Accordingly, the screening committee should give specific and reasoned recommendations in each case considered by it."

8. We have given our thoughtful consideration to the entire matter with able assistance of learned counsel for the parties and have minutely gone through the pleadings.

9. It is not disputed that applicant secured 80 marks in evaluation system and persons with lesser marks have been offered appointment. Though a statement has been suffered by learned counsel for the respondents that marks are not the only criteria to offer appointment on compassionate grounds but they have not spelt out any other yardsticks for offering appointment to candidate with lower marks. For lack of transparency and lack of reasons, we are left with no option but to allow this O.A. Once a marks based evaluation system is in place, which has been followed by them to adjudge the candidates, then they cannot introduce another mechanism which raises fingers towards arbitrariness shown by them. Accordingly, we quash impugned order being in violation of marks system adopted by the respondents. Respondents are directed to carry out the exercise afresh based on marks based evaluation system Annexure A-4 and A-5 and thereafter offer appointment to suitable candidates. While doing so, they will comply with the principles of natural justice if they have to displace persons who have already been appointed.

10. In the other O.A., case of Bhanu Partap has been rejected on the ground that he is born out of wedlock of second wife. To this learned counsel for the applicant submitted that in terms of judgment in the case **Union of India & Anr. vs. V.R. Tripathi**, decided on 11.12.2018, Lordships of Supreme Court have already held that legitimate child has a right for appointment on compassionate grounds. Therefore, view of the respondents in rejecting his claim cannot sustain. Relevant para of the judgment reads as under:

“18. The High Court has proceeded on the basis that the recognition of legitimacy in Section 16 is restricted only to the property of the deceased and for no other purpose. The High Court has missed the principle that Section 16(1) treats a child born from a marriage

which is null and void as legitimate. Section 16(3), however, restricts the right of the child in respect of property only to the property of the parents. Section 16(3), however, does not in any manner affect the principle declared in sub-section (1) of Section 16 in regard to the legitimacy of the child. Our attention has also been drawn to a judgment of a learned Single Judge of the Madras High Court in *M Muthuraj v Deputy General of Police, Tamil Nadu* adopting the same position. In the view which we have taken, we have arrived at the conclusion that the exclusion of a child born from a second marriage from seeking compassionate appointment under the terms of the circular of the Railway Board is ultra vires. A Division Bench of the Madras High Court followed the view of the Calcutta High Court in *Namita Goldar in Union of India v M Karumbayee*. A Special leave petition filed against the judgment of the Division Bench was dismissed by this Court on 18 September 2017.

11. Accordingly, impugned order therein is also quashed and set aside.

His case be also considered along with other candidates as noted in the case of Abhinav Verma.

12. Both the OAs along with all pending MAs stand disposed of in the above terms.

(P. GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Date: 02.4.2019.
Place: Chandigarh.

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