

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/899/2015

Date of Reserve: 15.03.2019

Date of Order:18.04.2019

CORAM:

HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

Balaram Jani, aged about 38 years, S/o. Late Madhaba Jani, (Ex-Safaiwala, Naval Armament Depot. (NAD), Sunabeda residing at Balda Post, Sunabeda-4, Dist-Koraput.

...Applicant

By the Advocate(s)-M/s.D.K.Mohnty
S.Nayak

-VERSUS-

Union of India represented through:

1. The Secretary, Ministry of Defence (Navy), Directorate Civilian Personnel, D-II Wing Sena Bhawan, New Delhi-110 011.
2. Flag Officer Commanding in Chief, HQ, Eastern Naval Command Visakhapatnam, Andhra Pradesh.
3. The General Manager, Naval Armament Depot (NAD), Sunabeda.

...Respondents

By the Advocate-(s)-Mr.C.M.Singh

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

Applicant's father while working as Safaiwala in the office of the General Manager, Naval Armament Depot. (NAD) (Respondent No.3) untimely passed away on 17.09.2003 leaving behind him, his widow, one son (the present applicant) and two daughters. It is to be noted that applicant's father had been provided an employment under Respondent No.3 as a land oustee for his land having been acquired for the establishment of Naval Armament Depot at Sunabeda. After the death of her husband, the mother of the applicant submitted a representation to Respondent No.3 for providing an employment on compassionate grounds in favour of her only son, the present applicant. Vide letter dated 03.20.2007 (A/4) the applicant was intimated that his

employment assistance on compassionate grounds is under process and accordingly, he was asked to attend the office of Respondent No.3 along with the required documents as mentioned therein. While the matter stood thus, a letter dated 18.2.2015 (A/5) was communicated by the office of Respondent No.2 to Respondent No.3 which reads as follows:

“Employment under Employment Assistance Scheme

1. Refer to this Headquarters letter of even number dated 28 Nov. 2014 and 23 Dec. 2014 and NAD(Sun) letter No.SAE/0230/E. Assistant dated 21 Jan. 2015.
2. The matter has been examined. As per S.No.13 of DOP&T OM No.14014/02/2012-Estt(D) dated 30 May 2013 FAQ, married sons are not eligible for Employment under Employment Assistance Scheme.
3. It is requested that individual may be informed to submit relevant documents in respect of Smt.Danai Jani, W/o. Sri Late Madhabjani, Ex-Safaiwala by 24 Feb. 2015, failing which the proposal will be removed from the list of applications for employment under Employment Assistance Scheme”.

2. In response to this, the mother of the applicant submitted a representation dated 27.2.2015 stating that due to her ill health, she is unable to undertake the job and requested the authorities concerned to provide employment assistance in favour of her son, the present applicant. Vide letter dated 11.06.2015, it was intimated by Respondent No.2 to Respondent No.3 which reads as follows:

“Employment Assistance : Shri Balaram Jani, S/o. Late Madhab Jani, Ex-Safaiwala:

1. Refer IHQ MoD(N) letter No.CP(NG)/6670/AR dated 22 Apr. 2015 (copy enclosed).
2. The proposal in respect of Shri Balaram Jani, S/o. Late Madhab Jani, Ex-Safaiwala of NAD(Sun) vide ibid letter and stated that as per Sl.No. 60 of FAQ circulated vide IHQ MoD(N) letter No.CP(NG)/4528/EA dated 14 May 2015 “the cases of compassionate appointment already settled w.r.t. the FAQs dated 30 May 2013 may not be reopened”.

3. The proposal in respect of Shri Balaram Jani, S/o.late Madhab Jani, Ex-Safaiwala of NAD(Sun) is returned herewith".

3. The applicant thereafter was communicated a letter dated 13.08.2015 (A/7) which reads as follows:

1. Refer to your application dated 16 Dec. 2008 for seeking employment under employment assistance scheme.
2. It has been intimated vide HQENC(V) letter CE/2000/5/EA/XII Bd dated 11 Jun.2014 that your request for employment under employment assistance scheme was rejected by IHQ, MoD(N) vide letter No.CP(NG)/667/AR dated 22 Apr. 2015 and the cases of compassionate appointment already settled w.e.f. the FAQs dated 30 May 2013 may not be reopened.
3. This is for your information".

4. Aggrieved with the above, the applicant has approached this Tribunal in the present O.A. praying for the following reliefs:

- i) To quash the letter dated 13.8.2015 under Annexure-A/7.
- ii) To direct the Respondents to consider the case of the applicant and provide applicant for appointment on compassionate ground in accordance with the DOP&T instruction stated above.
- iii) To pass any other order(s) as deemed fit and proper.

5. Opposing the prayer of the applicant, the respondents have filed a detailed counter. They have submitted that the O.A. being devoid of merit is liable to be dismissed.

6. Heard the learned counsels for both the sides and perused the records. During the course of hearing, learned counsel for the applicant drew the attention of this Tribunal to Office Memorandum No.F.No.14014/02/2012-Estt.(D) dated 05.09.2016 issued by the Government of India, Ministry of

Personnel, Public Grievances and Pensions, Department of Personnel & Training regarding consolidated instructions on compassionate appointment – review of FAQs dated 30.05.2013/25.02.2015 with regard to married son, the gist of which reads thus:

“The undersigned is directed to invite attention to this Department O.M.No.4014/6/1994-Estt.(D) dated 09th October, 1998 and OM of even number dated 16th January, 2013 vide which Consolidated Instructions on compassionate appointment were issued. Subsequently, vide FAQ No.13 dated 30.05.2013 it has been clarified that married sons are not covered as dependent family member and hence not eligible for consideration for compassionate appointment. The clarification with regard to married son as stipulated in FAQ No.13 dated 30.05.2013 has been reviewed vide FAQ No.60 of even number dated 25.02.2015 as under:

Sl.No.	Question	Answer
60	Whether “married son” can be considered for compassionate appointment ?	Yes, if he otherwise fulfils all the other requirements of the Scheme, i.e., he is otherwise eligible and fulfils the criteria laid down in this Department’s O.M. dated 5 th January, 2013. This would be effective from the date of issue of this FAQ viz., 25 February, 2015 and the cases of compassionate appointment already settled w.r.t. the FAQs dated 30 th May, 2013 may not be reopened. Sr.No.13 of the FAQs dated 30 th May, 2013 may be deemed to have been modified to this extent.

2. Pursuant to various Court orders, the clarification/FAQ No.13 dated 30.05.2013 and FAQ No.60 dated 25.02.2015 has been further reviewed in consultation with the Department of Legal Affairs. It has been decided that married son can be considered for compassionate appointment if he otherwise fulfils all the other requirements of the Scheme, i.e., he is otherwise eligible and fulfils the criteria laid down in this Department’s O.M. dated 16th January, 2013.
3. FAQ No.13 dated 30.05.2013 and FAQ No.60 dated 25.02.2015 stands withdrawn from the date of their issue.
4. The cases of compassionate appointment rejected solely on the grounds of marital status in terms of FAQ No.13 dated 30.05.2013 during the intervening period i.e. w.e.f. 30.05.2013 to 25.02.2015 in respect of married son may be reopened/reconsidered against vacancies occurring after issue of this OM”.

7. From the above, it is clear that consequent upon issuance of consolidated instructions, the marriage son is eligible to be considered for compassionate appointment provided he/she fulfils the eligibility conditions for such appointment. In this connection, it is to be noted that as quoted above, by virtue of operation of the Office Memorandum dated 05.09.2016, FAQ No.13 dated 30.05.2013 and FAQ No.60 dated 25.02.2015 stood withdrawn from the date of their issue. As would be evident from the communications dated 11.6.2015 and 13.08.2015(A/7), the request of the applicant for compassionate appointment has been rejected vide communication dated 22.04.2015 which date neither FAQ No.13 dated 30.05.2013 nor FAQ No.60 dated 25.02.2015 was in force. In view of this, the impugned communications dated 22.04.2015 and dated 11.06.2015 and dated 13.08.2015 (A/7) are quashed and set aside. Consequently, the respondents are directed to reopen/reconsider the case of the applicant in the light of the instructions issued by the DOP&T vide Office Memorandum dated 05.09.2016 and issue appropriate orders within a period of 60 (sixty) days from the date of receipt of this order.

8. In the result, the O.A. is allowed to the extent indicated above, with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

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