

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No.21/1317/2014

**Reserved on: 10.12.2018
Order pronounced on: 11.12.2018**

Between:

N. Mahesh Kumar, S/o. late N. Viswanadham,
Aged 25 years, Peon (expired), Office of the G.E.,
Golconda, Hyderabad,
R/o. H. No. 9-1-34/14/47/A, Langer House,
Bapunagar, Hyderabad – 500 008.

...Applicant

And

1. Government of India,
Ministry of Defence, South Block,
New Delhi – 110 011, Rep. by its Secretary.
2. Engineer-in-Chief (Inc. branch),
Kashmir House, New Delhi.
3. The Chief Engineer,
Headquarters, South Command,
Pune – 411 001.
4. The Chief Engineer (FY), Hyderabad.
Opp. Parade Grounds, Sardar Patel Road,
Secunderabad - 500 003.
5. Commander, Works Engineer (CWE) (Army),
Mud Fort, Secunderabad – 500 003.
6. Garrison Engineer,
Garrison Engineer's Office, Golconda,
Hyderabad – 500 008.

...Respondents

Counsel for the Applicant ... Mr.K. Ram Murthy
Counsel for the Respondents ... Mr. Vijay Bhaskar Babu, Addl. CGSC

CORAM:

Hon'ble Mr. B.V. Sudhakar ... ***Member (Admn.)***

ORDER
{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.)}

The OA is filed for not providing compassionate appointment to the applicant.

2. Brief facts of the case are that the applicant's father while working as peon in the respondents organisation has passed away on 9.8.2004, leaving behind applicant's mother, grandparents, unmarried sisters to fend for. On representing for compassionate appointment, the respondents called for certain documents on 18.11.2005 and accordingly applicant submitted Income certificate, community certificate etc by Nov 2006. After examining the same and on grounds that vacancies were not available, the request for compassionate recruitment was rejected vide 6th respondent's lr. dt 15.9.2008. The applicant's mother again represented on 3.11.2008 but was rejected on grounds that the case was more than 3 years old. The applicant then moved this Tribunal in OA 360/2009 wherein respondents were directed to consider the request and accordingly it was considered and rejected by the respondents vide lr dt 11.3.2011. Thereafter, the applicant again approached this Tribunal in OA 1047/2011 urging that the respondents have not fully complied with the order of this Tribunal in OA 360/2009. Based on the directions of this Tribunal the respondents reconsidered the request and rejected it on 29.6.2013 for reasons of lack of vacancies. A contempt application was filed bearing the number 98/2014 for non implementation of orders in OA 1047/2011 but was withdrawn on being given the liberty to file a fresh OA. Hence the present O.A.

3. The contentions of the applicant are that the applicant's father died with 13 years of service left and a big family of 6 members to be looked after. They are poor and require immediate support since there were neither earning members nor properties to eke out a decent living. The applicant has made the application for compassionate appointment well within 3 years limitation period. As per guidelines the case of the applicant has to be considered every quarter for a period of 3 years, instead it was examined only once. The consideration of the case should commence from the quarter the applicant has become major and not from the date of death of the applicant's father as per OA directions in OA 360/2009. The terminal benefits received were only 1,10,000 and not Rs 2,29,008 as claimed by the respondents. The respondents have not applied their mind while rejecting his claim as is clear from the fact that the impugned order dt 11.3.2011 was corrected thrice, as it had many mistakes. The applicant is aggrieved that his case for compassionate appointment is not being considered intentionally.

4. Respondents resist the contentions of the applicant by stating that there is only one unmarried sister. Respondents have fairly conceded that there was a mistake in showing the terminal benefits due to which the applicant got 55 marks instead of 60 marks. However, even with these marks the applicant would not have got selected as two candidates had more than 60 marks for the quarter Apr-June and Jul – Sep of 2007. Besides, there were no vacancies available at that time. As per policy, the case of the applicant was considered only for 3 years from the date of death of the deceased employee. Other family members could have applied for compassionate appointment is one another contention of the respondents. The plea of the applicant to include grandparents as dependent though not shown in the family member certificate

issued by the Mandal Revenue Officer (MRO) vide lr dt 28.8.2006, is impermissible. As per directions in OA 360/2009 the applicant's case was reconsidered but could not be offered appointment for lack of a vacancy.

5. Heard the counsel and went through the documents submitted. Both the counsel stuck to the stand taken in their written submissions.

6. The case details when perused, it is clear from the income certificate issued by the MRO dt 6.11.2006 that they do not have any assets and that they live on wages earned by rendering labour. Their annual income is Rs.24,000 per year. This gives us a clear picture that the applicant hails from a very poor family. It has to be construed that they are in financial distress.

a. The object of the Scheme, as envisaged by Dept. of Personnel and Training, OM - F.No. 14014/02/2012-Est (D) dt 16.1.2013, is

“ To grant appointment on compassionate grounds to a dependent family member of a Government servant dying in harness or who is retired on medical grounds, thereby leaving his family in penury and without any means of livelihood, to relieve the family of the Government servant concerned from financial destitution and to help it get over the emergency.”

The compassionate appointment objective is thus to bail out the family of the deceased employee from financial distress. The deceased employee had 13 years to go for retirement but for his demise. This is quite a long period. The death being sudden it is understandable that the family has been going through financial and emotional stress. The employee has passed away in 2004 and the applicant is struggling to get compassionate employment since then, though 14 years have passed till then. The procedural wrangles did consume considerable time. By stating so this Tribunal does not mean that the

compassionate appointment has to be given but the travails through which the applicant has to go through by filing a series of OAs is heart rendering. Respondents have rejected the case either on grounds of limitation period or non availability of vacancy or for not having relative merit in respect of marks secured vis-à-vis other candidates.

b. Respondents, have stated that the case cannot be considered since 3 years have lapsed after the death the employee and hence applicant is disqualified. This is against DOP&T OM dt 16.1.2013 which clarified that

“Prescribing time limit for considering applications for compassionate appointment has been reviewed vide this Department O.M No.14014/3/2011- Estt.(D) dated 26.07.2012. Subject to availability of a vacancy and instructions on the subject issued by this Department and as amended from time to time, any application for compassionate appointment is to be considered without any time limit and decision taken on merit in each case”

c. The learned counsel for the applicant has claimed that marks were not awarded for minor children, unmarried daughters, dependents at the time of the death of the applicant's father. If these were properly considered at that instant of time the applicant would have secured not less than 80 marks and would have been definitely selected. The DOP&T instructions dt 16.1.2013 are lucid that the dependents are those:

“who was wholly dependent on the Government servant/ member of the Armed Forces at the time of his death in harness or retirement on medical grounds, as the case may be.”

The respondents did not verify this aspect independently. They should not reckon dependents at any other instant of time.

d. In case of compassionate recruitment it is generally expected of the respondents to call upon the bereaved family to provide emotional support and

explain to them the features of the compassionate recruitment. This is done in major labour intensive Government organisations like the Railways and the Dept. of Posts. Ministry of defence, being a central Govt organisation which is also labour intensive, should have at least verify the plight of the family and the veracity of the facts claimed by the applicant. Once again DOP&T norms vide O.M dt 16.1.2013 are elaborate and crystal clear in this regard.

They state that:

“The Welfare Officer in each Ministry/Department/Office should meet the members of the family of the Government servant in question immediately after his death to advise and assist them in getting appointment on compassionate grounds. The applicant should be called in person at the very first stage and advised in person about the requirements and formalities to be completed by him.”

“The applicant may also be granted personal hearing by the committee, if necessary, for better appreciation of the facts of the case.”

Records do not speak of any such attempt being made. In fact this would help the respondents to come to a clear conclusion as to whether the applicant was placed in indigent circumstances.

e. More so, in the context of Para 4 of O.M No.14014/3/2011-Estt.(D) dated 26.07.2012 of DOP&T, wherein it was emphasized that

“the onus of examining the penurious condition of the dependent family will rest with the authority making compassionate appointment. ”

f. It is not out of place to adduce that “DOP&T general instructions as contained in OM dt 16.1.2013, do elaborate that the

“Scheme of compassionate appointments was conceived as far back as 1958. Since then a number of welfare measures have been introduced by the Government which have made a significant difference in the financial position of the families of the Government servants dying in harness/retired on medical grounds. An application for compassionate appointment should, however, not

be rejected merely on the ground that the family of the Government servant has received the benefits under the various welfare schemes. While considering a request for appointment on compassionate ground a balanced and objective assessment of the financial condition of the family has to be made taking into account its assets and liabilities (including the benefits received under the various welfare schemes mentioned above) and all other relevant factors such as the presence of an earning member, size of the family, ages of the children and the essential needs of the family, etc.”

g. The DOP&T OM dt 16.1.2013, did have a word of sympathy for those who died in Group D category by stating that:

“Requests for compassionate appointment consequent on death or retirement on medical grounds of erstwhile Group ‘D’ staff may be considered with greater sympathy by applying relaxed standards depending on the facts and circumstances of the case.”

h. The important aspect which should not be lost sight of as per DOP&T instructions referred to, is that

“The family is indigent and deserves immediate assistance for relief from financial destitution; and (b) Applicant for compassionate appointment should be eligible and suitable for the post in all respects under the provisions of the relevant Recruitment Rules”

As we understand from the records placed, the applicant appears to stand a chance on both counts, but it is for the respondents to get these facts right before taking a view on the matter. Process delay should not cost the applicant his claim for compassionate recruitment. The family is in penury and it is only the respondents who can provide succour after independent verification of facts. The deceased employee is from the lower rung and his family would not be immediately aware of the nitty-gritty of the rules governing compassionate appointment. Even the educated do take some time to comprehend and apply for what is due to them, in view of the dynamic nature of rules and the interpretation they are subjected to. This fact need to be appreciated.

i. The applicant claims that there is an error in awarding marks to the applicant. Such errors have been committed by the respondents in the past as admitted by them in the reply statement. Therefore it is all the more necessary that the respondents get the details verified properly and independently. Otherwise injustice would be done. In the present case the applicant family as per records is in a distressful economic situation as is evident from the low income earned and the number of dependents being sizeable. The case has to be dealt with the compassion it deserves within the ambit of instructions laid down by DOP&T instructions referred to. A fine balance between authority to decide and compassion is to be struck. The beauty of such a decision would be that justice blossoms with all its fragrance. The Tribunal is confident that the respondents will be on board in this regard.

j. Lastly the respondents cited Honourable Supreme Court judgment dated May 4, 1994 in the case of ***Umesh Kumar Nagpal vs. State of Haryana and others [JT 1994(3) S.C. 525]*** stating that as per this judgment the applicant's request cannot be considered favourably. However, in the same judgment it has also been laid down that only dependents of an employee dying in harness leaving his family in penury and without any means of livelihood can be appointed on compassionate ground. The aspect of penury is on record and they do not have any stable means of livelihood. This is exactly the prayer of the applicant and the respondents need to make an in-depth analysis of the issues involved in the background of the DOP&T instructions and the cited judgment, to arrive at a balanced view and justifiable decision.

k. Thus taking into consideration the aforesaid facts and DOP&T instructions cited, the OA fully succeeds. Hence it is allowed.

7. Respondents are directed to consider as under:

- i) To consider providing compassionate employment to the applicant on compassionate grounds after making an independent verification of the facts stated by the applicant in regard to the dependent family members for awarding marks as per prevailing rules and regulations of the respondents organisation.
- ii) Time allowed to implement the order is 3 months from the date of receipt of this order.

8. In the circumstances, there shall be no order to costs.

**(B.V. SUDHAKAR)
MEMBER (ADMN.)**

Dated, the 11th day of December, 2018

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