

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.290/00257/2017

RESERVED ON: 14.01.2019

Jodhpur, this the 25th January, 2019

CORAM

Hon'ble Smt Hina P. Shah, Judicial Member

Prema Ram S/o Late Sh. Ram Chander aged about 39 years, R/o Jajiwal Kurti, Post Banar, District Jodhpur. Ward of Ex. Majdoor in the office of Commandant, 19 FAD C/o 56 APO.

.....Applicant

By Advocate : Mr S.K. Malik.

Versus

1. U.O.I. through Secretary of Defence, Raksha Bhawan, New Delhi.
2. Commandant 19 Field Ammunition Depot Pin 909719 C/o 56 APO.
3. Administrative Officer, 19 Field Ammunition Depot Pin 909719 C/o 56 APO.

.....Respondents

By Advocate : Mr. K.S. Yadav.

ORDER

This Original Applications has been filed under Section 19 of the Administrative Tribunals Act, 1985 seeking following relief(s) :

- (i) By an appropriate writ order or direction impugned orders dated 20.01.2015 at Annex. A/1, impugned order dated 31.08.2016 at Annex. A/2 and impugned order dated 13.12.2016 at Annex. 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 and give him appointment on any suitable post as per law.
- (iii) By an order or direction respondents may be directed to produce the Board proceedings of compassionate appointment for the year 2012-13, 2013-14, 2014-15 and 2015-16 wherein the case of applicant alongwith others candidate have been considered and comparative merit list of the said Board for perusal of this Hon'ble Court.
- (iv) Exemplary cost be imposed on the respondent for causing undue harassments to the applicant.
- (v) Any other relief which is found just and proper be passed in favour of the applicant in the interest of justice.

2. Facts of the case as stated by the applicant are that his father late Shri Ram Chander while working on the post of Majdoor died on 20.11.2012. He was survived by his widow, one son and one daughter. The family owns small house of two rooms in Jajiwal Kurti and 2.5 Bigha of agricultural land. The income of agricultural land is nil and the cost of ancestral house is Rs 30,000/-. Applicant states that there is no member in the family who is employed in Government, non-Government or doing a private job. The applicant further states that he too does some work but same is only for about 15 days, therefore, the condition of the family is such that it is in poverty and in indigent condition. The applicant moved an application for compassionate appoint by filing documents as required by the respondents to consider his case for any Group D post. He had submitted all the documentary

evidence required by the respondents including affidavit of himself, his mother & sister, Pension Payment Order, copy of Jama Bandi of agricultural land, school leaving certificate etc. The applicant states that impugned order dated 20.01.2015 is a stereotype non-speaking order whereby respondents have rejected the case of the applicant stating that he could not be selected as there were more deserving cases and limited number of vacancies. The applicant further states that as per the policy of the Ministry of Defence, Govt. of India dated 22.01.2010, the submission of the respondents that marks have been allotted as per the eligibility cannot be accepted as the same is contrary to the Scheme of compassionate appointment and in violation of Article 14 and 16 of the Constitution of India. Therefore, applicant prays that the impugned order dated 13.12.2016 may be quashed and set aside and the applicant be considered for compassionate appointment.

3. After issue of notice, the respondents have filed reply on 09.05.2018 stating that the applicant's father while serving as Majdoor expired on 20.11.2012 putting in more than 33 years of service. As per family details submitted, the deceased employee survived by three family members, wife, applicant and one daughter. The family has been paid Death cum Retirement benefits and they are also getting family pension. The respondents have considered the case of the applicant as per the

Policy and marks have also been allotted to the applicant as per policy in vogue, which is just and proper. The submission of the respondents is that as per details submitted by the applicant marks have been allotted keeping in mind the parameters of the Policy and therefore, since they have rightly considered the case of the applicant on three occasions and as the name of the applicant has not been recommended by the Board of Officers (BOO), the applicant could not be given compassionate appointment. The respondents have stated that the family possessed 2.10 Bigha of agricultural land whose market value is Rs 2.5 Lacs and yearly income of the deceased family is shown as Rs 30,000/- as per the Certificate issued by the Tehsildar Jodhpur dated 10.09.2013 and therefore, by dividing the same with 12 months, the same comes to Rs 2,500/- per month. It is the case of the applicant that on all three occasions, the applicant has secured less marks compared to other candidates and hence, he could not be provided compassionate appointment.

4. Heard Mr S.K. Malik, learned counsel for the applicant as well as Mr K.S. Yadav, learned counsel for the respondents and also perused the original record brought by the respondents pertaining to the applicant, alongwith other such cases.

5. Learned counsel for the applicant reiterated the submissions made in the OA and stated that in the year 2012-13 when the annual BOO for compassionate appointment was held, the

justification of marks provided to the applicant cannot be agreed as the respondents did not show that the applicant has secured 35 marks, whereas, last selected candidate secured 70 marks. He stated that there is no mention of number of vacancies, which are the more deserving cases, what were the laid down criteria for consideration and also comparative merits was not disclosed to the applicant. Therefore, it is difficult for the applicant to know that as to how he had only secured 35 marks. He makes the same submission for second and third chance given to him, when his case was considered in the annual BOO for the year 2013-14 and 2014-15. Here too he raises and reiterates the same questions, as aforesaid, wherein applicant secured 35 marks whereas last selected candidate secured 66 and 63 marks for BOO for the year 2013-14 and 2014-15 respectively.

6. On the other hand, learned counsel for the respondents reiterated the submissions and also produced original minutes of BOO for the year 2012-13, 2013-14 and 2014-15 which contained comparative chart of the marks secured by the candidates including applicant, number of vacancies available for compassionate appointment and who were the most deserving candidates as per comparative merits to be selected against vacant posts meant for compassionate appointment. Relying upon these minutes, learned counsel for the applicant submitted that since the applicant was low in merits, therefore, he could not be

selected for appointment on compassionate grounds. He further submitted that compassionate appointment cannot be claimed as matter of right but the same can be considered within the parameters of policy.

7. I have considered the rival contentions and perused the record as well as original minutes of BOO pertaining to the applicant.

8. Admittedly, on the basis of documents provided by the applicant, i.e. movable/immovable property etc. and other service particulars of the deceased employ with regard to family details and Death cum Retirement benefits, the indigent condition of the family has been rightly quantified as per the parameters laid down in the policy and as such, marks were allotted not only to the applicant but other candidates also whose cases were considered alongwith applicant. Learned counsel for the respondents specifically submitted that there is no injustice done to the applicant as last selected candidates had secured 70, 66, 63 marks on each occasion respectively whereas the applicant had secured only 35 marks.

9. It is an undisputed fact that the applicant's father had expired on 20.11.2012 leaving behind his mother, one son and one daughter. The case of the applicant was considered on 03 occasions by the annual BOO meeting for the year 2012-13, 2013-15 and 2014-2015. For the year 2012-13, there were 47 vacancies

for compassionate appointment wherein 7 vacancies for Group 'C' posts carrying Grade Pay of Rs 1900/- and 40 vacancies for Group 'C' posts carrying Grade Pay of Rs 1800/- and without grade pay. The cut off marks for both these Group of posts were 73 and 70 respectively whereas the applicant secured 35 marks. The applicant's case was considered against the posts carrying Grade Pay of Rs 1800/- and without Grade Pay. Likewise, for the year 2013-14, vacancies were 13 and 39, cut off marks were 70 and 66 whereas the applicant got only 35 marks. The applicant has been informed about the same vide letter dated 20.01.2015. For the year 2014-15, vacancies were 23 and 39 and cut off marks were 65 and 63 respectively whereas the applicant secured only 35 marks. The applicant has been informed about the same vide letter dated 13.12.2016.

10. Thus, it is clear that as per records produced by the respondents, there is no case of any discrimination on the part of respondents while considering the case of the applicant for appointment on compassionate grounds as per policy alongwith such other persons. He could not be appointed on compassionate grounds due to him being low in merits as there were many deserving candidates above him. It is well settled that the object of compassionate appointment is to enable the deceased family to get over the sudden financial crises and thereby to mitigate the hardship due to the death of the bread earner. Consideration for

appointment on compassionate grounds is to be construed as violation of Articles 14 and 16 of the Constitution of India and is only in the nature of concession and therefore, does not create a vested right in favour of the claimant. Compassionate appointment can neither be claimed, nor be granted as a matter of right. There are several Apex Court judgments which have clarified this position :

- (1) Umesh Kumar Nagpal Vs State of Haryana & Ors, 1994 SCC (L&S) 930.
- (2) Punjab Nation Bank V/s Ashwin Kumar Taneja, 2005 (1) SLJ 30.
- (3) State Bank of India & Anr V/s Somvir Singh, (2007) 2 SCC (L&S) 92.
- (4) Mukesh & Anr Vs State of Bihar & Ors, 2017 (2) SLJ 256.
- (5) Gurpreet Kaur Vs State of Punjab & Ors, 2017 (6) SLR 763 (Punjab & Haryana)

11. It is clear that compassionate appointments are to be made strictly in accordance with the scheme governing such appointments and against existing vacancies. The respondents have in place a mechanism in the form of Policy to evaluate or quantify the indigent condition and to avoid discretion. In the present case, the applicant's case has been considered as per Policy against existing vacancies for the year 2012-13, 2013-14 and 2014-15. I find no discrimination on behalf of respondents while considering the case of the applicant alongwith such other cases as per policy. The sole reason for applicant's case not being recommended for appointment on compassionate grounds

is his being low in merit. Hence, no case is made out by the applicant for issuing any direction to the respondents or interfering with the impugned orders issued by the respondents by this Tribunal. Therefore, no interference is called for quashing and setting aside the impugned orders dated 20.01.2015 (Annex. A/1), 31.08.2016 (Annex. A/2) & 13.12.2016 (Annex. A/3).

12. In view of the discussions hereinabove made, OA lacks merit and the same deserves to be dismissed. Accordingly, OA is dismissed with no order as to costs.

**[Hina P. Shah]
Judicial Member**

Ss/-