

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

...

Original Application No.290/00378/2016

This, the 14th day of December, 2018

Reserved on 04.12.2018

....

CORAM:

HON'BLE SMT. HINA P. SHAH, MEMBER (J)

...

Vijendra Naval S/o late Shri Babu Lal, aged about 29 years, R/o Bichla Bass, Bhadwasia, Jodhpur. Ward of Ex. Majdoor late Shri Babu Lal from the office of Commandant 19 FAD C/o 56 APO.

...APPLICANT

BY ADVOCATE : Mr. S.K. Malik

VERSUS

1. Union of India through the Secretary, Ministry of Defence, Raksha Bhawan, New Delhi.
2. The Commandant, 19 FAD, PIN 909119, C/o 56 APO.
3. Personnel Officer, 19 FAD, PIN 909119, C/o 56 APO.

RESPONDENTS

BY ADVOCATE : Mr. K.S. Yadav

ORDER

...

The applicant filed the present OA under Section 19 of the Administrative Tribunals Act, 1985 for the following reliefs:-

“(i) By an appropriate writ order or direction respondents may be directed to consider and provide appointment on compassionate ground to the applicant immediately.

“(ii) Any other relief which is found just and proper be passed in favour of the applicant in the interest of justice.”

2. The brief facts of the case as stated by the applicant are as under:-

Applicant's father Late Shri Babu Lal, Majdoor, while uploading ammunition boxes fell down on his body & caused grievous injury due to which he died on 02.03.2013 (Annexure-A/1) leaving behind widow, two unmarried sons and one unmarried daughter. The respondent No.2, thereafter, assured the applicant's mother that the department would provide appointment very soon to one of her family members. In pursuance of that assurance, she moved an application dated 12.04.2013 (Annexure-A/2) to respondent No.2 by giving full details of her family and requesting there to provide appointment on compassionate grounds in favour of her son i.e. applicant herein. Thereafter, the respondents asked the necessary documents from the applicant so as to process his case for compassionate appointment, which was submitted by the applicant, vide dated 17.01.2014 (Annexure-A/3). It has been further averred in the OA that the respondents vide letter dated 16.04.2015 (Annexure-A/4) gave a cheque amounting to Rs.5,56,520/- as compensation under Workman Compensation Act to the mother of the applicant but nothing has been done with regard to providing compassionate appointment in favour of the applicant. But, when no satisfactory reply was given by the respondents, then the applicant submitted an application in the office of respondent No.3 to know the status of his application for appointment on compassionate grounds. In reply to that application, the respondents vide letter dated 24.08.2015 (Annexure-A/5) informed the applicant that the documents submitted by him, has been forwarded to HQ Southern Command (Ord.) through his office letter dated 17.06.2014. It has been

further informed that the appointment has to be given as per merit prepared by the Board on the basis of marks allotted to the candidates and his case will be considered thrice. It has been further informed that one chance has been given to the applicant, which intimation has already been provided by the department vide letter No.2562/821/Est. dated 20.01.2015 (but the applicant denied to received that letter). It has also been informed that his case for appointment on compassionate appointment will be considered twice more, which intimation will be given to him. But, when nothing has been done in providing immediate relief by providing compassionate appointment to one of the member of the bereaved family so as to survive the family in a dignify manner, the applicant has approached this Tribunal by way of filing the present OA for the reliefs quoted above.

3. The respondents after issue of notice have filed their reply on 11.05.2017 and have stated that due to sudden demise of late Shri Babu Lal on 02.03.2013, the wife of the deceased employee has been paid terminal benefits amount to Rs.5,99,184/- as gratuity, Rs.5840/- as pension-, Rs.1,47,618/- as GPF, Rs.46426/- as CGEGIS and Rs.9639/- as Leave Encashment. In addition to the aforesaid terminal benefits, a sum of Rs.5,56,520/- was also paid as Compensation under Workman Compensation Act. It has been further averred that the case of the applicant was considered by the Board of Officers, but looking to the availability of limited number of vacancies and after considering the applicant's case along with other eligible candidates on the basis of

points given on 100 per scale as per the policy in vogue, the case of the applicant was not found deserving in comparison to others and thus the same was rejected at first instance, as intimated by HQ (Southern Command) (ORD) which was also informed to the applicant vide letter dated 20.01.2015. Therefore, it is clear that on the day of the filing the instant OA, the case of the applicant was under active consideration for 2nd and 3rd chances as per Rules. Unfortunately, on 2nd and 3rd occasion also, the case of the applicant has not been recommended for appointment on compassionate grounds due to limited number of vacancies and as the applicant was lower in merit prepared on the basis of points given to scale the condition of the family and the same has already been informed to the applicant vide letter dated 31.08.2016 and 31.12.2016 (Annexures-R/2 & R/3) respectively. It has been further averred that since the case of the applicant has already been considered by the respondents thrice, therefore, the OA has rendered infructuous. Further, the case of the applicant has been considered strictly in accordance with policy on the subject, but the case of the applicant has not been found suitable to be recommended for appointment on compassionate grounds within the parameters of the policy. Thus, it has been prayed that the instant OA is liable to be dismissed.

4. It is seen that after filing the reply, the respondents have also filed an additional counter affidavit on 03.10.2018 annexing therein the copy of Board Proceedings for the years 2012-2013, 2013-2014 and 2014-2015 as Annexures R/1 to R/3 respectively, and submitted that after receipt of

the application of the applicant for appointment on compassionate grounds, the case of the applicant has been considered by the Committee. The applicant secured 50 marks in total on the 100 marks/points scale provided under the Scheme issued vide OM dated 14.05.2010 to consider the penurious conditions of the family. It has been further averred that the case of the applicant for the appointment on compassionate grounds was considered first time by the Board of Officers for the year 2012-2013 along with other cases (Annexure-R/1) but the applicant was not able to succeed in getting appointment on compassionate grounds due to his being lower in merit and the last selected candidates in Group C posts carrying grade pay of Rs.1800/- and Rs.1900/- secured 70 & 73 marks respectively, whereas applicant secured only 50 marks. Thereafter, the case of the applicant was again considered in the Board proceedings of the year 2013-2014 (Annexure-R/2), but on this occasion also the cut off marks of last selected candidate in Group C posts carrying the grade pay of Rs.1800 and 1900 remained 66 and 70 respectively, whereas the applicant secured 50 marks. Finally, the case of the applicant was considered in the Board proceedings for the year 2014-2015, but unfortunately the cut off marks of last selected candidate in Group C posts carrying the grade pay of Rs.1800 and 1900 remained 63 and 65 respectively, whereas the applicant secured 50 marks only. Therefore, the applicant could not succeed to get appointment on compassionate grounds.

5. Heard Shri S.K. Malik, learned counsel for the applicant and Shri K. S. Yadav, learned counsel for the respondents and perused the original record.

5. Learned counsel for the applicant submits that from bare perusal of the Constitution of Annual Board of Officers for the years 2012-2013, 2013-2014 and 2014-2015, it would reveal that while considering the case of the applicant, the said Board of Officers have not allotted correct marks to the applicant in the head of 'number of minor children'. He submits that in the head of 'number of minor children' of the deceased employee, the respondents have granted 'nil' marks/points, whereas it is an admitted position that at the time of death of deceased employee, he has one unmarried daughter, which was minor at that point of time and for which five marks ought to have been awarded by the respondents under the said head. Therefore, he submits that if the respondents have awarded the correct marks to the applicant, then the applicant would have succeeded to get appointment on compassionate grounds.

It is the further case of the applicant that from perusal of the Merit List of Group C Post AOC (Carrying Grade Pay of Rs.1900/- of Annual Board of Officers for the Years 2012-2013, 2013-2014 and 2014-2015) on All India basis, it would also reveal that the respondents have considered the candidature of the candidates, where the deceased employee expired in the year 2008, 2009, 2010, 2011, 2012 etc.. It is the case of the applicant that the respondents ought to have considered the cases of compassionate appointment year wise after assessing the 5% vacancies available on that particular year. Therefore, the case of the

applicant ought to have been considered year wise alongwith the candidates, where deceased employee died in the year 2013-2014. But the respondents while considering the case of the applicant have included the cases where the deceased employee expired in the year 2008 and onwards, therefore, the applicant has got less marks and was not able to succeed in getting appointment on compassionate grounds. He submits that if the respondents have considered the cases on annual basis and every year board is constituted, then the applicant would have got appointment on compassionate grounds.

Learned counsel for the applicant further submits that as per aim and object of the scheme for compassionate appointment to tide over the immediate financial crisis of the bereaved family so that the family can survive, but the same has not been considered in the applicant's case. It is the case of the applicant that the father of the applicant was a Group D Employee, who died on 02.03.2013 due to falling of ammunition boxes on body while on duty, the mother of the applicant managing the deceased family by doing labour job, and further family is not having any source of income, despite this the respondents have not considered the case of the applicant sympathetically. Therefore, he submits that the action of the respondents is illegal, unjust and discriminatory while considering the case of the applicant. Therefore, he prayed that the OA deserves to be allowed.

6. Learned counsel for the respondents, on the other hand, submitted that the case of the applicant for appointment on compassionate grounds

have been considered thrice by the Board of Officers for the year 2012-2013, 2013-2014 and 2014-2015 along with other candidates, but due to lower in merit in comparison to other candidates, therefore, his case could not be recommended for appointment on compassionate grounds. He further submitted the case of the applicant vis-à-vis other candidates has been considered by the Board of Officers for the years 2012-2013, 2013-2014 and 2014-2015 and marks were awarded after considering various aspect i.e family size including ages of children, amount of terminal benefits, amount of family pension, liability in terms of unmarried daughters, minor children etc., moveable/immovable properties left by the deceased at the time of death, to find out the cases of acute financial distress/ most deserved case in relative merit and thereafter recommended only the deserving case that too only if clear vacancy. He further submitted that since the applicant has got only 50 marks, which is admittedly lower from the marks got by the last selected candidates in the Board of Officers for years 2012-2013, 2013-2014 and 2014-2015, therefore, his case was finally rejected vide Annexure-R/3 dated 12.12.2015 by the respondents after considering thrice.

Learned counsel for the respondents further submitted that the Scheme of appointment on compassionate grounds have been envisaged with the object of granting compassionate appointment to enable the family to tide over the crisis and to relieve the family of the deceased from financial destitution and to help it overcome the emergency. The Scheme does not necessarily imply that dependent of each and every deceased employee will be offered appointment on compassionate

grounds. It is also submitted that the quota prescribed for the purpose of compassionate appointment is only 5% of the total direct recruitment vacancies occurring in a year in Group “C” and erstwhile Group “D” posts. Therefore, all the compassionate appointment are considered by the Board of Officers constituted for the purpose as per the Government Policy, to find out the most deserving cases which are in acute financial distress/more indigent in comparison to other similarly placed cases, against the 5% quota of Direct Vacancies occurring in a given year. Further, the compassionate appointment is not a matter of right and after a balanced and objective assessment of the totality of the circumstances of the case the competent authority rejected the case of the applicant after considering thrice. Therefore, the act of the respondents is just and proper.

7. Considered the rival contentions of both the parties and perused the pleadings available on record.

8. It is the admitted position that applicant’s father Late Shri Babu Lal, Majdoor, while uploading ammunition boxes fell down on his body which caused grievous injury due to which he died on 02.03.2013 (Annexure-A/1) leaving behind widow, two unmarried sons and one unmarried daughter. The mother of the applicant moved an application dated 12.04.2013 (Annexure-A/2) to respondent No.2 for appointment on compassionate grounds in favour of the applicant. Thereafter, the case of the applicant vis-à-vis other candidates has been considered for appointment on compassionate grounds by the Board of Officers for the

years 2012-2013, 2013-2014 and 2014-2015. But the same has not been recommended by the respondents.

9. From perusal of the record, it is clear that the case of the applicant has been considered by the respondents thrice as per the Scheme of the Compassionate Appointment issued vide OM dated 14.05.2010. It is also seen that the case of the applicant was considered first time by the Board of Officers for the year 2012-2013 along with other cases (Annexure-R/1) and in which the last selected candidates in Group C posts carrying grade pay of Rs.1800/- and Rs.1900/- secured 70 & 73 marks/points respectively. Thereafter, the case of the applicant was considered second time in the Board proceedings of the year 2013-2014 (Annexure-R/2), wherein the last selected candidate in Group C posts carrying the grade pay of Rs.1800 and 1900 secured 66 and 70 marks/points respectively. Finally, the case of the applicant was considered third time in the Board proceedings for the year 2014-2015 and in which the last selected candidate in Group C posts carrying the grade pay of Rs.1800 and 1900 secured 63 and 65 respectively, whereas the applicant in all three occasions secured 50 marks only and therefore the applicant could not succeed to get appointment on compassionate grounds. It is clear from the record that while considering the case of the applicant, there are more indigent persons in comparison to the applicant and therefore, the case of the applicant has not been recommended for appointment on compassionate grounds due to secure lower marks/points in all these three occasions.

10. It is the contention of the applicant that the respondents while considering his case have made discrimination in awarding the marks. He pointed out that the respondents under the head of 'number of minor children' has awarded 'nil' marks, whereas there is one minor daughter of the deceased employee and for which at least 5 marks ought to have been awarded by the respondents. From perusal of the record, it is clear that the respondents while considering the case of the applicant have not awarded 5 marks under the head of 'number of minor children' in all three considerations. If, at this stage, it is assumed that the applicant is entitled to get 5 more marks under the head of number of minor children in all three considerations then the applicant could have secured 55 (50+5) marks/points, then also his case could not have been recommended for appointment on compassionate grounds because in all these three occasions the last selected candidates have secured 70 & 73 (1st consideration), 66 & 70 (2nd consideration) and 63 & 65 (consideration) respectively, which is higher than the marks secured by the applicant. Learned counsel for the applicant has also failed to point out any case where the person who secured less marks in comparison to the applicant, has been given appointment on compassionate grounds. Further, the compassionate appointment cannot be claimed as a matter of right. The object of compassionate appointment is to enable the deceased family to get over the sudden financial crisis. It is not a source of recruitment but to provide source to the family of the employee who die in harness.

11. It is the further contention of the applicant that the case of the applicant for appointment on compassionate grounds ought to have been considered year wise after assessing the 5% vacancies available on that particular year. It is clear that one of the questions raised by the applicant was that his case had to be considered in 2013 itself and no other case so 2008, 2009 etc. were required to be considered in 2013. If this formula was applied by respondents, then applicant's case also could not be considered in subsequent years. Therefore, the contention of the applicant cannot be accepted because the department has rightly been considered the cases of compassionate appointment as per provisions of the Scheme. As it is seen from the record that the case of the applicant has rightly been considered by the respondents department thrice along with the other candidates whose applications received from Comd HQs/ Depots, and whose candidatures were considered for IInd or IIIrd time as the case may be, and the candidates whose cases could not be considered in earlier Annual Board due to misc. reasons etc. have been considered in the subsequent year depending upon the vacancy position. I find from the record that no person who got less marks in comparison to the applicant has been recommended for appointment on compassionate grounds. Further, the case of the applicant has been rightly considered by marshaling all the vacancies available in the 5% direct recruitment quota. Unfortunately, on all three occasions, there are more indigent persons in comparison to the applicant for appointment on compassionate grounds and therefore, his case has not been recommended by the Board of Officers.

12. In view of the discussions made in the above paras, I find no merit in the OA and therefore the same is dismissed. No order as to costs.

(HINA P. SHAH)
MEMBER (J)

Rss

