

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

...

Original Application No.290/00112/2016

Reserved on : 07.02.2019

Pronounced on:25.02.2019

CORAM:

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

Zakir s/o Late Shri Sharfudeen, aged 34 years, R/o in front of New Kohinoor Cinema, Bapu Colony, Chopasani Road, Jodhpur; Shri Sharfudeen Deceased-Mazdoor in office of Garrison Engineer (Army) Utility, MES Jodhpur

...Applicant

(By Advocate: Shri. Vijay Mehta)

Versus

1. Union of India through the Secretary to the Government of India, Ministry of Defence, Raksha Bhawan, New Delhi.
2. Chief Engineer, Jodhpur Zone, Military Engineer Service, Jodhpur
3. Garrison Engineer (Army), Utility, MES, Multan Lines, Jodhpur

...Respondents

(By Advocate: Shri K.S.Yadav)

ORDER

In this OA filed u/s 19 of the Administrative Tribunals Act, 1985, the applicant prays for the following reliefs:-

That on the basis of facts and grounds mentioned herewith, the applicant prays that order ANN A 1 may kindly be quashed and the respondents may kindly be directed to give appointment on compassionate grounds to the applicant forthwith. Any other order as deemed fit in the facts and circumstances of the case may kindly be also passed and the costs be also awarded to the applicant.

2. Brief facts of the case, as stated by the applicant, are that he is son of late Shri Sharfudeen, who was a permanent employee of the respondent department. Late Shri Sharfudeen expired on 29.01.2010 leaving behind his wife, three sons and two unmarried daughters. At the time of filing the OA, the applicant was 34 years old and 8th standard pass. One of the brothers of the applicant is mentally disabled since birth. The family has no earning and is in urgent need of employment. The mother of the applicant is getting family pension worth Rs. 4470/- and also paid terminal benefits and there is no earning member in the family. The family has a small kutcha house to live in and heavy liability of loans and marriages of the daughters of the deceased, who were unmarried at the time of death of the deceased. The applicant has made an application dated 26.2.2010 to respondents and respondent No.3 vide his letter dated 3.3.2010 has directed the applicant to submit documents for taking necessary action. Accordingly, the applicant submitted documents and also the disability

certificate dated 31.7.2002 of his brother Ekilas to the respondents. The case of the applicant was considered for first look and vide letter dated 9.5.2011 it was informed that his case was considered alongwith 243 applicants by the Board of Officers and he secured 41 marks and the cut off marks of last candidate were 88. Thereafter the case of the applicant was considered in the second look and vide letter dated 15.9.2011 the applicant was informed that his case was considered along with 246 candidates and he secured 64 marks, whereas the cut of marks of the last candidate selected for the post of LDC was 85 against nil vacancy. Thereafter again the case of the applicant was considered for third and final look on 23.11.2013 and he was informed vide letter dated 19.11.2015 that he secured 64 marks whereas the last candidate selected was of 66 marks. Thereafter again the case of the applicant was considered for fourth look and vide letter dated 21.10.2011 it was intimated that he secured 73 marks but still he was not given appointment. It was also intimated in the said order that his case will be considered in the next look. The applicant thereafter made a representation to respondent No.2 and 3 vide his letter dated 19.12.2015. The respondent No.3 vide his letter dated 31.12.2015 intimated

that his application has already been considered for third and final look dated 23.11.2013 and it was intimated that the same was already forwarded to the applicant vide letter dated 29.11.2015. The applicant has challenged the speaking order of third and final look dated 23.11.2013 on the ground that though he was given 64 marks but the cut off was only 66 marks. Thereafter again case of the applicant was considered for fourth look on 21.10.2011 and he secured 73 marks but still he was not appointed. It was also intimated in the said order that his case will be considered in the next look. The applicant thereafter made a representation to respondent Nos. 2 and 3 vide his letter dated 19.12.2015. Accordingly, respondent No.3 vide his letter dated 31.12.2015 intimated that his application has already been considered for third and final look and the same was forwarded to the applicant vide letter dated 29.11.2015. The applicant has challenged the speaking order of third and final look dated 23.11.2013 that though he was given 64 marks but the cut off was only 66 marks and as the monthly income was wrongly shown as Rs. 2000 inspite of the fact that the family has no income, the applicant ought to have got more marks and accordingly he had a good ground for getting compassionate appointment.

It is the case of the applicant that his marks have been reduced from 73 to 64 and, therefore, if his marks are shown as 73 he could have very well got compassionate appointment. Therefore, he prays for quashing and setting aside the speaking order dated 23.11.2013.

3. After issue of notices, the respondents have filed their reply dated 17.11.2016 and have stated that the applicant secured 64 marks on all the occasions though by mistake the applicant has been shown to have secured 73 marks but it was a mistake only and he has instead secured 64 marks on all the occasions. It is the case of the respondents that case of the applicant has been considered on several occasions and they have annexed alongwith their reply the speaking order dated 12.6.2013, 20.6.2013 and 23.11.2013 for the years 2010-11, 2011-12, 2012-13, but as the applicant was lower in merit though his case was considered but could not be recommended for compassionate appointment. The respondents further stated that as per the law laid down by the Apex Court, compassionate appointment cannot be treated as a matter of right and the same has to be considered within the framework of the policy which the respondents have complied with. Also the order dated 23.11.2013 is speaking

and reasoned order and, therefore, the submission of the applicant that the same is not a speaking order is not justified. Pertaining to the submissions of the applicant regarding monthly income of Rs. 2,000/- per month, it has been submitted that the applicant himself has submitted the said document in the shape of certificate issued by Tehsildar, Jodhpur which is for an yearly amount of Rs. 24000 and, therefore, if the same is divided by 12 months, the same comes to Rs. 2,000 per month. The respondents have also stated that none of the grounds stated by the applicant deserves any interference and, therefore, the order dated 23.11.2013 is just and proper, which has been passed as per rules and case of the applicant is now finally closed and will not be considered again.

4. The applicant has filed rejoinder to the reply and the respondents have further filed additional reply and the applicant has filed reply to the additional affidavit.

5. Heard Shri Vijay Mehta, counsel for the applicant and Shri K.S.Yadav, counsel for respondents and perused the original record pertaining to the case of the applicant.

6. Besides reiterating the facts, the applicant has stated that he has secured 73 marks as per the speaking order

dated 21st October, 2011 and, therefore, it is not justified on the part of the respondents to state that the applicant has secured 64 marks on every look. The applicant has also stated that he has not submitted any document pertaining to income and, therefore, Ann.R/7 submitted by the respondents in the reply does not belong to him and, therefore, his family is not having any other income. The respondents should have considered it properly and, therefore, given appropriate marks. He further stated that the certificate produced by the respondents does not belong to him as his signature is not there on the said certificate. It is also his submission that the respondents may reconsider his case again along with such other cases for the available vacancies and if found fit, he may be provided compassionate appointment.

7. The respondents on the other hand, stated that the speaking orders pertaining to first, second and fourth look were passed by the Headquarters, Chief Engineer Bhopal Zone in which in one of the speaking order by mistake the marks have been shown as 73 marks. Even otherwise, the said consideration was against nil vacancies and cut off marks for last candidate considered for selection was 'NA'. On formation of new Headquarter, the Headquarters Chief

Engineer has considered the case of the applicant on three occasions against vacancies of the year 2010-11, 2011-12 and 2012-13 and the applicant has secured 64 marks in all looks. Pertaining to the query about income certificate, it is stated by the respondents that the mother of the applicant has given this certificate issued by the Tehsildar, Jodhpur along with her application and as the certificate show Rs. 24,000 yearly income, which comes to Rs. 2000 per month, therefore, the respondents have considered the case of the applicant and, hence, the submission of the applicant that the income certificate does not belong to him is not proper. With regard to the submission of the applicant that his case has been finally closed, the respondents have contended that they have considered the case of the applicant on a number of occasions and enough chances have been given to the applicant, therefore, his case is finally closed.

8. Considered the rival contentions of both the parties.

9. Admittedly, the applicant has secured 64 marks in all three yearly looks i.e. for the year 2010-11, 2011-12 and 2012-13, which can be perused from the original record produced by the respondents. Perusal of Ann.A/3, which is the application of the applicant alongwith annexed

documents dated 1.4.2010, the applicant has submitted income certificate from Tehsildar, Jodhpur. Besides this, the mother of the applicant has also submitted income certificate along with other documents, affidavits etc. with her application dated 21.3.2010. The submission made by the applicant that this certificate does not belong to him is not proper as the certificate issued by the Tehsildar, Jodhpur cannot show the signature of the applicant since there was no requirement in the certificate to that effect. The Tehsildar cannot issue such certificate suo-motu but the said certificate is issued only after providing certain documents/information to this effect by the applicant. This certificate was submitted by the applicant and mother of the applicant along with other documents. Therefore, it is not proper for the applicant to say that this income certificate does not belong to him. The case of the applicant along with other such cases has been considered and only deserving candidates who have secured more marks than the applicant have been provided employment. The case of the applicant has been considered on several occasions, therefore, the respondents finally treated the case of the applicant as closed. The applicant has restricted his arguments to his marks as 73 and also pertaining to

monthly income, which has already been considered, but it is shocking on the part of the applicant to say that the income certificate has not been supplied by him. The applicant himself along with other documents vide letter dated 01.04.2010 (Ann.A/3) as also the mother of the applicant vide letter dated 21.3.2010 has submitted these documents. The income certificate is issued by the Tehsildar, Jodhpur, which cannot bear the signature of the applicant, therefore, the applicant is warned not to make any baseless statements, which may have serious consequences.

9. In view of the discussions made above, there is no merit in this OA and the impugned order dated 23.11.2013 (Ann.A/1) does not require any interference. Accordingly, the OA is dismissed with no order as to costs.

(HINA P.SHAH)
Judicial Member

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