

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.290/00528/16

Jodhpur, this the 17th January, 2019

CORAM

Hon'ble Smt Hina P. Shah, Judicial Member

Adesh Kumar S/o Late Sh. Kalu Ram aged about 34 years, R/o Village and Post Banar, District-Jodhpur, Rajasthan. Ward of Majdoor Late Sh. Kalu Ram in the office of Commandant 19 FAD C/o 56 APO Jodhpur.

.....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 Field Ammunition Depot. C/o 56 APO Jodhpur.
3. The Personnel Officer, 19 Field Ammunition Depot. C/o 56 APO Jodhpur.

.....Respondents

By Advocate : Mr K.S. Yadav.

ORDER (Oral)

This is a second round of litigation seeking compassionate appointment by Mr Adesh Kumar, son of late Shri Kalu Ram who died on 06.02.2005 while working in the respondent-department. Applicant had earlier filed OA No. 290/00165/14 which was disposed of by this Tribunal vide order dated 07.09.2016 while declining to intervene in the matter since 2nd & 3rd Board meetings were still to be convened by the respondents. However, in the said order, this Tribunal had also observed that if still full marks

would be given to the applicant as contended by him towards pension, that would also not help the case of the applicant who was far below in the merit list compared to the selected candidate.

2. In the present OA, applicant has challenged the legality of orders dated 20.01.2015 (Annex. A/1) and 04.11.2016 (Annex. A/2) passed by the respondents while seeking following relief(s):

- (i) By an appropriate writ order or direction, impugned orders at Annex. A/1 dated 20.01.2015, and impugned order at Annex. A/2 dated 04.11.2016 be declared illegal and be quashed and set aside.
- (ii) By an order or direction, respondents may be directed to consider the case of the applicant on any Group D post and give him appointment with all consequential benefits.
- (iii) By an order or direction exemplary cost be imposed on the respondents for causing undue harassment to the applicant.
- (iv) Any other relief which is found just and proper be passed in favour of the applicant in the interest of justice.

3. Respondents filed additional affidavit on 04.01.2019 annexing copy of Board Proceedings for the year 2009-10 (Annex. R/1), 2010-11 (Annex. R/2) and 2011-12 (Annex. R/3).

4. When matter was taken up for hearing today, at the outset, Mr S.K. Malik, learned counsel for the applicant drew my attention to impugned orders dated 20.01.2015 & 04.11.2016 and stated that despite order passed by this Tribunal in OA No. 290/00165/14 to the extent that the competent authority must decide whether, for the purpose of computation of marks, only basic pension is to be considered, or, whether the Basic Pension would include DA and

other allowances etc. yet respondents have passed such non-speaking orders. He thus prayed that impugned orders may be quashed and set aside.

5. On the other hand, Mr K.S. Yadav, learned counsel for the respondents submitted that the applicant had filed the earlier OA No. 290/00165/14 at a premature stage when 2nd & 3rd Board meeting was still to take place and the same was disposed of by this Tribunal declining to intervene in the matter as same was premature. But during pendency of the said OA, 2nd & 3rd Board meetings took place and the comparative merits and marks secured by the applicant had been placed on records of that OA by way of additional affidavit. He further stated that this Tribunal had categorically observed in order dated 07.09.2016 that even if allotment of marks for family pension, disputed by the applicant, would have been given in full then also the applicant's case is far below in merits. With regard to impugned orders, he submitted that order dated 20.01.2015 was passed during the pendency of OA No. 290/00165/15. However, order dated 04.11.2016 (Annex. A/2) had been passed after issuance of direction by this Tribunal.

6. I have heard counsels for the parties and also perused the relevant record. This Tribunal in para 11 of order dated 07.09.2016 passed in OA No. 290/00165/14 has observed as under:

11. As far as issue of marks allotted on account of family pension are concerned, even if full marks had been granted to the applicant, taking into account the lower pension, as contended by the applicant, it still would not help the case of the applicant who was far below the merit list compared to the selected candidates. The respondents are directed to maintain uniformity while taking into account the correct pension and other parameters at the time of the meeting of the next Annual Boards. It must be ensured that no one gets any undue advantage or is placed at a disadvantageous position because of different formula being adopted, by the PAOs of different field formation giving rise to avoidable anomalies. The competent authority must decide whether, for the purpose of computation of marks, only basic pension is to be considered, or, whether the Basic Pension would include DA and other allowances etc also. The respondents shall ensure that the policy/principal for taking into account family pension of the candidates is carved in stone, allowing no discrimination or deviation whatsoever not only in the current case but for all such future selection too. I am not inclined to intervene in the matter since the 2nd & 3rd Annual Board meetings are yet to be convened where the case of the applicant will be considered.

From perusal of above observation, it is clear that the applicant does not stand in merit for his case to be recommended for appointment on compassionate grounds. At the same time some anomaly/error in allotment of marks to the applicant with regard to family pension attribute had been observed by this Tribunal though he was far below merit. Therefore, some observations for competent authority were made for ensuring that no discrimination takes place while considering compassionate appointment cases. In this particular case, the applicant has challenged the impugned order and specific submissions have

been made by counsel for the respondents to the extent of legality of these orders issued by the respondents.

7. I have gone through both the orders, i.e. order dated 20.01.2015 (Annex. A/1) and 04.11.2016 (Annex. A/2). I agree with the submission made by learned counsel for the applicant that impugned order dated 20.01.2015 has been passed during pendency of the OA but apparently order dated 04.11.2016 has been passed after disposal of the earlier OA. On perusal, I find that impugned order dated 04.11.2016 (Annex.A/2) passed by the respondents after observations made by this Tribunal is clearly vague and a non-speaking order and cannot sustain in eyes of law.

8. Accordingly, order dated 04.11.2016 (Annex. A/2) is quashed and set aside. Looking to the facts and circumstances of the case, respondents are directed to pass fresh speaking order within 03 months from the date of receipt of a copy of this order clearly mentioning number of vacancies, what was the laid down criteria and also comparative merits with last selected candidate on each occasion when case of the applicant was considered.

9. In terms of above directions, OA is disposed of. No costs.

[Hina P. Shah]
Judicial Member

Ss/-