

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHENNAI BENCH**

OA/310/01095/2018

Dated Thursday the 16th day of August Two Thousand Eighteen

PRESENT

HON'BLE MR. R. RAMANUJAM, Member (A)

D.Muralikumar,
S/o late Shri K. Dorairaju,
No. 3, Coral Block,
S A Avenue,
Thudiyalur, Coimbatore 641043.Applicant

By Advocate M/s. Ayyar & Iyer

Vs

1. Union of India rep by,
The Secretary to the Govt. of India,
Ministry of Defence,
South Block, DHQ (PO),
New Delhi 110011.
2. The Controller General of Defence Accounts,
Ulan Bator Road,
Palam, Delhi Cantt 110010.
3. The Controller of Defence Accounts,
618, Anna Salai,
Teynampet, Chennai 600018.Respondents

By Advocate Mr. M. Kishore Kumar

ORAL ORDER

(Pronounced by Hon'ble Mr. R. Ramanujam, Member(A))

Heard. The applicant has filed this OA under section 19 of the Administrative Tribunals Act, 1985 seeking the following relief :

" To call for records pursuant to impugned proceedings No. AN/VIII/19001/Corr/Chennai-Vol-II dt. 12.07.2018 of the 2nd respondent read with 3rd respondent's proceedings No. AN/I/16/Rect/GpC/CA/Muralikumar dt. 09.07.2018 thereby closing the case for employment assistance on compassionate grounds is unjustified, unconstitutional, showing non-application of mind, arbitrary, depicting closed mind approach to the peril of the applicant to live with dignity and honour and further direct the respondents to consider his case for employment assistance on compassionate grounds to any of the posts under the respondents and pass any such orders or directions that may deem fit in the facts and circumstances of the case and thus render justice. "

2. It is submitted that the applicant's father while working as a Clerk in the office of PAO (ORs) MRC, Wellington under the 3rd respondent died in harness on 02.06.2001 leaving a family comprising his dependent parents, three sons and two daughters. The death benefits received by the family were not sufficient to settle the family's debts. A request for compassionate appointment at the relevant time was rejected for want of vacancies first on 09.04.2002 and again on 03.12.2003 and 25.04.2006. The applicant is now aggrieved with Annexure A12 impugned order dt. 09.07.2018 by which his request for compassionate appointment was turned down in terms of the provisions of the scheme of compassionate appointment as contained in Serial Nos. 32 and 39 of the FAQ issued by the Department of Personnel & Training.

3. Learned counsel for applicant would submit that in terms of Serial No. 32 of the FAQ, the respondents ought to inquire into the financial condition of the family of the deceased. One of the criteria to be considered was that the family should be indigent and deserved immediate assistance for relief from financial destitution. Further, as per Serial No. 39 of the FAQ, Ministries/Departments could consider request for compassionate appointment even where the death or retirement on medical grounds of the Government servant took place long time back. While considering such belated request, it should be kept in view that the concept of compassionate appointment was largely related to the need for financial assistance of the family so as to relieve it from financial distress. It is submitted that in terms of these two provisions, the respondents could not arrive at a conclusion that the family did not need support only on account of the delay in seeking compassionate appointment. More so, when even this ground is not factually fully correct as the respondents had rejected the family's request for compassionate appointment earlier. As such, there was no delay and even if there was, no request for compassionate appointment could be rejected solely on the ground of delay. Serial no. 8 of the scheme for compassionate appointment issued under Consolidated Instructions on compassionate appointment of the DoPT dt. 16.01.2013 clearly states that subject to availability of vacancy and

instructions issued on the subject by the Department 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. Accordingly, the OA is liable to be allowed and the impugned order quashed and set aside, it is urged.

4. Learned counsel for the respondents would, however, submit that although the family sought compassionate appointment soon after the death of the Government employee, after the rejection of the request in 2006 for want of vacancy, there was no request for compassionate appointment till the year 2018. As the family had managed for 12 long years without any support in the form of compassionate appointment, there was no case now to consider the applicant's request for compassionate appointment. He seeks to rely on the order of the Hon'ble Apex Court in CA 251/2017 dt. 10.01.2017 wherein it is clearly held that the direction to give compassionate appointment several years after the death of the employee was not justified.

5. I have considered the submissions made by the rival sides. It is not in dispute that the applicant's father died on 02.06.2001 and the family applied for compassionate appointment soon thereafter. The request of the family for compassionate appointment had been rejected in the year 2002, 2003 and 2006 for want of vacancies. Although there

was a gap of 12 years thereafter before the applicant sought compassionate appointment again, Serial no. 8 of the scheme annexed to DoPT OM dt. 16.01.2013 which provides that an application for compassionate appointment should be considered without any time limit and a decision taken on merit in each case cannot be overlooked.

6. As regards Serial nos. 32 and 39 of the FAQ as extracted in the impugned order dated 09.07.2018, it is seen that the only criteria is that the family should be indigent and deserved immediate assistance for relief from financial destitution. It is also seen that Ministries/Departments could consider such requests though it should be kept in view that the concept of compassionate appointment is largely for need of immediate assistance to the family of the Government servant in order to relieve it from economic distress. The very fact that the family had survived somehow should 'normally' be taken as adequate proof that it had dependable means of subsistence.

7. Presently, a request for compassionate appointment is considered in an objective manner by awarding merit points under different criteria such as income of family from various sources, number of dependent children, number of unmarried daughters, etc, etc. The presumption that is expected to be made in the normal course that a family which was able to manage without assistance for several years had some dependable means of subsistence would get duly

reflected in the award of merit points. I am accordingly of the view that rejection of a request for compassionate appointment solely on the basis of delay without making an objective assessment is not in order.

8. As for the reliance placed on the order of the Hon'ble Apex Court in Civil Appeal no. 251/2017 dt. 10.01.2017, the full facts of the case considered by the Hon'ble Apex Court are not seen in the order. It does not also seem to have been highlighted before the Hon'ble Apex Court that under Serial no. 8 of the scheme for compassionate appointment issued with OM dt. 16.01.2013 of the DoPT, it is provided that subject to availability of vacancy and instructions on the subject issued by the Department, any application for compassionate appointment is to be considered without any time limit and a decision taken on merit in each case. In as much as the decision in this case has not been taken on merit based on an objective assessment but on a presumption that the delay involved in the submission of request for compassionate appointment indicated that the family was able to manage somehow, the impugned order does not seem to be in accordance with the provisions of the scheme.

9. In view of the above, Annexure A12 impugned order dt. 09.07.2018 is quashed and set aside. The respondents are directed to make an assessment of the financial condition of the family on objective criteria as laid down in the scheme, place the matter before

the relevant committee for its recommendations and then pass a reasoned and speaking order within a period of three months from the date of receipt of a copy of this order.

10. OA is disposed of as above. No costs.

**(R. Ramanujam)
Member(A)
16.08.2018**

SKSI