

**CENTRAL ADMINISTRATIVE TRIBUNAL**

**PATNA BENCH, PATNA**

OA/050/00088/2018

With

MA/050/00138/2018

Reserved on : 07.02.2019

Date of Order: 08.02.2019

**C O R A M**

**HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER**

Laddu Kumar, s/o Late Awadhesh Singh, resident of Village-Medanichak, P.O.-Pamera, P.S.-Karai Parsurai, District-Nalanda.

..... Applicant.

- By Advocate : Shri J.K.Karn.

-Versus-

1. The Union of India through the Secretary, Ministry of Defence, New Delhi-110001.
2. The Chief controller of Defence Accounts, New Delhi-110001.
3. The CDA, Patna, Rajendra Path, Patna-800019.
4. The Assistant Controller of Defence Accounts (Administration), O/o the Controller of Defence Accounts (Patna), Rajendra Path, Patna-800019.

..... Respondents.

- By Advocate :- By Advocate :- Shri Bindhyachal Rai.

**O R D E R**

**Per Mr. Dinesh Sharma, A.M.:-** The case of the applicant is that his father late Awadhesh Singh died in harness on 07.06.2005. His request for compassionate appointment was rejected vide letter dated 15.11.2010 issued by Assistant Controller of Defence Accounts (Administration), office of CDA, Patna, on ground that he was not eligible for Group 'C' post and there was no vacancy of Group 'D' post. Though the mother of the applicant

submitted several representations thereafter, his request has again been rejected by letter dated 28.03.2016. In this letter, the ACDA has quoted Office Memorandum of DoP&T No. 14014/3/2011-Estt. (D) dated 26.07.2012 according to which only those matters need to be reopened for review which were closed for want of vacancies under the office memorandum no. 14014/19/2002-Estt. (D) dated 05.05.2003.

2. The argument of the applicant is that rejection on this ground is wrong since another set of instructions were issued by the DoP&T through its OM of the same number dated 16.01.2013 under which any application for compassionate appointment was to be considered without any time limit and decision taken on merit in each case.

3. The applicant has requested for considering his case once again by the concerned Committee while following the scheme and instructions which are now in force.

4. The applicant has also filed an MA 050/00138/2018 in which he has requested for condonation of delay which has happened due to poverty and grim financial condition of the applicant. This MA is allowed.

5. The respondents have denied the claim made by the applicant. Besides contesting the indigent condition of the applicant, they have also justified their earlier decisions which were because of non-fulfilment of indigency criteria and non-availability of vacancy on compassionate quota. They have also alleged that the claim of the applicant for compassionate appointment was considered sympathetically before the Board of Officers four times, i.e. 19.10.2006, 14.06.2007, 20.02.2008 and 21.05.2009. The

case was rejected on the above grounds at all these four occasions. They have also alleged that they have virtually complied with the DoP&T OM No. 14014/02/2012-Estt(D) dated 16.01.2013. Reconsideration of compassionate appointment was not possible due to non-fulfilment of indigency criteria and lack of vacancy for the prescribed post. The respondents have cited the decision of the Hon'ble Supreme Court in the case of State of Haryana and another Vs. Ankur Gupta wherein it was held that compassionate appointments are not a matter of right and such applications should not be routinely forwarded for sympathetic considerations. They have also cited the judgment of the Apex court in UOI & Ors. Vs. Seema Banerjee in Civil Appeal No. 251 of 2017 where the Apex Court found a direction to give compassionate appointment, several years after death, unjustified.

6. Learned Advocate for the applicant also cited decisions of this Tribunal in OA/050/00338/2015 (Suganti Devi and Anr. Vs. UOI & Ors.), OA/050/00695/2016 and OA/050/0009/2017 between the same parties (in which this Tribunal directed the case for consideration without looking at the time limit); OA/050/00658/2017; and OA/050/00960/2018 (Sumati Devi & Anr. Vs. Union of India & Ors.). In this case also this Tribunal had directed the Department to consider a case many years after the death of an employee in harness.

7. I have gone through the pleadings and heard the counsels for the parties. It is a fact that the father of the applicant died in harness in the year 2005 and it is now about 14 years since then. It is also not denied that

the case of the applicant has been considered on a number of occasions and been rejected on various grounds. The only point on which the advocate for the applicant has strongly argued is the refusal to re-consider his case (communicated by letter dated 28.03.2016, Annexure A/1). The argument of the learned counsel is that this communication quotes the DoP&T OM dated 26.07.2012 while a new OM on the subject dated 16.01.2013 was available. We have gone through this new OM (Annexure A/3). It is correct that this memorandum does away with the time limit and allows a decision to be taken on merit in each case. However, as made clear by the Hon'ble Apex Court in the case of Seema Banerjee cited above, this consideration cannot continue endlessly. Going by the objective of the scheme, giving a direction to give compassionate appointment several years after death is not justified. The decisions of this Tribunal cited by the Ld. Counsel for the applicant are relevant to the facts and circumstances of these individual cases, and cannot, in any case be followed ignoring the express dictum of the Hon'ble Apex Court. In the present case, the father of the applicant died in the year 2005 and the applicant himself is now about 41 years of age. As mentioned by the respondents in the WS (and not denied by the applicants) his case has already been considered four times in the period immediately after his father's death. In such a situation, sending it back to the Department on a technical ground (of it having quoted a wrong circular in the impugned order) will not be proper. The OA is, therefore, dismissed. No order as to costs.

[ Dinesh Sharma ]  
Administrative Member

Srk