

Reserved

Central Administrative Tribunal, Allahabad Bench, Allahabad

Original Application No.330/01012/2012

Pronounced on 13.8.2019

Hon'ble Mr. Justice Bharat Bhushan, Member (J)

Shivram Singh son of late Mahendra Singh resident of village Ram Nagar, Post Office Akola, District- Agra.

Applicant

By Advocate: Sri Mahesh Kuntal

Versus

1. Union of India through Secretary, Ministry of Information and Broadcasting, Government of India, New Delhi.
2. Director General, Prasar Bharti, All India Radio, New Delhi.
3. Director General (P), All India Radio, new jDelhi.
4. State Director, All India Radio, Lucknow.
5. Screening Committee through its Chairman, All India Radio, lucknow.
6. Administrative Officer, All India Radio, Lucknow.
7. Superintendent, All India Radio, Agra.
8. Station Engineer, All India Radio, Agra.
9. Ahran Evam Samutran Adhikari, All India Radio, Agra.

Respondents

By Advocate: Sri R.K.Srivastava

ORDER

Hon'ble Mr. Justice Bharat Bhushan, Member (J)

A 38 year old applicant, Shivram Singh has filed this Original Application (O.A.) for appointment on compassionate ground in All India Radio from respondents.

2. Brief facts are, that late Mahendra Singh, father of applicant, was working as Security Guard in All India Radio, Agra after his appointment on that post on 12.10.1988. Late Mahendra Singh died in harness on 21.9.1999 leaving behind his widow Jai Devi, five daughters and son applicant Shivram Singh.

3. It is stated that two unmarried daughters of deceased employee namely Km. Anita aged about 14 years and Km. Anjali aged about 13 years were pursuing their education in different institutes. Applicant, along with his sisters and mother were wholly dependent upon the income of his late father. It is further

stated that after death of deceased employee, his family have plunged into deep financial crises.

4. Applicant moved an application with relevant documents for compassionate appointment before Director General, All India Radio on 28.10.1999. He could not be appointed under the category of compassionate appointment. It is stated that appointment to the post of LDC on compassionate ground are done as per recruitment rules under 5% quota on zonal basis. So, if there are more deserving applicants seeking appointment under category of compassionate appointment, then the names are considered on the basis of prevailing rules.

5. Initially, the name of applicant was considered for three years, but subsequently, he was informed vide order dated 20.11.2009 that his name would not be considered in subsequent years. This order is available on record as Annexure A-13.

6. The applicant filed an O.A. No. 508/2010 (Shiv Ram Singh Vs. Union of India and others), wherein vide order dated 14th May, 2010, the respondents were directed to again consider the name of applicant on merit. The relevant portion of this judgment is reproduced as below:-

"2. The applicant's case for compassionate appointment has been rejected vide impugned order No. La Kha-22(6)/2008 -S (Anu Nee) dated 20.11.2009 on the sole ground of closing such cases after three years in terms of instruction issued by DOP&T. Apart the reference to the DOP&T instruction No. 14014 of 2002-Estt (D) dated 1.5.2003. The Hon'ble Jurisdictional High Court has held the DOP&T instruction dated 1.5.2003 as ultra virus to the constitution.

3. In view of the above, the impugned order No. La Kha-22(6)/2008 -S (Anu Nee) dated 20.11.2009 is quashed and

set aside and matter is remitted back to respondent No.5 to reconsider the applicant's case on merit afresh after ignoring the DOP&T instruction No. 14014 of 2002-Estt (D) dated 1.5.2003 and pass fresh reasoned and speaking order within a period of three months from the date of receipt of copy of this order."

7. Thereafter, name of applicant was again considered along with 66 other candidates. However, the applicant could not succeed in obtaining the appointment since the screening committee did not find the case of applicant Shivram Singh as most deserving. Relevant portion of impugned order dated 27.2.2012 is reproduced as below:-

"Dated 27.02.2012

ORDER

Sub: CCP No. 61/2011 Shivram Singh Vs. Shri A.K. Tyagi in O.A. No. 508/2010 before Hon'ble CAT, Allahabad.

Shri Shivram Singh, applicant had filed an O.A. No. 508/2010 before the Hon'ble Central Administrative Tribunal, Allahabad seeking compassionate appointment on Gr. 'C' post in place of his deceased father Sri Mahendra Singh, Ex-Security Guard, All India Radio, Agra. The Hon'ble CAT, Allahabad vide order dated 14.5.2010 decided the said O.A. at admission stage by quashing the impugned order No. Lakha -22(6)/2008-S (Anu Nee) dated 20.11.2009 and matter was remitted back to respondent No. 5 for reconsidering the applicant's case on merit afresh ignoring the DOP&T's instruction No. 14014/19/2002-Estt (D) dated 5.5.2003 and to pass a fresh reasoned and speaking order within a period of three months from the date of receipt of copy of this order.

In compliance of the Hon'ble Tribunal order dated 14.5.2010 and respondent's submission dated 27.12.2010, the case of Shri Shivram Singh for compassionate appointment was placed before the Screening Committee meeting held on 18.11.2011 for reconsideration. Accordingly, ignoring the DOPT instruction as above the case was reconsidered by the Screening Committee. The minutes of Screening Committee containing the recommendation on the subject case were forwarded to the All India Radio Directorate, New Delhi vide this office letter No. Lko-22(6)/2004-S (Comp. Appt.) dated 12.12.2011 for approval. Now the approval of competent authority i.e. DG, AIR has been received. Accordingly, it is intimated that claims of all the applicants along with the claim of Shri Shivram Singh were considered against one available vacancy under 5% quota for the year 2010. Since the

Screening Committee did not find the case of Shri Shivram Singh as most deserving, therefore, he has not been recommended for appointment on compassionate ground further the screening committee recommended to cancel the claim of the applicant along with other cases.

(S.R. Banerji)
Deputy Director General (P)"

8. This order is under challenge before this Tribunal.
9. The respondents have filed their counter affidavit on 7.2.2013 and Supplementary Counter reply on 12.10.2018 denying the claim of applicant. They have stated that name of applicant was considered at least five times under this category with other candidates. They have also stated that there is prescribed quota of 5 % for such appointment. All posts are not available for appointment under this category. Therefore, the applicant had to compete with other candidates for consideration under prevailing rules and he cannot be appointed out of turn even in this category.
10. Respondents have claimed that the case of applicant was considered first time on 18.9.2001, second time on 15.1.2004, third time on 26.5.2006, fourth time on 18.11.2011 but his name could not be recommended for appointment on account of securing less marks.
11. Respondents have further stated that name of applicant was again considered for 5th occasion on 5.8.2016 but could not be recommended for appointment due to low merit. Minutes of Screening Committee are available with Supplementary Counter Affidavit filed by the respondents on 12.10.2018 which indicates that name of 66 candidates were considered under prescribed quota of 5%. Two names were recommended for appointment but applicant could not succeed along with other 63 failed candidates.
12. Heard Sri Mahesh Kuntal, counsel for applicant and Sri R.K. Srivastava, counsel for respondents.

13. The bare perusal of admitted facts and record reveals that applicant's name was repeatedly considered as per rules and guidelines but he could not found fit for appointment on compassionate ground due to low merit position. It is pertinent to point out that father of applicant Mahendra Singh died in the year 1999. At present, applicant is 38 years of age. He filed first O.A. in the year 2010 at the age of around 29 years and the present O.A. was filed at the age of 31. Meaning thereby, the applicant has been able to manage for last 20 years without compassionate appointment.

14. Hon'ble Apex Court in the case of **Bhawani Prasad Sonkar Vs. Union of India and others reported in 2011 (4) SCC 209** has held as under:

"20. Thus, while considering a claim for employment on compassionate ground, the following factors have to be borne in mind:

(i) Compassionate employment cannot be made in the absence of rules or regulations issued by the Government or a public authority. The request is to be considered strictly in accordance with the governing scheme, and no discretion as such is left with any authority to make compassionate appointment dehors the scheme.

(ii) An application for compassionate employment must be preferred without undue delay and has to be considered within a reasonable period of time.

(iii) An appointment on compassionate ground is to meet the sudden crisis occurring in the family on account of the death or medical invalidation of the bread winner while in service. Therefore, compassionate employment cannot be granted as a matter of course by way of largesse irrespective of the financial condition of the deceased/ incapacitated employee's family at the time of his death or incapacity, as the case may be.

(iv) Compassionate employment is permissible only to one of the dependants of the deceased/ incapacitated employee, viz. parents, spouse, son or daughter and not to all relatives, and such appointments should be only to the lowest category that is Class III and IV posts."

15. As per dictums of Hon'ble Apex Court, it is settled position of law that compassionate appointment is granted to meet the

sudden crisis on account of death of breadwinner while in service. While considering the claim for compassionate appointment, financial condition of family of deceased employee must be taken into consideration. The object to grant compassionate appointment is to provide immediate help to the dependents of deceased employee, so that they may not die in starvation.

16. It is settled position of law that compassionate appointment is not a Rule and cannot be sought, as a matter of right. The compassionate appointment is a concession and exception to public appointment provided under Articles 14 and 16 of the Constitution of India, therefore, to seek a concession of compassionate appointment, claimant must prove his financial condition and must prove that in the event of non grant of compassionate appointment, claimant would face financial crisis.

17. It is pertinent to point out that appointment to the public office cannot be claimed as a matter of right. The respondents have pointed out that only 5% vacancies of particular year are available for appointment under compassionate ground. Record further reveals that even for such appointment, large number of people had moved their applications. Their names were considered under the prevailing rules for compassionate appointment. Marks were awarded. These marks are clearly available to any candidate. In fact, applicant had sought such information under Right to Information Act, 2005 (in short RTI). Minutes of Screening Committee meeting held on 5.8.2016 (Annexure A-6) are annexed along with Supplementary Counter Affidavit dated 12.10.2018 which clearly indicates that name of applicant was considered along with 65 other candidates but only two persons could be selected under the prescribed 5 % quota meant for compassionate appointment. This Tribunal cannot force the respondents to breach

this quota of 5% or to appoint a person who had secured low percentage of marks. As has been pointed out earlier, 63 other persons are waiting in the wing and they may also claim the appointment as a matter of right.

18. I have carefully considered all material available on record. Record reveals that name of applicant was considered at least five times for compassionate appointment in accordance with prevailing rules and no useful purpose would be served for asking the respondents again to consider the name of 38 year old applicant for compassionate appointment. This O.A. is devoid of merit and is accordingly dismissed. No order as to costs.

(Justice Bharat Bhushan)
Member (J)

HLS/-

