

**CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH**

O. A. No. 209/2017 With M.A. No. 200/2017  
Ahmedabad, the 13<sup>th</sup> August, 2019

CORAM :

**Hon'ble Sh. M.C.Verma, Member (Judicial)**

Ketankumar Dalpatbhai Gohel, aged about 27 years, resident of B/40, Suncity Row Houses, Opp. GSFC Company, Kosamba Road, Tal. Mangrol, District Surat-394120

**... Applicant**

**[By Advocate : Ms. Vilas Purani]**

V/s

1. Union of India notice to be served through The Secretary, Ministry of Agriculture & Farmers' Welfare, Government of India, Department of A.H. Dairying & Fisheries, Krishi Bhavan, New Delhi – 110001.

2. The Director, Central Cattle Breeding Farm, Mangrol, Dham Road, District Surat – 394 125.

**... Respondents**

**[By Advocate : Ms. Roopal Patel]**

**O R D E R (ORAL)**

M.C.Verma, Member (Judicial) :

1. In instant matter the OA, after filing has been amended by the applicant. Pre-amended OA was preferred by the applicant having grievance that his application for appointment on compassionate ground has not been decided by the respondents. Till filing of OA no decision was taken by the respondent on representation of applicant for his appointment on compassionate ground, however, during pendency of the OA his case for appointment on compassionate ground was rejected and hence applicant did amend his OA impugning the order whereby his case for appointment on compassionate ground has been rejected.

2. It is the case of the applicant that his father, since 1983 was serving in the office of respondent No. 2 and he died in harness on 19<sup>th</sup> April, 2014, while was serving on duty as LDC. That applicant applied for his appointment on compassionate ground, in year 2014 itself but no decision has been taken and during the pendency of the OA, the respondents did pass order dated 11.08.2017 (Annex.AA/S-1) stating that no post is available

under 5% compassionate ground quota in the Department to be filled-in and hence, it is not possible to offer compassionate appointment to the applicant. Consequent to this order, O.A. was amended and in amended OA following prayer has been made.

- A. *“This Hon’ble Tribunal be pleased to declare the order or direction, declaring the inaction on the part of respondents in deciding his compassionate application dated 10.6.2014 and not granting him compassionate appointment as illegal, arbitrary, unjust and violative of Art. 14 & 16 of the Constitution of India, direct respondents to decide the pending case of the petitioner and grant compassionate appointment to petitioner from retrospective date and pay arrears with 12% interest.*
- AA *This Hon’ble Tribunal be pleased to declare the impugned decision of the respondent no. 1 denying compassionate appointment to the applicant on the grounds of non-availability of vacancy vide dated 11.8.2017 letter no. F.no. 3-8/ACS/CAT/KDG/2017-18/467 at Annexure – AA, as illegal, unjust, arbitrary and violation of Art. 14 & 16 of the Constitution of India and be pleased to quash and set aside the same and direct respondents to give compassionate appointment to the applicant.*
- AAA. *This Hon’ble Tribunal be pleased to declare that the respondents have acted in a mechanical way, without application of mind and rejected the compassionate appointment to the applicant.*
- B. *This Hon’ble Tribunal be pleased to declare that the respondents have acted mala fide and has illegally delayed in deciding the applicant’s case of the compassionate appointment, therefore, be pleased to direct the respondents to decide his application dated 10.6.2014 and grant him compassionate appointment and further direct the respondents to pay cost and compensation for the present litigation to the application and same may be recovered from the personal salary of the erring officers.*
- C. *Any other relief this Hon’ble Tribunal deem fit and proper in interest of justice.”*

3. Reply to the amended OA has been filed by the respondents. The stand of the respondents is that applicant’s application, along with other applications, for consideration for appointment on compassionate ground, was referred to the respondent No. 1 by respondent No.2, vide letter Annex. R/1 dated 5<sup>th</sup> July, 2014, 1<sup>st</sup> August, 2014 and 31<sup>st</sup> December, 2016 respectively and it was informed by the respondent No. 1, vide

letter No. 6-2/2017-Admin-III dated 9<sup>th</sup> August, 2017, that after circulating for clear vacancies from all the CCBF Farms of the Department, no post found available under 5% quota in direct recruitment in the department to be filled on compassionate ground(s) and thus, it is not possible to proceed further in this case. Respondents in Para 5 of their reply has mentioned the detailed position of the vacancies. It has been pleaded that in year 2014-15 the office had **19** vacant posts of MTS out of which **13** posts have to be kept for regularisation of TSW to MTS and **6** posts were to be filled in from direct recruitment. That during the year 2015-16 out of 19 vacant posts, 13 posts had to be kept for regularisation of TSW and **6** posts were for direct recruitment. That during year 2016-17 out of 23 vacant posts, 15 posts were to be kept for regularisation of TSW and **8** posts by direct recruitment. That for compassionate appointment 5% of post to be filled in from direct recruitment's vacancies come to **0.30** in year 2014-15, **0.30** in year 2015-16 and **0.40** in year 2016-17 and thus 'Nil' vacancy was there in year 2014-15, 2015-16 & 2016-17. Scheme of compassionate appointment and some other documents have been annexed by the respondents with their reply. The vacancies collected and calculated from the subordinate offices of the Department have been annexed as Annex. R/2 whereas DOP&T OM No.14014/6/94-Estt.D, dated 9<sup>th</sup> October, 1998 and revised O.M. No. 14014 / 02/ 2012 – Estt. (D) Dated 16<sup>th</sup> January, 2013 has been annexed as Annex. R/3.

4. Have heard learned counsel Ms.Vilas Purani, who appears for applicant and learned counsel Ms. R.R. Patel who appears for respondents. Learned counsel Ms. Vilas Purani submits that only ground assigned by the respondents for rejecting the case of applicant is that there were no vacancy for compassionate appointments, under 5% quota of direct recruits but factually it is incorrect, posts were available under the 5% quota and the respondents has miscalculated the posts. She referred the Scheme for Compassionate Appointment and submits that while calculating the vacancy, spirit of Clause (g) of Para 7 of the scheme has totally been ignored and had note of Clause (g) would have been taken it cannot be said that there was no vacancy.

5. Learned counsel for respondents, Ms. R.R.Patel, with vehemence refuted the submission that respondents has miscalculated the posts. She referred the reply of respondents and urged that only 5% of post to be filled in from direct recruitment's vacancies can be filled through compassionate appointment and said 5% of vacancies come to **0.3** in year 2014-15, **0.3** in year 2015-16 and **0.4** in year 2016-17 and thus 'Nil' vacancy was there in year 2014-15, 2015-16 & 2016-17. When attention of learned counsel was drawn to Clause (g) of Para 7 of the Scheme, she submits that the applicant otherwise also was not eligible for compassionate appointment as he was not having requisite qualification. Learned counsel for applicant, in rebuttal opposed this submission contending that issue of other criteria has not been disclosed in the impugned order and at this stage same cannot be agitated.

6. The Scheme for compassionate appointment has been annexed by respondent as Annex. R/3. Para 7 of the scheme pertains to determination / availability of Vacancies. Clause (b) of said Para stipulates that compassionate appointments can be made up to a maximum of 5% of vacancies falling under direct recruitment quota in any Group 'C' post and that the appointing authority may hold back up to 5% of vacancies in the aforesaid categories to be filled by direct recruitment through Staff Selection Commission or otherwise so as to fill such vacancies by appointment on compassionate grounds. Clause (g) provides liberalized method of calculation of vacancies for small Ministries / Departments. For sake of brevity, Clause (g) is reproduced herein below :-

*“(g) Liberalized method of calculation of vacancies for small Ministries / Departments’- The small Ministries / Departments may apply a more liberalized method of calculation of vacancies under 5% quota for compassionate appointment. The small Ministries / Departments, for the purpose of these instructions, are defined as organizations where no vacancy for compassionate appointment could be located under 5% quota for the last 3 years. Such small Ministries / Departments may add up to the total of DR vacancies in Group ‘C and erstwhile Group ‘D’ posts (excluding technical posts) arising in each year for 3 or more preceding years and calculate 5% of vacancies with reference to the grand total of vacancies of such years, for locating one vacancy for compassionate appointment. This is subject to the condition that no compassionate appointment was/has been made by the Ministries / Departments during 3 years or number of years taken over and above 3 years for*

*locating one vacancy under 5% quota. (Para 4 of O.M. No. 14014/3/2005-Estt.(D) dated 09.10.2006.”*

7. Aforesaid clause (g) provides that the small Ministries / Departments where no vacancy for compassionate appointment could be located under 5% quota for the last 3 years, such small Ministries / Departments may add up to the total of DR vacancies in Group ‘C and erstwhile Group ‘D’ posts (excluding technical posts) arising in each year for 3 or more preceding years and calculate 5% of vacancies with reference to the grand total of vacancies of such years, for locating one vacancy for compassionate appointment.

8. The detailed position of the vacancies as has been pleaded in reply reveals that in the year 2014-15 respondent department had 19 vacant posts of MTS out of which 13 posts have to be kept for regularisation of TSW to MTS and 6 posts were to be filled in from direct recruitment, during the year 2015-16 out of 19 vacant posts, 13 posts had to be kept for regularisation of TSW and 6 posts were for direct recruitment and during year 2016-17 out of 23 vacant posts, 15 posts were to be kept for regularisation of TSW and 8 posts by direct recruitment. If the total of DR vacancies of year 2014-15, 2015-16, & 2016-17 had have been added the figure that will come would be 20 (6+6+8) and one vacancy under 5% quota for appointment on compassionate ground would have been available.

9. Anyhow, considering the submissions and taking note of the vacancies of the year 2014-15, 2015-16 and 2016-17 it can evidently be said that at least one vacancy under 5% quota for appointment on compassionate ground would have been available so the stand of the respondents that there was no vacancy, is not at all tenable.

10. Taking note of entirety the impugned order dated 11<sup>th</sup> August, 2017 is quashed and set aside and, Respondent-Department is directed to consider the case of applicant afresh for appointment on compassionate grounds. Respondents shall carry out this exercise within three months from the date of receipt of a copy of this order.

11. With aforesaid observation & direction the OA stand disposed of. M.A. if any pending as on date, also disposed of.

[M.C.Verma]  
Judicial Member

mehta