

CENTRAL ADMINISTRATIVE TRIBUNAL

MADRAS BENCH

DATED THIS THE 6 DAY OF JUNE, TWO THOUSAND NINETEEN

PRESENT:

THE HON'BLE MR. T. JACOB, MEMBER (A)

OA.1175/2013

V. Sathiyaseelan,
S/o late R.Vijayarangam,
2/4 School Street, Mittanmalli Post,
Via A.F Avadi, Chennai 600 055

...Applicant

M/s G.Justin, counsel for the applicant.

-versus-

1. Union of India rep. by
The Chief Engineer, (R & D),
Picket, Secunderabad,
Pincode 500 003.
2. The Garrison Engineer (I) (R&D),
Military Engineer Services,
Avadi, Chennai 600054

...Respondents

Mr. K. Kannan, counsel for respondents. P

ORDER

(Pronounced by Honble Mr. T. Jacob, Member (A))

This OA has been filed by the applicant under Sec.19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

"...to set aside the order dated 28.05.2013 passed by the 1st respondent in proceedings No.10023/5PK/22F/B consequently direct the respondent to give appointment to the applicant in any future vacancy for Group 'D' post under the second respondent and thus render justice."

2. The brief facts of the case are that the applicant is the son of late R. Vijayarangam who while working as a Mate under the Respondents died prematurely on 8.2.1997 leaving behind the applicant and his mother. It is submitted that the mother of the applicant had made many representations seeking employment assistance in favour of the Applicant which was considered and rejected by the respondents. Finally the applicant made representation dated 11.03.2011 which was rejected by the 1st respondent on 13.4.2011 stating that "No cases will be considered for appointment by Board of Officers after three years from the date of death of Government employee. The applicant challenged the said order of rejection in OA No. 679 of 2011 wherein this Tribunal by order dated 12.10.2011 quashed the order of rejection and remitted the matter back to the respondents for reconsideration. In pursuance of the above order, the respondents considered the case of the applicant but

once again rejected the claim of the applicant vide order dated 28.05.2013. Challenging the said order of rejection, the applicant has filed this OA seeking the above reliefs which was dismissed by the Tribunal by an order dated 6.6.2014 holding that there is no justification to interfere in the matter by directing the respondents to once again consider the case of the applicant that too after four times consideration and rejection on merits when the death of the father of the applicant was way back in 1997. Aggrieved by the said order, the applicant has filed a Writ Petition No.26944/2015 wherein the Hon'ble High Court by an order dated 27.8.2018 set aside the order of this Tribunal dated 6.6.2014 in OA.1175/2013 and remitted the matter back to this Tribunal for fresh adjudication. The matter has thus come to this Tribunal.

3. Pursuant to the direction of the Hon'ble High Court, the matter was considered once again and I have heard the learned counsel for the parties and perused the earlier orders passed by this Tribunal.

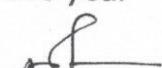
4. In the earlier OA.679/2011 wherein this Tribunal by order dated 12.10.2011 remitted the matter to the respondents to reconsider the claim of the applicant if he fulfils the ingredients of the scheme for compassionate appointment and comes within the zone of consideration for appointment on compassionate ground along with others those who are waiting for such appointment. Pursuant to the above, the applicant's name was considered in the year 2013 along with other similarly placed

candidates but his claim was rejected by order dated 28.5.2013 being low in merit than other more deserving cases and finally closed his case. Being aggrieved by the said order of rejection, the applicant filed OA.1175/2013 wherein this Tribunal by order dated 6.6.2014 dismissed the OA with the following observations:-

"5. Law is well settled that the Tribunal cannot give direction for appointment on the ground of sympathy disregarding the instructions/law on the subject and also cannot sit as an appellate authority over the decision. Judicial scrutiny is permissible to the extent whether any injustice is caused in the decision making process of the matter while rejecting the claim of the applicant for appointment on compassionate ground. On scrutiny of the order of rejection with reference to the stand point taken by both sides vis-a-vis keeping the law of the land on the subject, I do not see any justification to interfere in the matter by directing the Respondents to once again consider the case of the applicant that too after four times consideration and rejection on merit when the death of the father of the applicant in way back 1997. "

Against the said order only, the applicant has filed a Writ Petition cited supra and as per the direction, the matter was taken for fresh adjudication.

5. It is seen that the father of the applicant expired on 18.02.1997 and the case of the applicant was considered four times during 2002-2005 but each time the same was rejected and reason for rejection was communicated to him. However, in compliance of the order of this Tribunal in OA 679 of 2011, the respondents again considered the name of the applicant with similarly placed candidates by Screening Committee at Head Quarters, Chief Engineer, Southern Command, Pune for the year



2011-12 but could not be selected due to low in merit as the individual secured 66 marks against 70 marks secured by the last selected candidate. The applicant's case was considered against 46 available vacancies and he stands at S.No.82 of the merit list. As he could not make in the merit for appointment on compassionate ground, his case was not approved by the competent authority being low in merit than other deserving cases and the same was communicated to him by the impugned order dated 28.5.2013.

6. Every time the case of the applicant is considered, the fact remains that he has secured only low marks compared to other cases and with limited number of posts against scaturrent(overflowing) applicants for compassionate appointment, there cannot be compassionate appointment beyond the number of available vacancies. As such, though in obedience to the direction of the Hon'ble High Court, the case is reconsidered, there is no possibility of accomodating the applicant in view of his low merit position. And, pragmatically speaking, the demise of the government employee having taken place in 1997 the spirit behind compassionate appointment to tide over the immediate penurious situation would be frustated. The Tribunal is well aware that the basic requirement for appointment on compassionate grounds is the indigent condition of the family after the death of breadwinner while in service and that such appointment cannot be claim as a matter of right.

Considering the fact that the Tribunal in the earlier OA 679 of 2011 directed the respondents to reconsider his case and pursuant to the same, the applicant's case has been considered taking into consideration all the relevant factors and being low in merit than other more deserving cases, the competent authority has rejected his claim for such an appointment by the impugned order dated 28.5.2013.

7. The legal position is well settled that appointment on compassionate ground is not a source of recruitment, but merely an exception to the requirement regarding appointments being made on open invitation of applications on merits. The underlying intention is on the death of the employee concerned, his family is not deprived of the means of livelihood. The object is to enable the family to get over the sudden financial crisis faced by them on the demise of the sole earning member.

8. In the case of Union of India & Anr Vs. Shashank Goswami & Anr, reported as (2012) 11 SCC 307, the Apex Court has observed as under:-

"The claim for appointment on compassionate grounds is based on the premise that the applicant was dependant on the deceased employee. Strictly, such a claim cannot be upheld on the touchstone of Article 14 or 16 of the Constitution of India. However, such claim is considered as reasonable and permissible on the basis of sudden crisis occurring in the family of such employee who has served the State and dies while in service, and, therefore, appointment on compassionate grounds cannot be claimed as a matter of right."

9. In the case of State of Jammu & Kashmir Vs. Sajad Ahmed Mir (2006 SCC (L&S) 1195, the Hon'ble Supreme Court held that compassionate appointment after long time during which period the dependents of the deceased employee survived is at the cost of interest of several others ignoring the mandate under Article 14 of the Constitution.

10. After 16 years of the demise of his father, the applicant could not be considered for compassionate appointment as it is not a vested right which can be exercised at any time. The purpose behind such an appointment is to provide immediate succour against destitution to the family of the deceased employee by giving due consideration to the services rendered by him till he was alive as well as to address a legitimate expectancy of the survivors seeking a financial tide over due to the sudden death of the sole earning member. Having regard to the above facts and circumstances of the case, I do not find any ground to interfere with the impugned order of the respondents dated 28.05.2013.

11. Thus the OA being devoid of merits is dismissed. No order as to costs.