

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 132 of 2017
MA No. 122 of 2017

Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)

Rabindra Majhi, aged about 44 years, S/o Late Mirja Majhi, At-Angargadia (Industrial Estate), Rameswar Nagar, PO/Dist-Balasore.

.....Applicant

VERSUS

1. Union of India, represented through the Secretary, Ministry of Defence, Defence Research & Development Organization, DHQ, New Delhi.
2. The Director General of Research & Development, Govt. of India, Ministry of Defence, Defence Research & Development Organization, Director of Personnel (Pers-9), Room No. 205, 'A' Block, DRDO Bhawan, New Delhi.
3. The Director & Commandant, Proof & Experimental Establishment, PO-Chandipur, Dist-Balasore-756025.

.....Respondents

For the applicant : Mr.B.S.Tripathy, counsel

For the respondents: Mr.J.K.Nayak, counsel

Heard & reserved on : 23.8.2019 Order on : 5.9.2019

O R D R R

Per Mr. Gokul Chandra Pati, Member (A)

The applicant has filed the present OA seeking the following reliefs :

- "(a) To pass appropriate orders quashing the order dtd. 23.4.2003, letter dtd. 10.4.12 and letter dtd 19.2.13 under annexures A/3, A/5 and A/6 respectively;
- (b) To pass appropriate orders directing the respondents-Department to reconsider the case of the applicant for providing him an appointment on compassionate ground; and
- (c) To pass such further order/orders as are deemed just and proper in the facts and circumstances of the case and allow this OA with cost."

2. The facts in brief in this case are that the applicant's father expired while working as a Technician-B under the respondents on 16.1.1997. The applicant's mother submitted an application with the respondents to consider the case of her son (present applicant) for compassionate appointment. The case was rejected by the respondents vide order dated 15.6.1999 (Annexure-A/1) on the ground of non-availability of vacancy. But when the respondents appointed another candidate on compassionate appointment and advertised to

fill up 6 nos. Of posts, the applicant filed the OA No. 1219/2002 which was disposed of vide order dated 3.1.2003 (Annexure-A/2), with direction to the respondents to consider the case of the applicant before filling up the posts being advertised. The respondent No.3 again rejected the case vide order dated 23.4.2003 (Annexure-A/3).

3. Thereafter, the applicant submitted a representation on 7.2.2012 (Annexure-A/4) requesting re-consideration of his case. Vide order dated 19.2.2013 (Annexure-A/6), the respondent No.3 rejected the said representation of the applicant. The applicant again submitted a representation dated 20.7.2016 to the respondent No.3 to reconsider the case.

4. Being aggrieved, the applicant has filed this OA on the ground that the condition of the family was indigent after death of his father, his case for compassionate appointment has been rejected illegally on the ground that his family could survive for 7 years although similar appointment was allowed to other candidates even after a period of 7 years. It was also submitted that the applicant being a ST candidate and due to his backwardness and ignorance, the authorities have rejected his case. The reason for considering other cases was mentioned to be that the deceased employees in their case were Group-D employees, where as the applicant's father was a Group-C employee. It is stated that the respondents have never considered the case as per the directions of the Tribunal vide order dated 3.1.2003 (A/2). It is further stated that the order dated 19.2.2013 (A/6) does not mention any reason for rejecting his case.

5. The applicant has also filed the MA No. 122/2017 praying for condoning the delay in filing the OA. The ground advanced in the MA is that the applicant belongs to ST community and he was approaching the authorities from time to time. It is further stated that the delay was not intentional.

6. The respondents have filed Counter opposing the OA without disputing the basic facts. It is stated that the first time the applicant's case was considered for compassionate appointment, his case could not be recommended due to non-availability of the vacancy and the decision was communicated to the applicant vide order dated 15.6.1999 (A/1). The applicant filed the OA before the Tribunal which was disposed of with a direction to reconsider his case. It is stated in the Counter that the case was considered as per the direction of the Tribunal in the light of the DOPT OM dated 5.3.2003, which prescribed a period of three years for consideration of the case of compassionate appointment. The decision was communicated to the applicant vide order dated 23.4.2003 (A/3). It is stated that the applicant challenged the

said decision in this OA which a very old case and closed matter. It is stated that as per the judgment of Hon'ble Apex Court, the compassionate appointment made after many years of death, is in violation of the Constitution of India. It is further stated that as per the DOPT OM dated 26.7.2012 mentioned that the cases of belated request are to be considered with a great deal of circumspection. Although time limit for consideration of cases has been withdrawn, but the cases are required to be considered in accordance with the judgment of Hon'ble Apex Court in similar cases. The Counter also quotes the circular dated 30.4.2015 of the Ministry of Defence which stated as under:-

"the cases which have been closed for not being found suitable under the criteria for compassionate appointment need not be opened irrespective of waiver of time limit."

7. The Counter continues to cite the above circular by stating as under:-

"As per the above OM, if the compassionate appointment could not be granted due to non-availability of vacancies at that time, any fresh application received now should be reconsidered after adjudging his penurious conditions on the basis of family's latest financial/economic condition, number of dependents of the family as on date, latest marital status of dependents etc. in the light of the existing guidelines of DOP&T on the subject."

8. The Counter also raises the ground of limitation as well as the principles of 'Res judicata'. The Counter also cites the judgments in the following cases:

- i) Himachal Road Transport Corporation -vs- Dinesh Kumar [JT 1996 (5) SC 319]
- ii) Hindustan Aeronautics Limited -vs- Amt. A.Rashika Thriumalai [JT 1996 (9) SC 197]
- iii) Life Insurance Corporation of India -vs- Mrs. Asha Ramchandra Ambekar & Others [JT 1994(2) SC 183]
- iv) Umesh Kumar Nagpal -vs- State of Haryana & Others [JT 1994 (3) SC 525]

9. The respondents have also filed the objections to the MA No. 122/17 for delay condonation. The grounds mentioned are that the OA is barred by limitation and it is also hit by 'res judicata' since the Tribunal earlier had refused the claim for compassionate appointment.

10. Learned counsel for the applicant was heard on the MA No. 122/17. He submitted that the case of the applicant was considered favourably in 1998, but he could not be appointed due to non-availability of vacancy to accommodate him. When his case was required to be considered as per the order dated 3.1.2003 of the Tribunal, it was rejected on the ground that the family has survived for 6 years, while considering other cases as stated in para

4.10 of the OA. It was further submitted that the applicant belongs to the ST community and he has not been able to file the OA in time.

11. Learned counsel opposed the OA stating that the applicant did not take any action after his case was rejected vide order dated 23.4.2003 (A/3) and approached authorities only in 2012 through a representation.

12. While considering the MA No. 122/2017 for condoning delay in filing the OA, it is seen that the respondents have not disputed the fact that the family was not having financial difficulties after death of the applicant's father. His case could not be accommodated due to non-availability of vacancy, which implies that the applicant was otherwise eligible for compassionate appointment. Order dated 23.4.2003 (A/3) stated the grounds for rejecting the claim of the applicant since six years have lapsed after death of the applicant's father and in view of the ratio of the judgment of Hon'ble Apex Court in the case of Umesh Kumar Nagpal vs. State of Haryana & others reported in JT 1994(3) SC 525, his case cannot be considered.

13. In the case of Umesh Kumar Nagpal (supra), it was held by Hon'ble Apex Court as under:-

"3.Unmindful of this legal position, some Governments and public authorities have been offering compassionate employment sometimes as a matter of course irrespective of the financial condition of the family of the deceased and sometimes even in posts above Classes III and IV. That is legally impermissible.

.....

5. It is obvious from the above observations that the High Court endorses the policy of the State Government to make compassionate appointment in posts equivalent to the posts held by the deceased employees and above Classes III and IV. It is unnecessary to reiterate that these observations are contrary to law. If the dependant of the deceased employee finds it below his dignity to accept the post offered, he is free not to do so. The post is not offered to cater to his status but to see the family through the economic calamity.

6. For these very reasons, the compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole 1 (1989)4SCC468:1989SCC(L&S)662:(1989)11ATC878:(1989)4SLR327 breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over.

7. It is needless to emphasise that the provisions for compassionate employment have necessarily to be made by the rules or by the executive instructions issued by the Government or the public authority concerned. The employment cannot be offered by an individual functionary on an ad hoc basis."

From above, it is clear that the reference to consideration of a case after a lapse of time was in the context of the time to be specified under the rules and the dispute in the cited case related to consideration of the case without considering the financial conditions of the family and considering the case for

compassionate appointment for posts of higher rank than what is specified in the policy of the Government. Clearly, the case is factually distinguishable from the present OA.

14. In this OA, the case of the applicant was considered to be suitable, but he could not be appointed in 1998 due to non-availability of vacancy. As per the rules, it was the responsibility of the respondents to consider his fresh application along with other cases of compassionate appointment on merit. This was not done in this case and the reasons furnished in the Counter include the factors like the cases of Group-D employees to be considered on priority, although no such provision in the rules or guidelines has been furnished by the respondents with Counter. As stated in para 3 (V)(e) of the Counter, as per the guidelines of Government dated 30.4.2015, if compassionate appointment could not be given due to non-availability of vacancy, fresh application received from the applicant was required to be considered as per the rules applicable for compassionate appointment after adjudging his penurious conditions on the basis of the family's latest financial condition. Hence, the case of the applicant was required to be considered as per these guidelines and the judgment in the case of Umesh Kumar Nagpal (supra) will not debar such consideration on merit in accordance with the rules and the policy guidelines of the Government. Since in this case, the guidelines of 30.4.2015 permits re-consideration of the applicant's case as per the rules, it cannot be denied by applying the ratio of the judgment in Umesh Kumar Nagpal case, which is factually distinguishable as discussed earlier.

15. In view of the above discussions and taking into account the fact that the applicant belongs to the ST community and his case has been rejected after consideration of his case on merit in accordance with the rules and guidelines applicable for compassionate appointment and he was not found unsuitable for availing the said scheme, I am inclined to consider the grounds mentioned in the MA No. 122/2017 to be satisfactory. Accordingly, the MA No. 122/2017 is allowed and the delay on the part of the applicant to file this OA is condoned.

16. As discussed above, the case of the applicant has not been considered and rejected in accordance with the rules and policy guidelines of the Government for the scheme of compassionate appointment. His case has been rejected vide order dated 23.4.2003 (A/3) by applying the judgment in the case of Umesh Kumar Nagpal (supra) as discussed earlier without considering the case on merit as per the policy guidelines. From that angle the respondents did not comply the order dated 3.1.2003 (A/2) of this Tribunal passed in OA No. 1219/2002. When the applicant approached through a detailed representation dated 7.2.2012 (A/4) with the instances of other cases which were considered

after a lapse of time, the same was rejected vide the impugned order dated 19.2.2013 (Annexure-A/6) stating as under:-

"With reference to your representation dated 29 Dec 2012 addressed to the Secretary, Grievance Redressal Committee, New Delhi and copy to DGR&D, New Delhi for re-consideration of your case for appointment on compassionate grounds, it is intimated that all cases for appointment on compassionate grounds are considered on the basis of MoD/DOP&T guidelines. The parameters for consideration have been enumerated vide these guidelines and are uniformly implemented. The case has already been considered on the basis of these guidelines and in compliance of Hon'ble CAT, Cuttack Bench order.

Taking all the above into consideration, it has not been found administratively feasible to accede to your request for appointment on compassionate grounds."

17. It is clear from above that the case of the applicant has not been considered on merit and the representation dated 7.2.2012 (A/4) has been rejected in order dated 19.2.2013 (A/6), which is a non-speaking order without addressing the points raised by the applicant in his representation dated 7.2.2012.

18. In the facts and circumstances as discussed above, the order dated 19.2.2013 (A/6) is not legally sustainable and the applicant's case deserves reconsideration in accordance with the rules and guidelines of the Government. Therefore, the impugned order dated 19.2.2013 (Annexure-A/6 of the OA) is quashed and the matter is remitted to the respondents to reconsider the representation dated 7.2.2012 (A/4) of the applicant with reference to the points raised therein in accordance with the rules and the policy guidelines of the Government as extracted in sub-para (e) of para 3(V) of the Counter and dispose of the said representation by passing a speaking and reasoned order, copy of which will be communicated to the applicant within six months from the date of receipt of a copy of this order.

19. The OA is allowed in part as above. No order as to cost.

(GOKUL CHANDRA PATI)
MEMBER (A)

I.Nath