

CENTRAL ADMINISTRATIVE TRIBUNAL CUTTACK BENCH

OA No. 166 of 2018

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

1. Manorama Lenka, aged about 41 years, W/o Late Harekrushna Lenka.
2. Sisir Kumar Lenka, aged about 23 years, S/o Late Harekrushna Lenka.

Both the applicants are permanent resident of Mallikashpur, PO-Motiganj, PS-Balasore town, Dist. – Balasore.

.....Applicant.
VERSUS

1. Union of India represented through its Secretary to Government of India, Ministry of Defence, Sena Bhawan, New Delhi - 110011.
2. The Director General & Scientific Adviser to Rakhyta Mantri, Research & Development Organization, Ministry of Defence, Sena Bhawan, New Delhi-110011.
3. The Director, Proof & Experimental Establishment, DRDO, At/PO-Chandipur, Dist.- Balasore-756025.

.....Respondents.

For the applicant : Mr.S.K.Ojha, counsel

For the respondents: Mr.D.K.Mallick, counsel

Heard & reserved on : 26.7.2019 Order on : 22.8.2019

ORDER

Per Mr.Gokul Chandra Pati, Member (A)

The applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs :

- "(i) To admit the Original Application;
- (ii) To quash the letter/speaking order dated 31.05.2017 (Annex. A/9) so also order dated 31.7.2018 (Annex. A/10) and direct the Respondents more particularly the Resp. No.2 to reconsider the case of the applicants as per assurance given vide letter dtd. 07.9.1999 (Annex. A/4) & extend the benefit of compassionate appointment to Applicant No.2 within a stipulated period to save the distress family.
- (iii) To pass any other order/orders as deemed fit and proper in the circumstances of the case and for ends of justice."

2. The applicants No. 1 and 2 are the wife and son of late Harekrushna Lenka, who dies prematurely on 10.12.1997 in course of employment while working under the respondent no.3, leaving behind the wife and two children of age 4 years and 1 year. The applicant no. 1 had approached the respondents for employment assistance vide her application dated 15.1.1998 (Annexure-

A/1). It is the case of the applicants that although all the documents were supplied, but as informed by the respondents vide letter dated 7.9.1999 (Annexure-A/4), although the proposal for compassionate appointment of the applicant no. 1 was accepted, but due to non-availability of vacancy, it could not be allowed and it was assured that as and when the vacancy would arise, her case would be considered. The applicant no.1 did not challenge the said decision in spite of her financial difficulties. It is stated in the OA that in the meantime, the wife of another employee who had also expired in the same incident as the husband of the applicant no.1, was given appointment on compassionate ground although their condition was better. No action was taken by the respondents although the respondents have given about 40 appointment on compassionate ground.

3. The applicants filed the OA No. 219/2017, which was disposed of vide order dated 13.4.2017 (Annexure-A/8). Then the order dated 31.5.2017 (Annexure-A/9) informing that the case of the applicant no. 1 has been rejected since 1999 due to non-availability of vacancy. While considering the case of the applicant no. 2, the respondents issued the order dated 31.7.2018 (Annexure-A/10), rejecting the case of the applicant no. 2 on the ground that his merit point was 42 which is below the threshold level upto which more deserving cases are to be considered. It has been stated that the applicant no. 2 is free to apply again with requisite documents for consideration.

4. Counter has been filed by the respondents without disputing the basic facts. It stated that the case of the applicant no.1 was considered earlier, but it could not be allowed due to non-availability of vacancy. After fresh application was received from the applicant No. 2, his case has been considered and his merit point was 42 which was below the threshold score for considering it to be more deserving case. Hence, it could not be recommended by the Committee.

5. Rejoinder has been filed by the applicant, enclosing a copy of the DOPT OM dated 16.1.2013 (Annexure-A/11) by which, the cases for compassionate appointment are to be considered objectively taking into account the asset and liability. It is also stated as under:-

"On bare reading of the documents available on records, it would be clear that the respondents adopted falsehood and has given this counter only from their own imagination without sending the matter for consideration of CRC. While filing their 1st counter on 23.4.2018, it has been demonstrated that the case of the application was forwarded on 31.1.2018 for consideration by the HQ whereas while communicating the decision on 31.5.2017, it has been indicated that the CRC considered the case of the applicant in their meeting dated 15.1.2018 i.e. prior to the date case is forwarded. Further, in the 1st counter filed on 23.4.2018, it has been indicated that the applicant has availed only 35 points whereas in the letter of rejection it is indicated that 42 points awarded to the applicant."

6. Heard learned counsel for both the sides. It is stated in the impugned order dated 31.7.2018 as under:-

"The case of **Shri Sisir Kumar Lenka, s/o Late Sh. H.K.Lenka, Ex Tech-'A' of PXe, Chandipur** earned **42 points** in the '100 Points Scale' which is much below the threshold level up to which the more deserving cases have been recommended by the CAC in its meeting(s) on the basis of inter-se-merit vis-a-vis limited number of vacancies under 5% quota are available for this purpose. Therefore, CAC could not recommend the instant case for offering an appointment on compassionate grounds,. However, the candidate is free to apply again without any time limit as per the DOP&T guidelines **afresh along with all requisite documents/details of present compassion of the case.**"

7. It is noticed from the OM dated 16.1.2013 of the DOPT (Annexure-A/11) that there is no provision for the merit points in the said OM. The respondents have not furnished the details of the circular or guidelines, based on which the case was considered in terms of the merit points. No details as to how the merit point of the applicant was estimated have been furnished in the pleadings of the respondents. Therefore, the applicant's case deserves to be considered in accordance with the provisions of the circular for the scheme for compassionate appointment which has also been mentioned in the order dated 31.7.2018.

8. Taking note of the observations in the order dated 31.7.2016 (Annexure-A/10) and instructions vide letter dated 25.6.2018 (Annexure-R/2 of the Counter of the respondents, this OA is disposed of with liberty to the applicant no.2 to apply afresh under the scheme for compassionate appointment with requisite details as stated in the order dated 31.5.2017 (Annexure-A/9) within three months from the date of receipt of a copy of this order and if such a fresh application is received from the applicant no. 2, then his case is to be considered by the respondents in accordance with the OM dated 16.1.2013 (Annexure-A/11) of the DOPT and the decision taken be communicated to the applicant no. 2 through a speaking order within four months from the date of receipt of the fresh application to be submitted by the applicant no.2 as above. There will be no order as to cost.

(GOKUL CHANDRA PATI)

MEMBER (A)

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