

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

LIBRARY

No.O.A.350/01088/2013

Date of order: 7.3.16

Present : Hon'ble Mrs. Urmita Dutta Sen, Judicial Member

1. SATYANARAYAN SAHA

2. AKASHDUT SAHA

VS.

UNION OF INDIA & ORS.
(M/O DEFENCE)

For the applicants : Mr. S. Chakraborty, counsel
For the respondents : Ms. M. Bhattacharya, counsel

ORDER

The instant application has been filed under Section 19 of the Administrative Tribunals Act,1985 praying for the following reliefs:-

- "(i) Liberty given to file the application jointly U/r 4(5)(a) of CAT(Procedure) Rules 1987;
- (ii) Set aside and quash impugned letter No.1630/3/LB/RECTT.(12/L-CA) dated 29.06.2013 issued by General Manager, Metal & Steel Factory, Ichapur;
- (iii) To direct the respondents to consider the case of applicant No.2 according to the Memo No.F.No.19(3)/2009/D(Lab) dated 22nd January, 2010 regarding compassionate appointments and the light of the Office Memorandum of 9th October, 1998 as amended from time to time;
- (iv) To direct the respondents to consider the case of applicant No.2 for appointment on compassionate ground in any class IV of Class III post commensurating his age, qualification and physical fitness forthwith;
- (v) Any other order and/or orders as the Hon'ble Tribunal may deem fit & proper."

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2. As per the applicant, while he was holding the post of Mr. H.S.W(Moulder) under General Manager, Metal and Steel Factory, Ichapur, retired from service as "medically boarded out" on 18.08.2005 on the basis of the decision of the Medical Board set up by the Respondent No.2 (held on 16.05.2005) and the said decision was communicated to the applicant vide Memo No.608 dated 12.08.2005(Annexure A-1). The normal date of superannuation of applicant No.1 was 31.07.2012, but he

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had to retire from service on medical ground in 2005. The applicant No.1 preferred a representation dated 18.11.2005 to the Director General, Ordnance Factories, Kolkata, praying for compassionate appointment in favour of applicant No.2, Sri Akashdut Saha (Annexure A-5). However, vide order dated 12.06.2007, the case of the applicant No.2 was rejected on the ground that he secured only 46 points out of 100 (Annexure A-6). Being aggrieved the applicants preferred O.A.No.891/2007 before this Tribunal, which was disposed of on 20.12.2007(Annexure A-7) as being premature and a direction was given to the respondents to consider the application in accordance with the DOP&T's instructions. In pursuance to the said order of this Tribunal, the respondents again rejected the claim of the applicants vide order dated 14.05.2008 (Annexure A-8) on the same ground that the applicant No.2 secured 46 points out of 100, whereas the cut off marks for the year 2006-2007 was 68. Against the said order, the applicant No.1 preferred a representation dated 11.07.2008 (Annexure A-9), which was rejected vide order dated 28.12.2009 (Annexure A-10) on the ground that as per DOP&T's O.M. dated 05.05.2003, the maximum time for consideration of a person's name for offering appointment on compassionate ground, was three years from the date of death of the employee and if it could not be offered during that period, the case should be finally closed. It was also mentioned that the case of these applicants was found to be less deserving compared to many other deserving cases, therefore, the matter could not be considered. The applicants again filed O.A.No.1413/2010 before this Tribunal challenging such rejection, which was dismissed vide order dated 17.03.2011(Annexure A-11). Challenging the said order, the applicants filed a writ petition being WPCT 96/2012 before the Hon'ble High Court, Calcutta and the said W.P.C.T. was decided on 22.03.2013 directing the petitioners to submit a fresh application for compassionate appointment within four weeks and the respondents were directed to consider the same in accordance with law.(Annexure A-12). In compliance with the said order dated 22.03.2013,

the applicant No.1 submitted a representation on 16.04.2013 to the General Manager, Metal & Steel Factory, Ichapur but the said representation was rejected on 29.06.2013 (Annexure A-14) on the ground that their case was beyond the zone of consideration for compassionate appointment against 5% quota compared to other deserving cases during the year 2006-07, 2007-08 and 2008-09 and further in the month of May, 2013. Being aggrieved with, the applicants have filed this O.A. praying for the aforesaid reliefs.

3. As per the applicants, their case was considered and rejected in view of the DOP&T's O.M. No.14014/6/94-Estt.(D) dated 09.10.1998, followed by Ministry of Defence's D(Lab)I.D.No.19(4)/824-99/1998-D(Lab) dated 09.03.2001 and OFB., Kolkata letter No.039(6)/A/A dated 03-04-2001 & M/O D I.D No.19(4)/824-99/1998-D(Lab) dated 09.04.2002 forwarded through OFB Kolkata letter No.039(6)/A/A dated 15.05.2002 and the applicant No.2 secured 46 points out of 100, whereas the candidate who was recommended for compassionate appointment against the available single vacancy of 5% recruitment quota, had obtained 59 points out of 100. When the case of the applicant No.2 was considered in 2013, in the mean time, Government of India, Ministry of Defence vide their circular dated 22.01.2010 modified the Ministry of Defence's circular dated 09.03.2001 in the light of the 6th Pay Commission's recommendations and the revised point system based on a 100 point scale, was introduced. Had the applicant been considered under the new circular dated 22.01.2010(Annexure A-17), he would have got 60 points as per weightage system introduced by this Scheme and would have become entitled to get compassionate appointment as the person who was recommended for compassionate appointment was awarded with 59 points out of 100. As per the applicant, in the latest judgment of Hon'ble Supreme Court dated 15.05.2015 passed in Civil Appeal No.260/2008 (**Canara Bank & Anr. Vs. M. Mahesh Kumar**), it has been held that as per State Bank of India vs. Jaspal Kaur, (2007) 9 SCC 571, the

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respondents ought to have considered the case of compassionate appointment in the light of the scheme of 'died in harness' which was in vogue at the relevant time.

4. The respondents have filed their written statement wherein they have more or less accepted the facts enumerated in the original application. As per the respondents, the case of the applicants was rightly considered in terms of the prevalent DOP&T's O.M. dated 09.10.1998 followed by Ministry of Defence's D(Lab)I.D.No.19(4)/824-99/1998-D(Lab) dated 09.03.2001 and OFB., Kolkata letter No.039(6)/A/A dated 03-04-2001 & M/O D I.D No.19(4)/824-99/1998-D(Lab) dated 09.04.2002 forwarded through OFB Kolkata letter No.039(6)/A/A dated 15.05.2002, which were applicable to their case and not in terms of the Ministry of Defence's revised circular dated 22.01.2010 as the applicant No.1 was medically boarded out from service w.e.f. 18.08.2005 i.e. prior to implementation of the 6th Pay Commission. Therefore, according to the respondents, the revised instruction is not applicable in case of the applicants and there is no scope of granting 60 points as per the revised circular. Accordingly they have prayed for dismissal of the O.A.

5. The applicants have filed rejoinder wherein they denied the contentions of the respondents and submitted that the Hon'ble High Court in the case of **Amit Kumar Das vs. Union of India & Ors.**[W.P.C.T. No.281/2012] observed vide order dated 13.12.2012(Annexure A-20) that as per the memorandum dated 26.07.2012, the earlier Office Memorandum dated 05.05.2003 was withdrawn in the light of the judgment passed by the Hon'ble High Court, Allahabad on 07.05.2010 in case of **Union of India & Ors. Vs. Smt. Asha Misra & Ors.**[Civil Misc. Writ Petition No.13102 of 2010] , and it was held that the said O.M. dated 26.07.2012 itself indicate that compassionate appointments are to be regulated in terms of the Office Memorandum dated 09.10.1998 as amended from time to time. In the instant case, at the time of consideration in the year 2013, the circular dated 22.01.2010 was in

vogue, therefore, the applicant should have been considered as per the latest circular.

6. I have heard ld. counsel for both sides and perused the materials placed on record.

7. It is noted that as per the direction of Hon'ble High Court, Calcutta, case of the applicants was considered by the respondents vide order dated 29.06.2013(Annexure A-14). While considering the case of the applicants, the respondents have taken into account the O.M. dated 09.10.1998 followed by Ministry of Defence's D(Lab)I.D.No.19(4)/824-99/1998-D(Lab) dated 09.03.2001 and OFB., Kolkata letter No.039(6)/A/A dated 03-04-2001 & M/O D I.D No.19(4)/824-99/1998-D(Lab) dated 09.04.2002 forwarded through OFB Kolkata letter No.039(6)/A/A dated 15.05.2002. As per the applicants, their case should have been considered as per the revised and latest circular dated 22.01.2010(Annexure A-17) and in that case he would have got more marks than that of the person who was selected and recommended for appointment on compassionate ground. As per the respondents, the applicants' case was rightly considered in terms of the prevalent DOP&T's O.M. dated 09.10.1998 followed by Ministry of Defence's D(Lab)I.D.No.19(4)/824-99/1998-D(Lab) dated 09.03.2001and OFB., Kolkata letter No.039(6)/A/A dated 03-04-2001 & M/O D I.D No.19(4)/824-99/1998-D(Lab) dated 09.04.2002 forwarded through OFB Kolkata letter No.039(6)/A/A dated 15.05.2002, which were applicable to their case and as the applicant No.1 was medically boarded out from service w.e.f. 18.08.2005 i.e. prior to implementation of the 6th Pay Commission, their case could not be considered in terms of the revised circular of Government of India, Ministry of Defence, F.No.19(3)/2009/D(Lab) dated 22.01.2010.

8. It transpires that the main issue to be adjudicated in this case is whether the case of the applicants should be considered as per the earlier

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circulars i.e. the DOP&T's O.M. dated 09.10.1998 followed by Ministry of Defence's D(Lab)I.D.No.19(4)/824-99/1998-D(Lab) dated 09.03.2001 and OFB., Kolkata letter No.039(6)/A/A dated 03-04-2001 & M/O D I.D No.19(4)/824-99/1998-D(Lab) dated 09.04.2002 forwarded through OFB Kolkata letter No.039(6)/A/A dated 15.05.2002 or the latest circular issued by Government of India, Ministry of Defence, F.No.19(3)/2009/D(Lab) dated 22.01.2010. It is noted that as per the DOP&T's circular dated 26.07.2012 (Annexure A-15), the earlier Office Memorandum dated 05.05.2003 was withdrawn in the light of the judgment passed by the Hon'ble High Court, Allahabad on 07.05.2010 in case of **Union of India & Ors. Vs. Smt. Asha Misra & Ors.** [Civil Misc. Writ Petition No.13102 of 2010] and the said O.M. dated 26.07.2012, itself indicated that compassionate appointments were to be regulated in terms of the Office Memorandum dated 09.10.1998 as amended from time to time.

9. As the applicant No.1 retired from service as "medically boarded out" on 18.08.2005 on the basis of the decision of the Medical Board set up by the Respondent No.2 (held on 16.05.2005) and he submitted representation for compassionate appointment in favour of his son i.e. Applicant no. 2 on 18.11.2005, when the circular of 2002 was in vogue, their case should have been considered as per the said circular. Same view was taken by the Hon'ble Apex Court in a recent judgment dated 15.05.2015 in **Civil Appeal No.260/2008 (Canara Bank & Another Vs. M. Mahesh Kumar)** after following the case of **Jaspal Kaur** supra. Therefore, the respondents have rightly considered the case of the applicants in the light of the circular which was in vogue during the relevant period. Thus I do not find any merit in the contention of the applicants. Accordingly the O.A. is dismissed with no order as to costs.

Urmita Datta (Sen)
[Urmita Datta (Sen)]
Judicial Member