

**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, CAMP AT NAGPUR**

ORIGINAL APPLICATION NO.2280/2017

Dated this Wednesday, the 18th day of September, 2019

CORAM : DR.BHAGWAN SAHAI, MEMBER (ADMINISTRATIVE)

Miss Puja Rajkumar Sakharkar, Aged about 24 years,
Occ. Nil, R/o Gadge Nagar, At post Nachangaon,
Tah Deoli, Dist Wardha.

- Applicant

(By Advocate Ms. S.J.Banerjee)

Versus

1. The Commandant, Central Ammunition Depot,
Pulgaon, Tah Pulgaon, Dist Wardha Pin Code 442 303.

2. Union of India, Ministry of Defence, Room No.234,
South Block, Ministry of Defence, New Delhi
through its Secretary, Pin Code 110 011.

- Respondents

(By Advocate Shri R.G.Agarwal)

Order reserved on : 21.08.2019

Order delivered on : 18.09.2019

ORDER

Ms. Puja Rajkumar Sakharkar filed this OA on 16.11.2017 seeking quashing and setting aside of communication dated 18.04.2016 (Annex A-1) issued for Commandant, Central Ammunition Depot, Pulgaon, district Wardha about rejection of her case for employment on compassionate grounds, direction to the respondents to keep one post vacant during pendency of the OA and award of cost of this OA.

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2. Summarized facts :-

2(a). The applicant has stated that the Central Ammunition Depot, Pulgaon, District Wardha is under the Ministry of Defence, Government of India. Her father (Rajkumar Sakharkar) was in service with the CAD, Pulgaon since 08.08.1981 and while in service working as leading hand (Fire) expired on 27.10.2010 leaving behind his wife, two married daughters and two unmarried minor daughters. The applicant is the elder of two minor daughters.

2(b). Since the respondents have a scheme for providing compassionate appointment to one dependent family member of a government servant dying in harness, the applicant was minor at the time of death of her father and on becoming major, applied to respondent No.1 for compassionate appointment on 25.09.2011. She claims that thereafter she enquired with office of the respondent No.1 on several occasions but was replied that meeting of Board of Officers was yet to be scheduled to consider her case.

2(c). After five years, she wrote a letter dated 09.04.2016 to which the impugned communication dated 18.04.2016 (Annex A-1) was received informing her that she had not been selected for employment based on laid down criteria for determining relative hardship in view of more deserving cases and limited number of vacancies. After receipt of this letter, she personally approached respondent No.1 and requested for reconsideration of the decision.

2(d). She also claims that at that time the respondent No.1 promised her to reconsider her case in the next meeting. Then she wrote another letter on 06.08.2017 for reconsideration of her case to which she has not received any reply and therefore, this OA has been filed.

3. Contentions of the parties :-

In the OA, rejoinder, reply to the sur-rejoinder of the respondents and during the arguments of her counsel on 21.08.2019, the applicant has contended that-

3(a). the letter dated 18.04.2016 is contrary to law and against the scheme of the respondents meant for offering appointment on compassionate grounds, therefore, it should be set aside;

3(b). as per Rule 6 of the Scheme, compassionate appointments are exempt from requirements of regular recruitment procedure, clearance from surplus cell of the DOPT and orders on filling up posts issued by the Department of Expenditure, Ministry of Finance. Therefore, the communication of the respondents is illegal. There was inaction on the part of the respondent No.1 in not considering her application for five years and thereby keeping family of the deceased employee (her father) in almost starving position;

3(c). being the elder unmarried daughter, the applicant has the responsibility of the entire family. The respondents had offered appointment on compassionate ground to one Shri Ajay Rameshkumar Kuthe, who was also minor at the time of death of his father in

harness in 2010 but the applicant's case has been rejected by them;

3(d). the applicant had appeared in XII class examination and in her application had not mentioned about passing of Higher Secondary School Examination in which she had failed and was only X pass and therefore, her case should have been considered not as HSC pass candidate but for a Group 'C' post with Grade Pay of Rs.1,800/- for which the required educational qualification was only matriculation. Due to inadvertence and oversight, the applicant had failed to rectify the mistake made in filling up educational qualification as HSC which was unintentional and, therefore, this OA should be allowed.

3(e). The applicant has also filed MA No.2286/2017 for condonation of delay claiming that after receipt of the letter dated 18.04.2016, she had requested the respondent No.1 for reconsideration of her case and from April to August, 2017, she was not keeping good health and therefore, the OA has been filed after delay of about seven months. This

delay is not deliberate and was beyond her control and therefore, should be condoned.

In their reply, sur-rejoinder and during arguments on 21.08.2019, the respondents have contended that -

3(f). the OA is hopelessly time-barred because of unjustified delay. The letter of 18.04.2016 explained valid reasons for her non-selection and it was not the first time when her case was rejected. In fact that letter only conveyed the status of her already rejected application. Since the applicant in her application had mentioned as HSC qualified, her case was considered accordingly;

3(g). as per the Supreme Court decision on 04.05.1994 in case of **Umesh Kumar Nagpal Vs. State of Haryana and others**, compassionate appointment cannot be offered by an individual functionary on adhoc basis. As per another Supreme Court decision dated 08.04.1993, in case of **Auditor General of India and others Vs. G.Anant Rajeshwar Rao** appointment on compassionate grounds on descent clearly

violates Article 16(2) of the Constitution and in case of death of the Government servant in harness when there is immediate need of assistance to the dependent family when there is no other earning member only then an exception can be made but such a situation was not there in case of the applicant.

Also as held in the **Local Administration Department Vs. M. Selvanayagam Kumaravelu (page 43)**, appointment made many years after the death of the employee or without due consideration of financial resources available with her or his dependents and the financial deprivation caused to the dependents, simply because the claimant happened to be one of the dependents of the deceased employee would be directly in conflict with Articles 14 and 16 of the Constitution, hence it would be quite bad and illegal.

Also as per the Supreme Court decision in **Life Insurance Corporation of India Vs. Asha Ramchandra Ambekar and others**, the High Courts and Administrative Tribunals

cannot give direction for appointment of a person on compassionate grounds and can merely direct consideration of claim for such an appointment;

3(h). her application was rejected not by the respondent No.1 but in three consecutive annual meetings of Board of Officers conveyed at the Integrated Headquarters, Ministry of Defence, Government of India, New Delhi because of low marks obtained by the applicant as compared to the marks scored by the last of the recommended candidates. While the score of the last recommended candidates was 70, 73 and 70 in the assessment made in the meetings of Board of Officers held on 07.02.2014, 14.10.2014 and 11.12.2015, the applicant scored only 62, 62 and 62 marks. Therefore, because of her relative lower merit determined based on a number of specified criteria for assessing the condition of deprivation of the dependent family, she was not recommended for compassionate appointment.

In addition to the above three meetings of Board of Officers, her case was

also considered once by the Local Board of Officers at CAD, Pulgaon and in the pre-annual board at Headquarters of Southern Command, Pune; and

3(i). when she met respondent No.1 after receipt of letter dated 18.04.2016, she was explained the criteria laid down for selection for candidates and how her case cannot be reconsidered but there was no promise to reconsider her case as claimed by the applicant. In view of these facts and position in law as explained above, the OA should be dismissed.

4. Analysis and conclusions :-

I have perused the OA memo and its annexes, rejoinder of the applicant, reply filed by the respondents as well as the arguments advanced by both counsels on 21.08.2019. On their careful consideration, the clear position emerges as follows :

4(a). While in the application for condonation of delay, the applicant has claimed a delay of seven months, she has

mentioned sickness only between April and November, 2017. However, she has not explained as to why she did not file the OA up to March, 2017 after receipt of letter of 18.04.2016. Also the letter of the doctor attached by her on page 24, advising rest from 06.08.2017 to 10.11.2017 did not link the earlier advice for rest. Apart from advising rest, there is no mention of any medication advised by that Doctor in those two letters. Therefore, these letters about sickness of the applicant appear to be doubtful, they cannot be accepted as satisfactory reason which prevent the applicant from filing the OA in time. It is also found from the record that after applying for appointment on 25.09.2011, she did not correspond with the respondents till 09.04.2016 which shows that she was really not in need of employment. Her representation of 06.08.2017 cannot help her in justifying the delay. In view of failure of the applicant to justify the delay with satisfactory reasons, her application for condonation of delay is rejected.

4 (b) . The applicant has claimed that another candidate Shri A.R.Kuthe had been provided appointment on compassionate ground after death of his father but she has not impleaded him as a party to the present OA and, therefore, no consideration can be given to this averment.

4 (c) . As explained by the respondents (para 3(h) above), her case was considered on five occasions and because of her relative lower rank in the assessment of deprivations of her family, when other more deserving candidates were available for the limited vacancies available, the respondents could not accommodate her request for compassionate appointment. This was fully justified.

4 (d) . When she personally met the respondent No.1 after receipt of the letter of 18.04.2016, the various criteria used for assessing the relative deprivation of dependent families of employees who die in harness were explained to her and thereafter, she did not approached the Tribunal till

16.11.2017. The submission of the respondents in this regard is correct.

4(e). It is also relevant to mention that in the relative assessment of deprivation of her family made by the respondents (page 34), there is mention of monthly income of dependents of Rs.2,500/- in addition to receipt of the family pension of Rs.6,050/-. Therefore, the claim of the applicant that there is no sources of income with her mother and herself is totally false and misleading.

4(f). The stipulations under the OM dated 30.04.2015 cited by the applicant are also of no help to her because that relaxation is allowed only in those cases which had been closed earlier because of non-availability of vacancies. But the facts in present case were different, there were vacancies available but because of relatively higher score of deprivation of the dependents family, other candidates were selected by the respondents and the applicant could not be selected.

4(g). In addition, the case record also reveals false, dishonest and misleading claims

and submissions of the applicant. In her application for compassionate appointment, she claimed that her educational qualification was Higher Secondary School (which as an after-thought now claims by oversight) but actually she had failed in XII standard examination and her qualification was not HSC, it was only matriculation. In addition to the family pension sanctioned to her mother, the assessment made by the respondents also clearly mentioned the additional monthly income of Rs.2,500/-. Therefore, she made false claim about no source of income with her family consisting of her mother, herself and her sister.

4(h). Proximity to the death of her father is not there now as he expired on 27.10.2010 and his dependent family has managed itself for the last nine years. Therefore, as per the position settled in various case laws cited by the respondents in the preceding paragraphs, there is no merit in the present OA and it deserves dismissal.

5. Decision :-

The OA is dismissed because of unjustified long delay and on merit.

(Dr. Bhagwan Sahai)
Member (Administrative)

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JD
13/3/17