

CENTRAL ADMINISTRATIVE TRIBUNAL

CHENNAI BENCH

OA/310/01727/2016Dated 14th, the day of October, 2019

PRESENT

Hon'ble Mr. T.Jacob , Member (A)

R.Subhulakshmi,
W/o. Late. VR Raghavaiah,
(Ex-Safaiwala of ATNKK&G Area)
No.3, Govindaswamy Street,
Dr. MGR Nagar, 1st Street,
Chennai – 600 078.

....Applicant

By Advocate M/s C.Sundaramurthy

Vs

1. Union of India rep. By
The Secetary, Ministry of Defence,
New Delhi – 110 011.

2. Directorate General Staff Duties,
SD-7 (Adm civ)
General Staff Branch,
Integrated HQ of MoD (Army)
DHQ PO, New Delhi – 110 011.

3. General Officer Commanding,
Dakshin Bharat Area,
Island Grounds,
Chennai – 600 009.

....Respondents

By Advocate Mr. S.Padmanabhan

ORDER**(Pronounced by Hon'ble Mr.T.Jacob, Member(A))**

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

- "I. The applicant may be considered for regularising her temporary service in the post of Safaiwala, w.e.f 4.11.2009 as she was appointed temporarily as per appointment order No.55103/ Regf/Est, date 03 November 2009 and working till this date of application.
- ii. Strength decrease (death) certificate dated 10.10.2008.
- iii. Vacancy availability certificate dated 12.04.2010.
- iv. Deficiency statement as to the regular vacancy in that post is available from 14.10.2008 date on which the applicant's husband died.
or
- v. Orders may be issued for fully considering the applicant's case for compassionate appointment as per 3rd respondents documents Annexure no to 2 as the case may be. The impugned order passed by the 2nd respondent may be set aside."

2. The brief facts of the case as submitted by the applicant are as follows:

The applicant Mrs. Subbulakshmi W/o Late V.R.Raghavaiah is at present working as a Safaiwala in the 3rd respondent department, temporarily against vacant post of Safaiwala which fell vacant on the death of her husband on 14.10.2008. The applicant's husband late V.R.Raghavaiah worked as Safaiwala on being appointed in that post on 22.6.1982. Since March 2004 he was undergoing treatment for cancer and had insufficient means to meet his medical expenses with a salary of Rs. 9680/- and incurred a loan of Rs.1,98,000/- from the society. Soon after the death of her husband to tide over her family's indigent condition and to give relief from financial destitution, the third respondent arranged appointment to the applicant in the post of

Safaiwala which was held by her late husband till his death vide Order No. 55103/REGT/EST, dated 3rd November 2009 and she joined duty on 04.11.2009 and working as a Safaiwala till this day in the third respondent office. This appointment was probably made by the respondent in accordance with OM (Scheme for Compassionate Appointment issued in F.No.140114/6/94-Estt (D) dated 09-10-1998). Subsequently, on 8th December 2009 the applicant has been sanctioned family pension of Rs.4840/- till 14.10.2018 thereafter the pension would be Rs.3500/-. A death gratuity of Rs.2,68,346/- was also sanctioned. The applicant had submitted a request for compassionate appointment on 13th February 2010 to the 3rd respondent enclosing required documents as called for. The 3rd respondent had forwarded such application to the 2nd respondent for consideration and sent through the Head Quarters Southern Command (GS/SD) in Pin No.908541 which application was received in the head quarters Southern Command on 7th May 2010 where the 2nd respondent in his meeting of Board of Officers held on 2nd September 2014 rejected the application for compassionate appointment on the ground that the applicant had not secured 100 point scale parameters but earned only 74 points and consequently placed 51st place in merit list. Hence the 2nd respondent has not recommended the candidature of applicant due to low relative merit. But it could be seen in the statement of revised procedure that the applicant had secured only 47 points. The Dakshin Bharath area formerly known as ATNKKG area General Office Commanding had recommended the case of the applicant for the post of Safaiwala on compassionate ground in all respects on 1st May 2010, but the 2nd respondent had rejected the case of the applicant

on 26th November 2014 after a gap of 4 years returning the set of application containing annexures No.A5 to A25 to the applicant. Aggrieved by the above, the applicant has filed this OA seeking the above relief inter-alia on the following grounds:-

- i. The impugned order of the 2nd respondent through board of officers decision rejecting the claim of the compassionate appointment is arbitrary and unsustainable in law. An application received on May 7th 2010 and rejecting it on 27.11.2014 after the period of 4 years is great injustice meted out to a poor scheduled caste Safaiwala woman, while she was officiating as such in that vacant post temporarily.
- ii. As per the OM on consolidated instructions on compassionate appointment dated 16.01.2013 under objectives No.3 the authority competent to make compassionate appointment is head of department and the General Officer Commanding, Dakshin Bharat, Island Grounds, Chennai-9 is such competent authority who can make compassionate appointment but instead referring the case to the 2nd respondent is illegal.
- iii. The relative merit point is to be assessed then and there in the year 2010 itself, but dragging it to assess in the year 2014 would play foul as far as the assessment would differ from time to time, on different footing collectively collected and assessed for all India basis is also relevant as far as compassionate appointment is concerned.
- iv. The 2nd respondent seemed to have assessed 47 relative merit points in the case of applicant as per Annexure A-22 but, according to procedures to workout the relative merit issued in F.No.19(3) 2009 DC (Lab) Government of India, Ministry of Defence dated 22.01.2010 and dated 14.05.2010 (A) would show a different yardstick to assess such relative merit points. The applicant would fetch as far as possible a total of 84 merit points in accordance with category and specification as shown in the above said instructions issued on

22.1.2010 and 14.05.2010. Hence wrong assessment of relative merit points is worked out by the respondents in the respect of applicant.

v. In addition to above cases of assessment where wife of the deceased employee has applied herself for compassionate appointment, she shall get 15 additional points as grace points. This will be in general procedure that widow need to be given preference for compassionate appointment. If it is added to applicant's newly assessed and secured points of 84+15, she would secure a total of 99 merit points. This additional point of 15 points was absent in the workout of the respondents and proper fixed weightage was not given.

vi. Nowhere in the scheme for compassionate appointment under Central Government in Office Memorandum dated 09.10.1998, or "Consolidated instructions issued in the Office Memorandum dated 16.01.2013, prescribed a condition precedent or as mandatory for the assessment of relative points in respect of those who seeking compassionate appointment.

3. The respondents have filed a detailed reply statement. It is stated that Shri VR Raghavaiah was employed as a Defence Civilian Employee as Safaiwala at Headquarters Dakshin Bharat Area on 22 Jun 1982. After completion of 26 years of service he died on 11 Oct 2008 due to cancer. At the time of his death, the individual's family consisted of his wife Smt Subhulakshmi (41 yrs), one son Master Rajasekar (17 yrs), two daughters Mrs Rajeshwari (16 yrs) (Married) and Miss Ratna (15 yrs). Due to financial hardship of the family of the deceased, Smt Subhulakshmi wife of Late Shri VR Raghavaiah approached for employment to take care of the minor children. This Headquarters engaged Smt Subhulakshmi as Safaiwala on casual basis and payment was made out of Regiment Fund with effect from 04 Nov 2009. The applicant later requested for her permanent employment on extreme compassionate

grounds for the post of Safaiwala in Headquarters Dakshin Bharat Area on 13 Feb 2010. Accordingly, her case was taken up with higher Headquarters (Headquarters Southern Command) for appointment as Safaiwala on compassionate grounds alongwith all supporting documents through staff channel vide Headquarters Dakshin Bharat Area (GS Branch) letter No 140011/GS(SD) dated 01 May 2010. The applicant was considered for the third time by IHQ of MoD (Army), New Delhi held in Nov 2014 and was also rejected due to low merit points and intimated that the case had not been recommended even after three chances given to her for permanent appointment on compassionate ground vide IHQ of MoD (Army) letter No C/92842/BOO2012/Sep2014/SD-7(Adm civ) (51) dt 26 Nov 2014. Hence the respondents pray for dismissal of the OA.

4. Heard the learned counsel for the respective parties and perused the pleadings and documents on record.

5. Admittedly, the Integrated Headquarters of Ministry of Defence (Army) had forwarded the application of the applicant to the Head of Officers for considering appointment on compassionate ground in August 2011. As per laid down policy of 100 point scale parameters, the applicant earned only 74 points and consequently her application placed at 60 in the merit list out of 202 applications produced in the Board of Officers. Thus the application was not recommended by the Board due to low relative merit point. However, the Integrated Headquarters of Ministry of Defence (Army) assured that the application would again be considered in the subsequent Board as and when held and the same was communicated to the applicant

vide Integrated Headquarters of Ministry of Defence (Army) letter No. 92842/ SD-7 (Adm Civ)/I/60 dated 30 Aug 2011. There has been no deviation from the laid down rules and procedures. The application of the applicant was again forwarded for the second time by Integrated Headquarters of Ministry of Defence (Army) to the Board of Officers during Apr 2013. As per laid down of 100 point scale parameters, the applicant earned only 74 points and consequently her application placed at 59 in the merit list out of 160 applications produced in the Board. Thus the application was not recommended by the Board of Officers due to low relative merit point. Integrated Headquarters of Ministry of Defence (Army) once again assured that her application would be considered in the subsequent Board as and when held. The same was communicated to the applicant vide Integrated Headquarters of Ministry of Defence (Army) letter No C/92842/BOO/Jan 2013/ 59/SD-7(Adm Civ) dated 30 April 2013. The applicant was again considered in November 2014 and March 2019, but however, due to lower relative merit points earned, she could not be considered for appointment on compassionate grounds.

6. The initial gesture of inducting the applicant as Safaiwala but paid from regimental fund reflects that the respondents were satisfied with the penury conditions of the applicant and the positive recommendations for consideration for the compassionate ground appointment repeatedly for four years enforces the same. Undisputedly, the application of the applicant for appointment on compassionate ground was considered by the Board on four occasions in August 2011, April 2013 November 2014 and March 2019 and the outcome of the same was intimated to the

applicant from time to time. The applicant had secured only low relative merit points on all four occasions as against the selected candidates and hence her request was rejected. It is not possible to provide employment on compassionate ground to all the families of the deceased. The applicant who suffer the most have to be compensated, as per available vacancies and merit. The same principle has been followed by the Board in all cases of compassionate appointment. The Board of Officers have correctly assessed the merit points as per the available documents submitted by the applicant and as per laid down rules and regulations. The respondents would submit that as per the extant orders in force, there is no time limit or ceiling on the number of times a case could be considered and the applicant would be considered for the employment assistance on compassionate grounds in the next board along with other applications as and when it meets.

7. The applicant has sought for multiple relief in one OA. She has sought for regularisation of her services in the post of Safaiwala. She has also sought for considering her request for appointment on compassionate ground in this OA. A multiple relief cannot be sought in one OA and she has to file a separate OA seeking different relief. Regularisation of services governed by the regimental fund is not permissible and thus this relief cannot be treated as multiple relief. Seeking an impermissible relief which has to be simply ignored cannot non-suit the applicant for grant of compassionate appointment.

8. Keeping in view the above submission of the respondents and also the fact that there is no time limit or a ceiling on the number of times a case could be considered,

the OA is disposed of with a direction to the respondents to further consider the case of the applicant for subsequent years in terms of the extant orders/instructions on the subject and inform the applicant of the outcome thereof within a period of three months from the date of receipt of a copy of this order.

9. The OA is disposed of accordingly. No costs.

(T. JACOB)
MEMBER (A)
-10-2019

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