

CENTRAL ADMINISTRATIVE TRIBUNAL

CHENNAI BENCH

OA/310/00418/2019

Dated this the 20th day of November, 2019

PRESENT

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

A. Johnson, S/o. Andonisamy,

Aged about 22 years,

Residing at No.108,

Vanathu Chinnapar Koil Street,

Saint Paul Pet,

Puducherry – 605 008.

...Applicant

By Advocate M/s V. Vadivelu

Vs

1. Union of India Rep by

The Principal Secretary,

Ministry of Health & Family Welfare,

New Delhi.

2. The Director General,

Indian Council of Medical Research,

Off:V. Ramalinga Swamy Bhawan,

Ansari Marg, New Delhi.

3. The Director,

Vector Control Research Centre,

Indhira Nagar, Gorimedu,

Puducherry-605 006.

...Respondents

By Advocate Mr. Su. Srinivasan

Ms. Sunitakumari (R2 & R3).

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 reliefs:

"... To call for the records of the third respondent with No.359/legal cell/2018/982 dated 18.09.2018 and to quash the same in respect of the rejection of the representation of the applicant dated 16.09.2017 and consequently to direct the respondents to appoint the applicant in any suitable job on compassionate ground in the third respondent's establishment viz, Vector Control Research Centre, Pondicherry and pass such other or further orders in the interest of justice and thus render justice."

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

The applicant's father V. Andonisamy joined service as daily rated Attender in the year 1984 in the 3rd respondent's institute and got regularized on 01.01.1987 and subsequently promoted as Lab Attender/MTS on 01.04.1994. He died in harness on 16.03.2017 leaving behind the applicant herein, daughter and widow wife. The applicant submitted an application to the 3rd respondent on 12.06.2017 to consider his appointment in any suitable post on compassionate grounds for which no action was taken and, therefore, he filed OA.626/2018 which was disposed of on 5.6.2018 to consider the representation dated 16.09.2017 in pursuance of which the respondents issued an impugned order dated 18.09.2018 stating that the applicant's case was considered and rejected. Being aggrieved, the applicant has filed this OA to quash the above impugned order and to appoint him in any post on compassionate grounds, *inter alia*, on the following grounds:-

- i. The applicant is entitled to be appointed in any suitable job in the third respondent establishment on compassionate ground and rejection of his representation dated 16.09.2017 is most arbitrary, discriminatory and

illegal;

ii. The reasons stated by the third respondent for rejection of his representation are that the applicant's mother received all the dues and arrears after the death which are General Provident Fund, Group Linked Insurance Scheme, Family Pension, Death Gratuity, Commutation of Pension and any other dues provided by the respondents is a statutory right provided in favour of the employee who has rendered service in the respondent establishment, rejection of the representation on the above said ground is illegal and invalid;

iii. The very purpose of the rules providing for compassionate employment is only to enable the family of the deceased employee to tide over the sudden crisis resulting due to the death of the bread earner who has left over the family in penury and without any means of livelihood. Rejecting the applicant's representation on the ground of sanction of provisional family pension and death cum retirement gratuity to the applicant's mother is illegal and arbitrary;

iv. The provisional family pension and the Death cum Retirement Gratuity provided by the third respondent was utilized to discharge the debt incurred by the employee and the applicant's family is at present under penury and without any means of livelihood as such the rejection of the applicant's representation is most discriminatory and illegal;

v. The third respondent herein has not made any appointment on compassionate ground from 07.02.2003 though sufficient vacancy was available under the class III and IV, which was obtained by the applicant under the RTI Act vide letter No. VCRC/RTI-FAA/2017-18/58 dated 09.10.2017, the third respondent informed him that his application will be considered as per seniority list, but the third respondent stated different reason for the rejection of his application which is most arbitrary and illegal.

3. The respondents have filed reply stating that the applicant has requested for compassionate appointment. The appointment on compassionate grounds

should be made only on regular basis and that too only if regular vacancies meant for compassionate purpose are available. Compassionate appointments can be made upto a maximum of 5% of vacancies falling under direct recruitment quota in any Group 'C' post. The ceiling of 5% of direct recruitment vacancies for making compassionate appointment should not be exceeded by utilizing any other vacancy. There are number of requests for compassionate appointment on seniority basis and the applicant is in tenth position. Due to merger of erstwhile CRME, Madurai with VCRC w.e.f. 01.11.2017, the list of applicants may vary and his position will change accordingly. In view of the above and in compliance of the directions of this Tribunal vide order dated 05.06.2018 the representation dated 16.09.2017 submitted by the applicant has been considered, examined and found to be devoid of merits as stated in the OA.626/2018 and hence rejected. The respondent further submits that the competent authority has sanctioned the provisional pension and Death cum Retirement Gratuity (DCRG) on 04.01.2018 and issued the benefits of DCRG and family Pension order No. Ac/VI/Pension/3770 dated 21.06.2018 to Mrs. A. Elen W/o. (Late) Mr. Andonisamy Ex. MTS authorizing her to receive the Family Pension. Hence, the respondents pray for dismissal of the OA.

4. Applicant has filed rejoinder more or less reiterating the averments made in the OA. He has also filed written submissions.

5. Heard Learned counsel on both sides and gone through the pleadings and written submissions.

6. Admittedly this is the second round of litigation challenging the order passed by the respondents rejecting the case of applicant for compassionate appointment purusant to the orders of the Tribunal. According to the respondents, cases of the compassionate appointments were taken up upto the year 2003 and thereafter it could not be provided due to inadequate number of vacancies to arrive at the Compassionate Appointment quota of 5%. After 2016, due to revision of Recruitment Rules in the Technical cadre, recruitment was not done. The applicant has applied for Technical and administrative posts advertised during 2018. But the Indian Council of Medical Research has cancelled all the Technical posts recruitment vide ICMR letter No. ICMR/HSRC/1/2019-R.Cell dated 14.05.2019. If vacancy arises under the compassionate appointment quota, the case of the applicant would be considered as per his seniority. As the respondents have received similar applications for compassionate appointment from the legal heirs of the deceased employees of that Centre, the applicant's request would be considered for appointment on compassionate grounds subject to fulfilment of eligibility and other terms and conditions on seniority basis.

7. The Hon'ble Apex Court has laid down in catena of judgments that "Compassionate appointment being an exception to that of the general recruitment, the same should be provided with all caution taking note of the fact that compassionate appointment will certainly deprive the eligible meritorious youths and citizens of the country to get public employment. When the Courts are providing an exceptional scheme of compassionate appointment to the individual, it is equally relevant to keep in mind that such

facilities provided should not affect the rights of other citizens, who are otherwise qualified, meritorious and aspiring to participate in the open competitive process. The granting of relief, if it affects the constitutional rights of other citizens, then the courts must be slow in granting such relief.

8. At this stage, it is pertinent to quote the DoP&T's O.M.No. 14014/02/2012-Estt.(D) dated 16.01.2013 wherein at paragraph 7 & 8 it is mentioned hereunder:-

"7. DETERMINATION/AVAILABILITY OF VACANCIES

(a) Appointment on compassionate grounds should be made only on regular basis and that too only if regular vacancies meant for that purpose are available.

(b) Compassionate appointments can be made upto a maximum of 5% of vacancies falling under direct recruitment quota in any Group 'C' post. The appointing authority may hold back upto 5% of vacancies in the aforesaid categories to be filled by direct recruitment through Staff Selection Commission or otherwise so as to fill such vacancies by appointment on compassionate grounds. A person selected for appointment on compassionate grounds should be adjusted in the recruitment roster against the appropriate category viz SC/ST/ OBC/General depending upon the category to which he belongs. For example, if he belongs to SC category he will be adjusted against the SC reservation point, if he is ST/OBC he will be adjusted against ST/OBC point and if he belongs to General category he will be adjusted against the vacancy point meant for General category.

(c) While the ceiling of 5% for making compassionate appointment against regular vacancies should not be circumvented by making appointment of dependent family member of Government servant on casual/daily wage/ad-hoc/contract basis against regular vacancies, there is no bar to considering him for such appointment if he is eligible as per the normal rules/orders governing such appointments.

(d) *The ceiling of 5% of direct recruitment vacancies for making compassionate appointment should not be exceeded by utilising any other vacancy e.g. sports quota vacancy. DoP&T's O.M. No. 14014/02/2012-Estt. (D) dated 16.01.2013.*

(e) *The Committee constituted for considering a request for appointment on compassionate grounds should limit its recommendation to appointment on compassionate grounds only in a really deserving case and only if vacancy meant for appointment on compassionate grounds will be available within a year in the concerned administrative Ministry/department /Office, that too within the ceiling of 5% of vacancies falling under DR quota in Group 'C' posts. (O.M.No.14014/18/2000-Estt.(D) dated 22.06.2001).*

(f) *Calculation of vacancies by grouping of posts for small offices/cadres - Grouping of posts in small Offices/ Cadres for the purpose of calculation of vacancies for appointment on compassionate grounds is allowed. Consequently, Group 'C' posts in which there are less than 20 direct recruitment vacancies in a recruitment year may be grouped together and out of the total number of vacancies 5% may be filled on compassionate grounds subject to the condition that appointment on compassionate grounds in any such post should not exceed one. For the purpose of calculation of vacancies for compassionate appointment, fraction of a vacancy either half or exceeding half but less than one may be taken as one vacancy. (Para 2 and 3 of O.M. No. 14014/24/1999-Estt.(D) dated 28.12.1999).*

(g) *Liberalized method of calculation of vacancies for small Ministries/Departments - The small Ministries/ Departments may apply a more liberalized method of calculation of vacancies under 5% quota for compassionate appointment. The small Ministries/ Departments, for the purpose of these instructions, are defined as organizations where no vacancy for compassionate appointment could be located under 5% quota for the last 3 years. Such small Ministries/ Departments may add up the total of DR vacancies in Group 'C' and erstwhile Group 'D' posts (excluding technical posts) arising in each year for 3 or more preceding years and calculate 5% of vacancies with*

reference to the grand total of vacancies of such years, for locating one vacancy for compassionate appointment. This is subject to the condition that no compassionate appointment was/has been made by the Ministries/Departments during 3 years or number of years taken over and above 3 years for locating one vacancy under 5% quota.(Para 4 of O.M. No. 14014/3/2005- Estt.(D) dated 09.10.2006.

(h) The compassionate appointment can also be made against technical 'posts' at Group 'C' and erstwhile Group 'D' level. The 5% quota of vacancies will be calculated on the basis of total DR vacancies arising in a year in the technical posts. (Para 2 of O.M. No. 14014/3/2005- Estt(D) dated 19.01.2007. - 8 - DoP&T's O.M. No. 14014/02/2012-Estt.(D) dated 16.01.2013

8. TIME LIMIT FOR CONSIDERING APPLICATIONS FOR COMPASSIONATE APPOINTMENT:

Prescribing time limit for considering applications for compassionate appointment has been reviewed vide this Department O.M No.14014/3/2011- Estt.(D) dated 26.07.2012. Subject to availability of a vacancy and instructions on the subject issued by this Department and as amended from time to time, any application for compassionate appointment is to be considered without any time limit and decision taken on merit in each case."

9. In the instant case, the third respondent has not made any compassionate appointment from 07.03.2003 and not fulfilled the 5% reservation criteria. The 3rd respondent has made appointment from 01-01-2000 to 30-06-2017, 41 candidates under group III and 7 posts under class IV but had not made any appointment under the compassionate ground as per the reservation norms. According to the applicant, the 3rd respondent on 09-03-2019 through a newspaper advertisement invited applications for filling up various posts under Group 'B' to 'C' and subsequently cancelled the said recruitment vide ICMR letter No.ICMR/HSRC/1/2019 cell, dated 14-05-2019. If

the respondent would go ahead with the recruitment process, the 5% reservation would arise and the applicant could be accommodated under the compassionate ground. Though compassionate appointment is not a regular source of appointment the same being recognized subject to certain parameters, if the same is not pressed into service and the 5% vacancies are diverted to other modes of appointment, it amounts to fraud on power. The same shall not be permitted and the erring official should be held responsible for this serious lapse.

10. In view of the above, the impugned order dated 18.09.2018 is quashed and set aside. The respondents are directed to work out the total number of vacancies under Group 'C' posts for the past years keeping in view of the provisions of the DoP&T's O.M.No.14014/02/2012-Estt.(D) dated 16.01.2013 and consider the case of the applicant along with other eligible candidates and if the applicant makes it through, he may be considered for appointment on compassionate ground and if not, he be informed accordingly. This exercise shall be completed with a period of six months from the date of receipt of a copy of this order.

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

(T.Jacob)
Member(A)
20.11.2019

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