

CENTRAL ADMINISTRATIVE TRIBUNAL

MADRAS BENCH

DATED THIS THE 21 DAY OF FEBRUARY, TWO THOUSAND NINETEEN

PRESENT:

THE HON'BLE MR. T. JACOB, MEMBER (A)

OA/310/01107/2015

N. Sivasubramaniyan
No. 39-B, Mani Road
Kannikoil, Bahour Commune
Puducherry - 607 402.

...Applicant

-versus-

The Union Territory or Puducherry
Represented by the Secretary to Government (Works)
Public Works Department, Puducherry.

...Respondent

By Advocates:

M/s. P. Rajendran, for the applicant.

Mr. R. Syed Mustafa, for the respondents.



ORDER

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

This OA has been filed by the applicant under Sec.19 of the Administrative Tribunals Act, 1985 seeking the following relief:-

"To call for the records relating to the impugned order of the respondent in No. 349/PW-1/A-2/2013 dated 30.04.2015 and quash the same and direct the respondents to regularise the services of the applicant with effect from the date of his appointment and grant him all consequential benefits"

2. The brief facts of the case, as stated by the applicant, are as follows:-

The applicant's father who was working as Luscar in the Irrigation Division of the Public Works Department, Puducherry died on 25.02.1977, while he was in service. From then onwards, the wife of the deceased employee made representations to the respondent seeking compassionate appointment to her, as the applicant was only six years at the time of the death of the Government employee. It is submitted that pursuant to the Government of Puducherry orders in G.O.Ms.No.25/PWD dated 24.06.2005, the applicant was given appointment as Casual Labourer on compassionate grounds on 13.07.2005 and he is continuing in the said capacity since then. The contention of the applicant is that his services were not regularised even after putting in nine years of service. Therefore, the applicant made representation dated 23.01.2014 to the respondent requesting to regularise his services and since no order was passed so far, he filed OA 1941/2014. This Tribunal by order dated 19.12.2014 directed the respondent to consider the representation of the applicant dated 23.01.2014 in accordance with law and as per rules and pass a reasoned and speaking order. In pursuance of the said



order of this Tribunal, the respondents passed the impugned order dated 30.4.2015 stating that the applicant will be considered for regularisation as per seniority among the other full time casual labourers according to the available vacancies in the post of Multi Tasking Staff in the Public Works Department, Puducherry. Aggrieved by the said impugned order of the respondents the applicant has filed this OA seeking the above reliefs. In support of his case, the applicant also relied on the decision of this Tribunal in OA.Nos.1544/2010, 163/2011 & 164/2011 dated 30.09.2011.

3. The applicant has challenged the impugned order on the following grounds:

a. The object of compassionate appointment scheme makes it clear that once a decision is taken to grant compassionate appointment to the dependants of the deceased Government servant, the appointment should be in the nature of regular employment ensuring adequate income to the family which had lost its bread winner and the family fallen to penury due to untimely death of the Government Servant.

b. The applicant was placed at No. 1 in the list of approved candidates for compassionate appointment. Therefore, he should have come within 5% direct recruitment quota meant for compassionate appointment. The appointment of the applicant on compassionate grounds made on 13.07.2005 should have been on a regular basis and not as casual labourer.

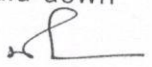
c. The applicant is also entitled to be regularised in service with effect from the date of his initial appointment, namely, 13.07.2005 and he need not wait for regularisation as per seniority among the casual labourers as mentioned in the impugned order.



4. The respondents have filed a detailed reply. The respondents would submit that the scheme for Compassionate Appointment provides that appointment on compassionate grounds should be made only if regular vacancies meant for that purpose are available. Further compassionate appointments can be made up to a maximum of 5% of vacancies falling under direct recruitment quota in any Group 'C' or 'D' posts and there is no bar to consider the applicant for appointment on casual / daily wage / adhoc / contract basis if he is eligible as per the normal rules/orders governing such appointments. It is submitted that in Public Works Department more than 151 applications received for appointment on compassionate grounds including the applicant herein, were pending consideration for adequate vacancies in the regular Group 'C' or 'D' posts and these applicants have been engaged as Casual Labourers for want of vacancies in the department. The applicant was engaged as Casual Labourer in Public Works Department, Puducherry w.e.f 13.07.2005. The respondents would further submit that with the availability of adequate vacancies in the post of Multi Tasking Staff, the applicant has been absorbed and offered appointment to the post of Multi Tasking Staff (Public Works) in the Buildings & Roads (Central Division, PWD, Puducherry vide Memorandum No.11654/PW/CE/Estt/EC4/2016 dated 12.02.2016 and the applicant has reported for duty in the post of Multi Tasking Staff (Public Works). Hence the respondents pray for dismissal of the OA.

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

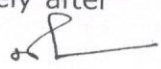
6. At the outset, it must be kept in mind that the object of compassionate appointment is to enable the family to tide over the sudden crisis as laid down



२७-

by the Hon'ble Supreme Court in Umesh Kumar Nagpal Vs State of Haryana and Ors. 1994 (4) SCC 138 and in State of U.P. & Ors Vs. Pankaj Kumar Vishnoi 2003 (11) SCC 178. Compassionate ground appointment cannot be granted after a lapse of reasonable time and it is not a vested right which can be exercised at any time in future. The respondents indeed deserve appreciation in that they have no hesitation to engage the applicant as a casual labourer after a score and eight years of the demise of the applicant's father, which is purely out of compassion shown upon the applicant. Otherwise, the appointment of the applicant as MTS would not have been preceded by this casual labour engagement. Normally, on the ground of delay, such appointments would have been denied. Secondly, their version is that there being no adequate number of vacancies in the regular post the applicant was initially engaged as a casual labourer so that the family could eke out. And, the applicant not being senior enough to be regularized earlier, it was when his turn reached he was to be regularized. Thus, as per the commitment of the respondents, in his turn the applicant has been offered MTS post.

7. In terms of the law declared by the Hon'ble Supreme Court in the case of Himachal Road Transport Corporation vs. Dinesh Kumar (JT 1996 (5) SC 319) and Hindustan Aeronautics Ltd. Vs. Smt Radhika Thirumalai (JT 1994 (9) SC 197), appointment on compassionate ground can be made only if vacancies are available for the purpose. There is nothing on record to show that any vacancy was available from 2005 to 2016, the date of regular absorption of the applicant in the department. Therefore, in the absence of any vacancy available in the department, the applicant could not be considered for appointment on regular basis. The applicant was considered immediately after



arising of the vacancy. As such, the claim of the applicant for regularisation from the date of appointment as casual labour could not be acceded to by the respondents as there were no vacancies available in the department.

8. The consideration for appointment on compassionate ground is to be construed as violation of Art.14 & 16 of the Constitution of India and is only in the nature of concession and therefore, does not create a vested right in favour of the claimant. A compassionate appointment Scheme is a non statutory scheme and is in the form of concession and it cannot be claimed as a matter of right by the claimant to be enforced by the Court. A compassionate appointment is justified when it is granted to provide immediate succour to the deceased employee. Mere death of a Government employee in harness does not entitle his family to claim compassionate appointment. The competent authority has to examine the financial condition of the family of the deceased employee and only if he is satisfied that without providing employment the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family of the deceased employee.

9. Thus, the concession afforded to the applicant is more than what normally an individual would be granted. With this observation the OA is dismissed, however, with no order as to costs.