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Court : Central Administrative Tribunal CAT Hyderabad

Decided On : Apr-27-2007

Judge : B Ray

Appellant : Rasool Bee

Respondent : The Chief Postmaster General, the

Advocate for Pet/Ap. : Sri. V. Kiran Kumar

Judgement :

1. This application has been filed seeking for an order setting aside the impugned order dated 19.5.2005 and consequently to direct the respondents to accommodate her in the department on compassionate grounds. It is the case of the applicant that her husband late Md.

Ahmed Pasha joined in service on 25.7.1979 as EDBPM, Anantharam BO. Subsequently he was promoted and died in harness on 20.3.2000 due to ill health. The applicant was selected for appointment in Group-D cadre on compassionate appointment and was directed to go for practical training vide memo No. B3.Gr.D/CA/Dlgs/02 dated 18.4.2002. The applicant completed the training on 24.4.2002. The applicant submitted the affidavit showing her date of birth to the Respondents. Respondent No. 3 issued a letter to the Gandhi Hospital authorities for medical examination to ascertain the fitness of the applicant vide letter dated 26.4.2002. The authorities accordingly examined the applicant and declared the fitness and considered that she is qualified for employment on the

ground of fitness. Further, Respondent No. 2 issued letter No. B3/Gr.D/Dlgs/CA/02 dated 3.9.2002 to the Gandhi Hospital to examine the applicant. The said Hospital authorities issued the age certificate in favour of the applicant. But thereafter the respondents have not taken any steps to issue appointment letter to the applicant.

The applicant is having three studying children and is facing hardship for their livelihood. The applicant submitted representation dated 17.2.2003 to consider her case on compassionate grounds. Respondents issued a letter dated 19.5.2005 stating that as per DOPT OM dated 16.5.2001, "the committee should consider the compassionate appointments only to the extent of 5% of the approved vacancies cleared by the screening committee and therefore, the candidates mentioned in Annexure-I could not be selected, as they did not merit the selection in comparative study of the indigent circumstances of all the 505 deceased families placed before the CRC and give to limited number of 5% of the approved vacancies cleared by the screening committee".

2. Applicant has enclosed the said letter as Annexure A-2 to the OA. Being aggrieved by the said letter, the applicant has approached this Tribunal seeking for the said relief.

3. The learned Counsel for the applicant Sri V. Kiran Kumar atreenuously argued that when the applicant is duly selected by the CRC and was found fit and medical examination was done, the applicant cannot be denied appointment later on the grounds mentioned in the impugned order dated 19.5.2005 as extracted above.

4. Respondents have contested the application by filing a counter reply. It is the specific case of the respondents that the case of the applicant was examined by CRC held on 13/15-3-2002 and recommended for the post of Group-D. The applicant who is illeterate was given relaxation in the condition of educational qualification. The case of the applicant was referred to Postal Directorate along with all other regularization cases. The CRC has approved the candidates in Group-D cardse to the extent of 5% of the total vacancies occurred during the years 2000, 2001 and 2002 but as per the DOPT OM dated 16.5.2001, which is enclosed as Annexure R-I to reply, compassionate appointments are to be

approved to the extent of 5% of the approved vacancies cleared by the screening committee but not to the extent of 5% of the total vacancies occurred during the year. It is the case of the Respondents that when it was found that as per the DOPT letter dated 16.5.2001 compassionate appointments are to be approved to the extent of 5% of the approved vacancies cleared by the screening committee, the Directorate in its letter No. 24-6-2000SPB.I dated 17.5.2004 intimated that a special CRC be convened for the cases among all the approved cases to the extent of 5% of the approved vacancies cleared by the Screening Committee. The case of the applicant was considered against the 3 vacancies of the year 2000-01 in the CRC held on 13/15.3.2002 and the applicant's case was examined along with all other approved candidates assessing the indigent circumstances of all the candidates and finally considered only three cases out of (16) sixteen. It is therefore the case of the respondents that although the applicant was initially selected by the Selection Committee which has considered the case to the extent of 5% of the total vacancies instead of 5% of the approved vacancies but when it was found that there was a mistake committed by the Respondents in following the DOPT OM dated 16.5.2001, the Respondents have taken steps to rectify the same by convening the special CRC to consider the cases upto 5% of the approved vacancies and accordingly the number of vacancies were reduced and the CRC recommended only three candidates and the applicant could not merit the selection and accordingly the order impugned in this OA dt. 19.4.2005 was issued by the respondents.

5. Heard Sri V. Kiran Kumar, learned Counsel for the applicant and Sri P. Venkat Rao, learned standing counsel for the Respondents. I have gone through the pleadings, material papers and the judgments cited in this case. It is true that the mistake committed by the Respondents in following the OM dt. 16.5.2001 does not deserve any appreciation.

Respondents are not expected to make such mistakes in following the instructions particularly in the case of compassionate appointments.

However, respondents have rectified their own mistake. In so far as the concept of approved vacancies is concerned, the same issue was discussed by this Tribunal

in OA 434/05 decided on 20.10.2005 wherein the respondents considered the case of compassionate appointment against 5% of approved vacancies declared by screening committee. This Tribunal in the said case had referred to the judgment of Hon'ble Apex Court in Himachal Road Transport Corporation v. Dinesh Kumar wherein the Apex Court has laid down that the appointment on compassionate grounds can only be made if the vacancies are available for that purpose. This Tribunal has said that when the case of the applicant is rejected on the ground that compassionate appointment cannot be given to him/her on the ground that there are no vacancies available in the 5% quota, perhaps, the only grounds on which the compassionate appointment can be challenged is the relative merit of the candidates selected vis-a-vis the applicant for that purpose.

This Tribunal, therefore, in the case cited (supra) has called for the records from the respondents including the minutes and after perusing the said records, dismissed OA 434/05. In the case in hand, I have perused the records produced by the learned standing counsel for the respondents to see the merit position of the applicant and the comparative assessment of the conditions of all the candidates made and found that the case of three candidates recommended by the Respondents have been correctly compared with the other cases. That being the position, in view of the above judgment in OA 434/05 and in view of the order of the Apex Court cited (supra), I find no merit in this case.

The OA is therefore dismissed accordingly with no order as to costs.

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