

**Shri Mohd. Azeem Khan S/O Late Vs. the Union of India (Uoi) Through**

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**Court :** Central Administrative Tribunal CAT Delhi

**Decided On :** May-24-2008

**Judge :** M Chhibber

**Appellant :** Shri Mohd. Azeem Khan S/O Late

**Respondent :** The Union of India (Uoi) Through

**Judgement :**

(i) Quash and set aside the impugned order (Annexure A-1) with direction to the respondents to consider the applicant's case fairly for grant of appointment on compassionate ground as LDC in Group 'C' post for which he is seeking.

(ii) Call for the records of consideration with merit drawn up by the Board of Officer, Board No. 6 held on 25.5.2006 specifically stating inter-alia the criteria adopted for drawing up the merit list.

(iii) Pass any order or direction deemed just and proper in the facts and circumstances of the case with award of the cost of this application in favour of the applicant against the respondents.

2. It is stated by the applicant that his father, Late Shri Abdul Naeem Khan, died in harness on 12.9.1996 leaving behind his widow, 3 sons, 2 daughters and 2 daughters not mentioned. Since they did not have any immovable property and no other source of income, so he applied for compassionate appointment. Though one son is employed but he is living separately with his own family. They received

Rs. 3,68,781/- as terminal benefits but that was spent in repaying the loan for father's treatment and marriage of the daughter. The case was duly recommended vide letter dated 5.11.1996 (page 20). In spite of exchanging number of letters nothing was being done, so finally a petition was filed before the Hon'ble Defence Minister, whereupon applicant was informed that since application was given on earlier format, therefore, case could not be processed. They were directed to forward fresh application as per Circular dated 21.12.1999. Counsel for the applicant thus submitted that applicant cannot be blamed for delay of 7 years from 1996 till October, 2003.

3. Respondents have opposed this O.A. They have stated after the death of Abdul Naeem Khan, LDC, his wife had requested for grant of compassionate appointment in favour of her son Mohd. Azeem Khan on 7.10.1996 which was forwarded to the Integrated Headquarter of MOD (Army) vide letter dated 22.9.1999. Integrated Headquarter of MOD (Army) had informed that the case would be considered on availability of vacancy. Fresh application was called by Integrated Headquarter of MOD (Army) on new format vide letter dated 6.10.2003. Fresh application was forwarded on 8.10.2004. Review committee was held on 6.2.2007 wherein applicant's case was also considered but rejected. They have explained according to the Planning Committee the Poverty line amount to income below 1,767.20 (353.44 X 5) for a family of 5 members per month and the same is annexed as Annexure-C to the counter-affidavit.

4. Smt. Sitara Begum wife of the deceased has received the following amount:a. Death gratuity Rs. 1,99,056/-b. Final payment of GPF Rs. 92,981/-c. Group Insurance CGEGIS saving Rs. 36,762/-d. Leave encashment of unavailed EL Rs. 39,982/-e. Encashed rate of family pension Rs. 2,900/- w.e.f. 13.9.1996 to 12.9.2003f. Normal rate of family pension Rs. 1740/- w.e.f. 13.9.2003 to till date 5. As far as details of children given by applicant, respondents have stated it does not match with the service documents. As per records, there were 6 children and not 7, as mentioned by the applicant.

Moreover, different ages have been mentioned. One of the sons was Central Government employee so it could not have been shown no other income. The wife

is getting enhanced pension @ 2900 plus other allowance w.e.f. 13.9.1996 to 12.9.2003 and thereafter she has been granted Rs. 1740/- and other allowance. They have also stated the deceased was left with 5 years 4 months 19 days service and not over 10 years. The case has been rejected after due consideration, therefore, they have prayed it may be dismissed.

6. I have heard both the counsel and perused the pleadings. Law on compassionate appointment is well settled by now. No body can claim compassionate appointment as a matter of right. A person only has right of consideration. So long a person's case has been considered and rejected, court cannot sit in appeal over the final decision taken by the authorities unless it is shown to be absolutely arbitrary or vitiated by mala fides or non-application of mind. Therefore, all that court is required to see is whether the case has been properly considered or not. Perusal of the records show that proper tables were drawn to assess the candidate's suitability by giving marks under different heading. Applicant was also duly considered but he had scored much less than others. To be precise, there were only 3 vacancies released by Ministry of Defence in the year 2006 against which as many as 1115 applicants were considered. The last candidate, who was recommended, had scored 73 out of 85 marks while applicant had obtained only 49 marks out of 89 each. 15 marks under other income as everyone was filing certificate of no income/property and it was not easily verifiable. From above, it is clear if there were no of other candidates who were more deserving than the applicant, naturally all the applicants could not have been recommended as vacancies were only 3, therefore, in this process if applicant was eliminated, it calls for no interference.

7. It goes without saying that since number of applicants is far more than the vacancies meant for compassionate appointment, therefore, all the applicants cannot be accommodated. Those cases, which are more deserving have to be given preference over less deserving, therefore, in this process if they are eliminated, they cannot have any grievance.

8. In the instant case it is relevant to note that though applicant's case has not been rejected on this ground but the fact is that one brother of the applicant was

already employed whereas there are number of other families with absolutely no other source of income. Moreover, as per the details shown by applicant himself in para 4.1 all the children were adults barring one son, who was also 17 years of age, therefore, there was no such liability of minor children. In these circumstances, if applicant's case has been rejected, we do not find any illegality in the order.

9. At this juncture it would be relevant to refer to the judgment of Hon'ble Supreme Court in the case of SAIL and Anr. v. Avdhesh wherein it was held as under: The Memorandum of Agreement for appointment on compassionate ground had been evolved by the employer so that on the sudden death of an employee his dependents would not be on the roads as destitutes and can maintain themselves if an appointment is given to any one of the dependents of the deceased. Such a scheme cannot at all be conceived if some other dependent of the deceased is already in service. The very purpose for which such scheme had been evolved would get frustrated if a claim on priority basis is made by a dependent of the deceased notwithstanding the fact that other dependent of the deceased is already in service.

10. In view of above, I do not find any ground to interfere in this case. O.A. is accordingly dismissed. No order as to costs.

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