

W.P. No.17853/2012

31.10.2012

Smt. Sarita Acharya, learned counsel for the petitioner.

Heard.

Order dated 18th September 2012 passed by the Central Administrative Tribunal, Jabalpur Bench, Jabalpur in Original Application No. 43/2010 is being assailed vide this petition under Article 227 of the Constitution of India. Vide impugned order Tribunal declined to interfere with the order dated 7.7.2004; whereby, application of the petitioner for appointment on compassionate ground in lieu of death of her husband was rejected.

Petitioner's husband Kamlesh was employed as Labourer with the respondent Central Ordnance Depot. He died on 29.9.2001. Petitioner applied for compassionate appointment on 18.12.2001. The claim was negatived vide order dated 2.7.2002 after considering her case thrice as per prevalent Rules. Petitioner preferred Original Application No. 609/2002 before the Tribunal which was dismissed on 11.9.2003. The said order was, modified, by order dated 12.11.2003 passed in W.P. No. 1794/2003 by this Court whereon respondents were directed to consider the application of the petitioner for compassionate appointment.

Case of the petitioner was considered by the Board, which convened its meeting on 29.3.2004. The petitioner since

was not found suitable for compassionate appointment, a detailed order was passed on 7.7.2004.

Having been unsuccessful in a contempt petition which was disposed of on 8.4.2005 with a liberty to the petitioner to avail the remedy as per law, the petitioner almost after a period of five years filed an Original Application No. 43/2010 on 8.1.2010, questioning the order dated 7.7.2004.

It was the contention of the petitioner that her candidature has been unduly rejected as the marks were not allotted to her properly and in accordance with the policy laid down by the Central Government. It was claimed that instead of 57 marks in first two considerations and 72 and 69 marks in third and fourth considerations respectively the petitioner was entitled for 82 marks which were more than the marks obtained by last selected candidate in each of the selections. Allegation on extending favouritism was also levelled qua certain employees appointed on compassionate grounds. It was claimed that under the heading of number of dependents and number of unmarried daughters the petitioner was not accorded proper marks.

The Tribunal after appreciating rival contentions and taking into consideration the circular dated 9.3.2001 and the revised circular dated 9.4.2002 by Ministry of Defence regarding 'Scheme for compassionate appointment – relative merit points and revised procedure for selection' and after perusal of extract of mark-sheet considered in the Board

meetings negated the claim of the petitioner. The Tribunal observed:

9. The respondents were asked by us to submit the extract of mark-sheet, considered in three Board meetings. On perusal of it, we find that in the first Board meeting on 04.03.2012, the applicant was awarded 57 marks while the last selected candidate obtained 69 marks. In the second Board meeting on 28.03.2002, while the applicant was again awarded 57 marks, the last selected candidate got 66 marks. In the third Board meeting dated 27.06.2002, the applicant was awarded 72 marks while the last selected candidate was awarded 81 marks. The respondents have explained the change of marks in the third Board meeting, stating that, due to certain amendments/clarifications, issued by the Ministry of Defence vide letter dated 9th April, 2002, the criteria for awarding of marks was changed and, therefore, the applicant got higher marks, along with other similarly placed candidate, in the third Board meeting.

11. Regarding the applicant's contention pertaining to award of marks based on clarifications issued by circular dated 09.04.2002

for the first two Board meetings also, the learned counsel for the respondents submitted that for all the applicants in the earlier board meetings similar treatment was given in regard to these points. Therefore, the relative position of the applicant will not be affected, even if revised system of marking was made applicable for all the employees considered in these meetings.

12. On perusal of the extract of the mark-sheet considered by the Board of Officers, we find that regarding number of Dependants, for all candidates, minor children and unmarried daughters have not been added to the number of dependents, and this was done only after the clarification of circular dated 09.04.2002. Thus, applicant has no case in this regard as all the candidates, before the Board, were treated in like manner. However, as against the other candidates, applicant was not given any marks on account of one unmarried daughter, though, she was entitled for 5 marks due to it. Therefore, she was entitled for 5 additional marks on the ground of having 1 unmarried daughter at the time of consideration by the first and second board meetings. The applicant has also contended that she should have been awarded 20

marks for the amount of family pension, as her proposed family pension, and not the actual family pension should have been considered and the proposed family pension entitled her for 20 marks. However, on perusal of the records submitted by the respondents, we find that there is no reason to believe that actual family pension has not been considered for awarding the marks. In any case, the instructions of department in this regard are quite clear that the actual family pension is to be considered for awarding the relative merit. Thus, the applicant would be entitled for only 5 additional marks during the first and second Board meeting, which would raise her marks to 62. But we find from the records that even after that, as against 4 posts, there would be 11 persons above her in the first Board meeting. Similarly, in the second Board meeting, against the 4 posts, 7 persons would still be above her. Thus, her application for compassionate appointment would, in any case, have been rejected, even with these additional marks.

Though frantic efforts were made by the learned counsel for the petitioner to dislodge the findings recorded by the Tribunal alleging that the same suffer from vice of perversity,

however, we are not apprised to any material as would contradict the finding recorded by the Tribunal to the effect that, the case of the petitioner was not properly considered in accordance with policy in vogue as would warrant an interference with the impugned order.

In the result petition fails and is hereby dismissed.

(AJIT SINGH)
JUDGE

(SANJAY YADAV)
JUDGE

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