

FROM NO. 21
(SEE RULE 102(1))

ARMED FORCES TRIBUNAL, KOLKATA BENCH

APPLICATION NO: O. A NO. 38 OF 2012

ON THIS 10TH DAY OF JANUARY, 2014

CORAM : HON'BLE MR. JUSTICE RAGHUNATH RAY , MEMBER (JUDICIAL)
HON'BLE LT GEN KPD SAMANTA, MEMBER (ADMINISTRATIVE)

1. Birendra Murmu
S/o Late Thapa Murmu,
R/o Vill. Nadigan, P.O. Anlakuda,
P.S. Chandua, Dist. Mayurbhanj,
Orissa – PIN 757021

2. Smt. Methi Mani Devi,
W/o Late Thapa Murmu,
R/o Vill. Nadigan, P.O. Anlakuda,
P.S. Chandua, Dist. Mayurbhanj,
Orissa – PIN 757021

.....Applicants

-VS-

1. Union of India service through
The Secretary, M/o Defence,
South Block, New Delhi-1

2. The Director General Resettlement,
Under the Ministry of Defence. Govt. of India,
West Block- IV, R.K.Puram,
New Delhi-110 066

3. The Additional Director General
Recruiting(Rig 50R)(E)
AG's Branch. Army Headquarters,
West Block-III
R. K. Puram, New Delhi-110 066

4. The Senior Record Officer,
Defence Security Corps, Records,
At Mill Road, PO & PS & Dist. Cannanore,
Kerala

5. The Sr. Record Officer,
Abhilekh Karyalaya, Recods,
The Bihar Regiment, C/O 56 APO,
PIN : 900 441
6. The Commandant,
The Bihar Regimental Kendra,
The Bihar Regiment Centre,
Danapur Cantonment,
C/o 56 APO, PIN- 900 441
7. Branch Recruiting Officer (Army)
Tulsipur, Cuttack, Orissa

..... Respondents.

For the Applicant : Mr. Nilanjan Kar, Counsel

For the respondents : Mr. B.K.Das, Counsel

ORDER

PER HON'BLE LT GEN KPD SAMANTA, MEMBER (ADMINISTRATIVE)

This original application has been filed jointly by the two applicants, who are son (Applicant No.1) and mother (Applicant No.2) by relation, praying for a direction upon the respondents to enroll the Applicant No.1 in the Indian Army as a Clerk under the Rehabilitation Assistance Scheme.

2. The facts, as stated by the applicants in this O.A., Shri Thapa Murmu, who is the father of applicant No.1 and husband of applicant No.2, was enrolled in the Bihar Regiment of Indian Army on 30.10.1963 as a Sepoy and was discharged on 31.10.1978 on completion of his terms and conditions of service. Subsequently, he was enrolled in the Defence Security Corps (DSC for short) on 27.08.1981 and was invalidated out on 30.03.1985 for being in low medical category. Subsequently the said Shri Thapa Murmu died on 16.07.1985 leaving behind his widow (applicant No.2) and two sons, younger son being applicant No.1 in this case and one daughter. Upon his death, applicant No.2 i.e. the widow was granted ordinary family pension

with effect from 16.07.1985. At that point of time the present applicant No.1 was aged only about 5 years, his date of birth being 10.10.1981. After the untimely death of her husband, the Applicant No.2 could not apply for any compassionate appointment because of her ill health.

3. The applicant No.1 prosecuted his studies and passed Secondary Examination in the year 1998 and attained majority in October, 1999. Thereafter, on 01.07.2000 he made an application for an appointment on compassionate ground under the Unit HQ Quota (UHQ) in the Indian Army being the dependent son of an ex-serviceman. It is further stated that the elder son of the deceased army personnel was not interested in maintaining the family and, therefore, the widow and other members of the family of the ex-serviceman were in penury for which such prayer for appointment/employment under UHQ was made. It appears that his application was forwarded from one office to another and the applicants went on making repeated representations praying for such appointment. Ultimately, by a letter dated 11.02.2009 it was intimated that the case of the applicant could not be considered as he was over-aged.

4. Being aggrieved, the applicants filed a Writ Petition before the Hon'ble Orissa High Court vide No. WP(C) 18825 of 2010. However, the said writ petition was subsequently withdrawn on 11.04.2011 with liberty to file an application before this Tribunal as in the meanwhile the Armed Forces Tribunal had come into force. Accordingly, the present application has been filed praying for quashing of the order dated 11.02.2009 and for a direction upon the respondents to employ the Applicant No.1 as a Clerk in accordance with his qualification under the Rehabilitation Assistance Scheme.

5. The respondents have contested the application by filing a counter affidavit. However, they have not disputed the facts averred by the applicants. It is stated that

there was discrepancy in the date of birth of the applicant inasmuch as in the school certificate the date of birth of applicant No. 1 was recorded as 10.10.1981 whereas in the service documents of his late father i.e. the ex-Army personnel, the date of birth of applicant No.1 is recorded as 22.07.1980. Therefore, when the discrepancy was noticed, the applicants were asked to rectify the defect. But nothing was done from their part. It is also stated that the prayer for compassionate appointment has been made long 15 years after the death of the employee, and from that aspect also the prayer could not be considered.

6. It is further submitted that as per Govt. of India policy decisions, compassionate appointment can be given only out of 5% direct recruitment quota in civilian Gr. 'C' & 'D' posts and a designated committee that assesses the degree of priority while providing such employment assistance. There is also time limit fixed by the Govt. of India, Department of Personnel and Training (DOPT) for making such applications. It is also stated that in the instant case, the applicants continued to survive without any financial assistance from the Govt. by way of employment assistance for so long a period (nearly 15 years) and, therefore, it is clear that the family is not in dire need of any job assistance from the Govt. That apart, as the application for compassionate appointment has been made long after 15 years of death of the employee, the case could not be considered on priority basis.

7. The respondents have subsequently filed two supplementary affidavits, the last one being filed on 11.09.2013 wherein they have annexed a policy letter dated 12.12.2011 (Annex. R14) in which it is clarified that where there is variation up to 366 days in the date of birth recorded in the official record and the educational certificate of the candidate, it may be taken as a "minor variation" and the case can be processed. However, if such variation is more than 366 days, it is a case of "major

variation” and the candidate cannot be given any benefit of Unit HQ Quota for recruitment. In the present case the applicant is not eligible to avail the facility of Unit HQ quota. It is, therefore, contended that the case of the applicant has no merit and the application should be dismissed.

8. We have heard the Ld. Counsels for the parties and have gone through the documents placed on record including various policy circulars.

9. Mr. Nilanjan Kar, Ld. Advocate for the applicant has not disputed the fact that there was indeed a discrepancy in the date of birth as recorded in the educational certificate of the applicant No.1 and the entry that was made in the service documents of his father. He, however, contended that for such discrepancy the applicant No.1 cannot be blamed; since his father is dead, no explanation can also be given to improve the case as to why a wrong date was entered in the service record of the father, the deceased soldier. It is further contended that the applicant did not suppress anything and disclosed the correct date of birth as recorded in the educational certificate and the respondents all along knew about this discrepancy but still they did not reject the case and insistently kept the matter pending for ten long years until they rejected the case only on the ground that the applicant became over-aged in the year 2009 for such employment. He contended that the applicants have been harassed unnecessarily for a long period. However, he very fervently made a prayer that the case of the applicant be considered for any civilian job in the ministry of defence; and relaxation of age can be granted to him being a ST candidate. His case should be considered sympathetically and he should be offered an appointment commensurate with his qualification so that the family can survive.

10. Ld. Counsel for the respondents has, however, referred to the policy letter and submitted that in view of the variation of the date of birth of the applicant for more

than 366 days, his case could not be considered for enrolment under the Unit HQ quota in the Army. The applicant has also become age-barred in the meanwhile.

11. We have considered the matter carefully. It is not disputed that when the ex-serviceman died in the year 1985, the applicant No.1 was a minor, his date of birth being 10.10.1981. Therefore, obviously he could not apply for any employment assistance under the relevant scheme. The widow also did not apply because of her ill health. It is also admitted that the widow has been getting family pension after the death of her husband. After the applicant No.1 became a major in the later part of 1999, he preferred an application in the year 2000 for enrolment in the Army under Unit HQ quota being son of an ex-serviceman. Along with his application he submitted necessary particulars. His case was also forwarded to the appropriate authorities for consideration. Thereafter the matter was considered at different levels and at different times with varied directions to the applicants to comply by way of submission of different documents. Ultimately, by a letter dated 11.02.2009 (Annex. A8) the applicant No.2 was informed that enrolment in the Army for her son i.e. the applicant No.1 could not be considered as he had crossed the age limit for such recruitment. It also appears from the subsequent communication dated 07.03.2009 (Annex. A9) that the local authority requested the Bihar Regimental Centre i.e. the parent unit of his late father to consider his case for compassionate appointment in the civilian post of Clerk in view of the poor family condition by way of granting age relaxation according to rules as he belongs to ST community. The Bihar Regimental Centre, however, did not pursue the case either with the State Govt. or with the MoD for consideration for a civil post under ST category.

12. It appears that the main hurdle for the enrolment of the applicant No.1 under the Unit HQ quota is the discrepancy and/or variation in date of birth recorded in the

school certificate and that recorded in the service record. Admittedly the discrepancy is more than 366 days and as per policy letter such discrepancy for more than 366 days is a major deficiency and mainly on that ground his case was turned down. It is also to be noted that in the year 2000 when the applicant No.1 made his first prayer for enrolment after attaining majority he was within the age limit but the case was kept pending for a long time and ultimately he became age-barred for such enrolment in the Army.

13. As per compassionate appointment scheme framed by Govt. of India, appointments against Gr. 'C' & 'D' posts can be made to the dependent son or daughter or widow of a Govt. servant who dies in harness. In the present case, undoubtedly the father/husband of the applicants was a retired soldier and not one who died in harness. In this case the first application was made long 15 years after the death of this retired service personnel because the applicant waited for attaining majority as admittedly when his father i.e. Army personnel died, the applicant No.1 was only 5 years old.

14. However, it has been held by the Hon'ble Apex Court time and again that compassionate appointment scheme is framed to provide immediate succor to the surviving family members after the sudden death of the only bread earner of the family. It is also held that compassionate appointment is an extraordinary measure in an exclusion of normal rules of promotion. Therefore, after long lapse of time, such appointment ordinarily cannot be given because if during all these years, the family could survive without such employment assistance, then it has to be presumed that the financial condition of the family is not such so as to provide such assistance in relaxation of normal rules. Moreover the deceased soldier was a pensioner and his widow, applicant No. 2, is a beneficiary of family pension as due to her.

15. We, however, notice that the applicant belongs to ST community and resides in a very remote village in the State of Orissa. His elder brother has not been looking after the family. Although the widow of the deceased soldier is getting ordinary family pension, it may not be sufficient in today's world to bring up a family of three. It is also not disputed that even though the applicant is over-aged for enrolment in the Army under unit headquarter quota, but for the purpose of civil employment he could still be eligible and within the age limit after granting relaxation for belonging to ST community for which there is specific quota in different Govt. jobs.

16. In view of the above discussion, we dispose of this O.A. with a direction upon the respondents to consider the case of the applicant No. 1 for any civil appointment, if eligible within rules as a ST candidate, who is a son of an ex-serviceman in terms of rules after giving him admissible age relaxation as and when vacancy would be available. The applicant is also at liberty to apply for such job in other forum like State Govt. or Govt. Undertakings where similar benefits and facilities are available for dependent wards of ex-serviceman, if so advised.

17. No cost.

18. Let a plain copy of the order duly countersigned by the Tribunal officer be furnished to both sides after observing due formalities.

(LT. GEN. K.P.D.SAMANTA)
MEMBER (ADMINISTRATIVE)

(JUSTICE RAGHUNATH RAY)
MEMBER (JUDICIAL)