

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 39 of 2017

**Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

Sangram Keshari Rout, aged about 40 years, S/o Late Purusottam Rout, At-Chandanpur, PO-Patapur, PS-Kakatpur, Dist.-Puri.

.....Applicant

VERSUS

1. Union of India represented through Secretary, Ministry of Finance, Govt. of India, new Delhi.
2. Commissioner of Central Excise, Kolkata-II, Customs House, M.S.Building (2nd Floor), 15/1 Strand Road, Kolkata-700001.
3. Additional Commissioner (P&V), Office of the Commissioner of Central Excise, Kolkata-I Commissionerate, 180 Shanti Pali, Kendriya Utpada Sukla Bhawan, 1st Floor, E.M.Bye Pass, Kolkata.
4. Assistant Commissioner (P&E), Office of the Commissioner of Central Excise, Kolkata-I Commissionerate, 180 Shanti Pali, Kendriya Utpada Sukla Bhawan, 1st Floor, E.M.Bye Pass, Kolkata.
5. Joint Commissioner (P&V), Central Excise, Kolkata-II, Customs House, M.S.Building (2nd Floor), 15/1 Strand Road, Kolkata-700001.

.....Respondents

For the applicant : Mr.S.S.Pratap, counsel

For the respondents: Mr.A.C.Deo, counsel

Heard & reserved on : 11.2.2020

Order on :18.05.2020

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The applicant has filed the present OA seeking the following relief :

“In view of the facts and circumstances stated above, it is therefore humbly prayed that, this Hon'ble Tribunal be graciously pleased to admit the Original Application and issue notice to respondents to show cause as to why the applicant shall not be extended with the compassionate appointment when recommendation have been made by the competent authority for appointment under the Rehabilitation assistance Scheme and the applicant is otherwise eligible to get the appointment under the said scheme and order dtd. 27.4.2016 at Annexure A/11 may be quashed.

And pass any other order/orders as deemed fit and proper in the facts and circumstances of the case.”

2. The applicant's father while working as a Sepoy under the respondents, expired on 7.2.2000. Then the applicant applied for appointment on compassionate ground (In short ACG)

with the legal heir certificate dated 25.5.2000 at Annexure-A/2. The economic condition of the family was inquired through the Inspector, Raiganj. It is averred by the applicant that in spite of regular contact with the authorities, no decision on his application for ACG was taken by the authorities. Vide letter dated 31.1.2011 (Annexure-A/8), the applicant was advised to liaise with Kolkata Commissioner's office about his request for ACG. But since no decision was taken by the authorities, the applicant filed the OA No. 773/2012 which was disposed of vide order dated 17.10.2012 (Annexure-A/9) directing the respondent no. 2 to consider the case of the applicant under the Scheme. Accordingly, the case of the applicant was considered and rejected vide order dated 27.4.2016 (Annexure-A/11) which is impugned in this OA.

3. It is stated in the OA that the ground mentioned in the impugned order at Annexure-A/11 is baseless as the applicant's family is suffering till date and the said reason is against the provisions of the Scheme for compassionate appointment.

4. Counter has been filed by the respondents stating that the applicant's case was considered by the Departmental Screening Committee (in short DSC) on 19.5.2005 for Tax Assistant and the case was closed as per the Board's letter dated 15.7.2004. The matter was reconsidered after direction of the Tribunal on 6.12.2012. As per the enquiry report dated 4.1.2013, the condition of the family was not good. The details of the family have been furnished at Annexure-R/4 of the Counter. It is also stated in the Counter that vide letter dated 10.8.2015 (Annexure-R/2), the applicant was asked whether he was willing for the post of Havildar in case he could not be selected for Tax assistant. It is also stated that the case has been considered as per the DOPT OM dated 16.1.2013 (Annexure-R/1) and the Bboard's clarification dated 4.10.2002 (Annexure-R/3 series).

5. No Rejoinder has been filed by the applicant. Learned counsel for the applicant was heard. He submitted that the case has not been considered on merit as per the Scheme. He pointed out to the averments in the para 7 of the Counter in which the financial status of the applicant's family has been mentioned and it was a deserving case.

6. Per contra, learned counsel for the respondents was heard. He opposed the submissions of the applicant's counsel on the ground that the applicant after submission of the application and documents required for ACG on 11.4.2002, did not take any action in the matter till he filed the OA No. 773/2012.

7. With regard to the pleadings as well as the submissions by both the parties, the question to be decided is whether the reason mentioned in the impugned order for rejecting the case is sustainable in the light of the instructions of Government on ACG issued from time to time. The impugned order dated 27.4.2016 (A/11) stated as under:-

"In continuation with the above, the case has been placed before the Departmental Screening Committee held on 18th December, 2015.

The Committee has gone through the case. It is observed that the earlier DSCs have deferred the issue to later meetings. The family has been able to sustain itself more than 14 years after the death of the govt. servant. Hence it cannot be said that they require immediate assistance to overcome the hardships due to the death of the govt. servant. Therefore, the family cannot be said to be in penury. The Committee opined that the case is not fit for compassionate appointment”.

The only ground for rejection is that the family was able to sustain for 14 years. But the averments in the Counter about the financial condition of the family, stated to be not good were not considered.

8. It is also stated in para 7 of the Counter as under:-

“The case was placed before the DSC meeting held on 27.12.2012 and the case deferred as the enquiry report is still awaited from Kol-II Commissionerate. Further, the case was placed before DSC dated 10.1.2013 and the decision taken by the committee that it is a fit case for consideration for next DSC meeting. The DSC held on 20th May, 2013 and the case has been deferred to next DSC meeting as and when vacancy arises.”

Whether these circumstances have been considered by the DSC on 18.12.2015 when the decision as per the impugned order was taken, is not clear from the pleadings of the respondents.

9. We also take note of the OM dated 26.7.2012 of the DOPT (Annexure-R/3 series of the Counter) in which it is stated as under:-

“2.....The very fact that the family has been able to manage somehow all these years should normally be taken as adequate proof that the family had some dependable means of subsistence. Therefore, examination of such cases call for a great deal of circumspection. The decision to make appointment on compassionate grounds in such cases was to be taken only at the level of the Secretary of the Department/Ministry concerned.”

Hence, in cases like that of the applicant there was a possibility to consider the claim on merit by the Respondent no. 1, particularly in view of the need for the assistance for the family as mentioned in the Counter.

10. In addition, whether any follow up action was taken as per the letter of the respondents at Annexure-R/2 to consider the case of the applicant for the post of Havildar has not been mentioned in the Counter. It is not disclosed in the impugned order at Annexure-A/11 whether the applicant was considered for the post of Tax assistant or Havildar.

11. Taking into the facts and circumstances as well as the instructions of the DOPT in the matter as discussed above, we are of the opinion that the case of the applicant deserves to be reconsidered as per the Scheme. Accordingly, the respondents are directed to reconsider the case in accordance with the Scheme for compassionate appointment, keeping in mind the discussions/observations in this order and communicate their decision to the applicant within four months from the date of receipt of a copy of this order. The applicant will be at liberty to inform the respondents within seven days, if he is willing to be considered for the post of

Haviladar in reply to the letter at Annexure-R/2, if the same has not been furnished already by the applicant earlier. The respondents will also be at liberty to inquire into the present financial condition of the family before reconsidering the case as above.

12. The OA is allowed to the extent as mentioned above. No order as to cost.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

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