CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA

O.A/350/1343/2016
M.A/350/370/2017

Date of Order: 4.5.2020

Coram: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. (Ms.) Nandita Chatterjee, Administrative Member

Amit Mahara, Son of late Dilip Mahara, residing at Rampurhat Chandmari Uttarpally, Mathpara, P.O & P.S Rampurhat, District – Birbhum, Pin code – 731224.

---Applicant

-Versus-

1. Union of India, service through the Secretary, Department of finance & Revenue, New Delhi , Pin code – 110011.
2. The Collector, Central Excise, office at Bolpur, Birbhum, Pin Code 731204.
3. The Commissioner of Central Excise, Kolkata-II, 51/1 Strand Road, Custom House, M.S Building 2nd Floor, Kolkata – 700001.
4. The Commissioner of Central Excise, Bolpur Commissionerate, Govt. of India, Ministry of Finance, (Department of Revenue) office at Sian, Nanoor Chandidas Road, Bolpur, Pin 731204.
5. The Chairman, Central Board of Excise and Customs, Ministry of Finance, Govt. of India, New Delhi Pin Code – 110011.
6. CPIO & Joint Commissioner (P&V) Central Excise, Bolpur Commissionerate, Govt. of India, Ministry of Finance, (Department of Revenue) office at Sian, Nanoor Chandidas Road, Bolpur, Pin 731204.
7. Additional Commissioner (P&V) Central Excise & S. Tax, Bolpur, Bolpur Commissionerate, Govt. of India, Ministry of Finance (Department of Revenue) office at Sian, Nanoor Chandidas Road, Bolpur, Pin 731204.

--Respondents

For The Applicant(s): Mr. P. Mukherjee, counsel
Ms. S. Saha, counsel
For The Respondent(s): Ms. D. Nag, counsel

ORDER

Per: Ms. Bidisha Banerjee, Member (J):

Ld. counsels were heard and records were perused.

2. The M.A No. 370/17 seeking deletion of Respondent no. 1&5 from the array is not allowed, as the said respondents may be required to condone the delay in seeking a reconsideration.

3. This application has been preferred to seek the following reliefs:

"a) to issue an appropriate order or direction upon the Respondent authorities to cancel, set aside and rescind the impugned letter dated 23.05.2016 issued by the Commissioner of Central excise, Kolkata II and also to issue appointment letter under compassionate ground in favour of the petitioner for the post of "Sepoy".

b) An appropriate order do issue directing the concerned respondent to release the appointment letter under compassionate ground according to petitioner's application.

c) An appropriate direction or directions upon the concerned respondents to transmit entire records of the case and on perusal thereof let the impugned decision dated 23.05.2016 be quashed and set aside and the conscionable justice may be rendered.

d) To issue any other order orders as the Hon'ble Tribunal deems fit and proper."

4. The order dated 23.05.2016 impugned in the present OA is extracted hereunder for clarity:

"To
Shri Amit Mahara,
s/o Late Dilip Mahara, Ex-Sepoy, Bolpur comm'te

Address: Chetumi Math Para, Chandmari Road, P.O+P.S –Rampurhat, Dist – Birbhum, Pin 731224.

Subject- Appointment under compassionate ground – Corres/Reg

The case of Shri Amit Mahara, date of birth – 30.12.1982 [s/o Late Dilip Mahara, (date of death –12.10.2001), Ex-Sepoy, Bolpur comm'te Ex-UDC, Bolpur comm'te] has been thoroughly examined in the Departmental Screening Committee (DSC) meeting held on 07.01.2016, 08.01.2016 & 09.02.2016 for appointment under compassionate ground for the post of Group 'C' (Havalder) under the combined cadre control of the Principal Chief commissioner, Central Excise Kolkata Zone. His application was duly consider5ed by the committee with reference to facts on records and in the light of various judicial pronouncements & directions / guidelines issued by the Competent Authority in this regard. The DSC took note of the basic guideline of the Scheme as

enshrined in Office Memorandum under F.NO14014/02/2012-Estt.(D) Dated 16.01.2013 of DoP&T which are;

a) The family is indigent and deserves immediate assistance for relief from financial destitution; and
b) Applicant for compassionate appointment should be eligible and suitable for the post in all respects under the provisions of the relevant Recruitment Rules.

The Screening Committee took note of the principles set out by the Hon'ble Supreme Court in the case of Umesh Kumar Napgal vs State of Haryana & Others. The Committee also perused the observation of Hon'ble Supreme in its judgement dated 05.04.2001 in Civil Appeal No. 2206 of 2006 filed by Local, Administration 'Department vs. M. Selvanayagam. The Committee also lent reliance on the order of Hon'ble CAT, Calcutta Bench in O.A 1004/2011 dated 21.09.2012 in the case of Chaman Bibi vs. U.OI & Ors, which rejected the plea of the applicant namely Chaman Bibi on the ground which reads as under:

> "Facts of the present case are that more than a decade has already expired. The object of the scheme is to provide immediate financial assistance".

The committee has also extensively gone through the provisions of the directions of the Competent Authority including the OMs of DoP&T as under:

(i) consolidated instructions on compassionate appointment of DoP&T's letter under F.NO14014/02/2012-Estt.(D) Dated 16.01.2013 (ii) DoP&T's letter under F.No. 14014/3/2011-Estt(D) Dated 26.07.2012 (iii) DoP&T's letter under F.No. 14014/02/2012-Estt (D) Dated 07.10.2014, (iv) FAQs of DoP&T's letter under F.No.14014/02/2012-Estt.(D) Dated 30.05.2013 and (v) FAQs of DoP&T's letter under F.No.14014/02/2012-Estt.(D) Dated 25.02.2015.

Keeping in mind the above instructions and judicial pronouncements, the Department Screening Committee (DSC) after careful consideration, has recommended that "the incidence of death has occurred more than a decade

back. Hence, does not merit any further consideration in view of the decisions of the Hon'ble Courts/ Tribunals as discussed above.

This issued with the approval of the competent authority."

5. It is evident from the records that the case was once closed in 2005, in view of the DOPT OM dated 05.05.2003. It was reopened on the prayer of the applicant, made on 13.08.2012 in view of the DOPT Circular dated 26.7.2012 that reads as under:

"**Government of India**
Ministry of Personnel, Public Grievances and Pensions
(Department of Personnel & Training)

North Block, New Delhi
Dated the 26th July, 2012

OFFICE MEMORANDUM

Subject:- **Review of three years time limit for making compassionate appointment.**

Xxxxxxxxxxxxxxxxxxxxxx

2.This Department's O.M. No. 14014/6/ 1994-Estt. (D) dated 09.10.1998 provided that Ministries/Departments can consider requests for compassionate appointment even where the death or retirement on medical grounds of a Government servant took place long back, say five years or so. While considering such belated requests it was, however, to be kept in view that the concept of compassionate appointment is largely related to the need for immediate assistance to the family of the Government servant in order to relieve it from economic distress. 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.

3. Subsequently vide this Department's O.M. No. 14014/19/2002-Estt. (D) dated 5th May, 2003 a time limit of three years time was prescribed for considering cases of compassionate appointment. Keeping in view the Hon'ble High Court Allahabad judgment dated 07.05.2010 in Civil Misc. Writ Petition No. 13102 of 2010, the issue has been re-examined in consultation with Ministry of Law. It has been decided to withdraw the instructions contained in the O.M. dated 05.05.2003."

Unfortunately, while DOPT has allowed cases closed in 2003 onwards to be reopened in 2012 i.e almost after 9 years, the case has been closed on the ground that "the incidence of death has occurred more than a decade back".

6. In such view of the matter, we feel it appropriate to quash the speaking order dated 23.05.2016 and direct a reconsideration strictly in terms of DOPT OM Dated 10.09.98 as envisaged in circular dated 26.7.12 (supra) and issuance of appropriate order within 4 months from the date of receipt of a copy of this order. No costs.

(Nandita Chatterjee)
Member (A)

(Bidisha Banerjee)
Member (J)

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