

LIBRARY

O. A. No. 350 / 1195 of 2016

IN THE MATTER OF:

1. **ARCHANA BISWAS**, wife of Late Madhusudan Biswas, aged about 57 years, prematurely retired on the ground of medical incapacitated from the office of the Principal Controller of Accounts (Fys), under Ministry of Defence, 10A, Shaheed Khudiram Bose Road, Kolkata- 700001 from the post of Auditor and residing at Village-Bonamalipur (West), Post office and Police Station-Barasat, District-24-Parganas (North); Pin- 700124

2. **SUBHASISH BISWAS**, son of Late Madhusudan Biswas and Smt. Archana Biswas, aged about 40 years, residing at Village-Bonamalipur (West), Post office and Police Station-Barasat, District-24-Parganas (North); Pin- 700124

...APPLICANTS

-VERSUS-

1. UNION OF INDIA, service through the Secretary, Ministry of Defence, South Block, New Delhi;
2. THE PRINCIPAL CONTROLLER OF ACCOUNTS (Fys.). Ministry of Defence, having her office at 10A, Shaheed Khudiram Bose Road, Calcutta- 700001;
3. THE CONTROLLER OF ACCOUNTS (A&N), Ministry of Defence, having his office at 10A, Shaheed Khudiram Bose Road, Calcutta- 700001;
4. SABYASACHI MUKHERJEE, working to the post of Auditor in the office of Principal Controller of Accounts (Fys.), 10A, Shaheed Khudiram Bose Road, Calcutta- 700001.

...Respondents.

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA

No. O.A. 350/1195/2016

Date of order: 15.5.2020

Present : Hon'ble Mrs. Bidisha Banerjee, Judicial Member

Archana Biswas & Another
Vs.
Union of India & Others(M/O Defence)

For the Applicant : Mr. P.C. Das, Counsel

For the Respondents : Mr. B.P. Manna, Counsel

ORDER

Per Bidisha Banerjee, Judicial Member

This application has been preferred to seek the following reliefs:-

"a) Leave may be granted to the applicants to file this application jointly under Rule 5(a) of the Central Administrative Tribunal (Procedure) Rules, 1987;

b) To quash and/or set aside the impugned speaking order dated 02.05.2016 being No.778/AN-II/COMP. APPTT/SB issued by the Controller of Accounts(Fys.) in the office of Principal Controller of Accounts(Fys.), Ministry of Defence, Kolkata by which the case of the applicants has been rejected on the ground which is not acceptable in the eyes of law being Annexure A-21 of this original application;

c) To pass an appropriate order directing the respondent authority to consider the case of the applicants in respect of grant of compassionate appointment in favour of the applicant No.2 in any suitable post to save distress condition of the family;

d) To quash and/or set aside the appointment of the private respondent dated 13.06.2011 who got compassionate appointment during pendency of the case of the applicants and whose case is not deserving than the present applicant and without considering the case of the present applicants, the appointment was given in favour of the private respondent which is not tenable in the eyes of law and the terminal benefits and pension which got by the applicant No.1 is much less than the benefit given in favour of the mother of the private respondent, despite that the said Sabyasachi Mukherjee got appointment on compassionate ground and the respondent authority illegally deprived the present applicants which is a hostile discrimination under Article 14 and 16 of the Constitution of India."

2. The speaking order impugned in the present O.A. is extracted verbatim herein below for clarity:-





प्रधान लेखा नियंत्रक (फिक्टरीज)

OFFICE OF THE

PRINCIPAL CONTROLLER OF ACCOUNTS (FYS)

रक्षा मंत्रालय MINISTRY OF DEFENCE

१०-ए, शाहीद खुदोराम बोस रोड, कोलकाता - ७०० ००९

10-A, SHAHEED KHUDIRAM BOSE ROAD, KOLKATA - 700 001

NO. 778/AN-III/COMP.APPTT/SB

DATED: 02/05/2016

ORDER

WHEREAS, Smt Archana Biswas was employed as clerk in this organization on compassionate ground and subsequently promoted to the post of Auditor. She was medically boarded out from service on 01/01/2000 (FN). Shri Shubhashis Biswas, son of Smt Archana Biswas had submitted an application dated 21/02/2000 requesting for appointment on compassionate ground in the department.

WHEREAS, the objective of granting compassionate appointment to a dependent family member of a Govt. servant dying in harness or who is retired on medical grounds, thereby leaving his family in penury and without any means of livelihood is to relieve the family of the Govt. servant concerned from financial destitution and to help it get over the emergency.

WHEREAS, Shri Shubhashis Biswas son of Smt Archana Biswas, Ex-Aud. vide his application dated 21/02/2000 requested this office for his employment on compassionate ground. The request of the said Shri Shubhashis Biswas for compassionate appointment was examined sympathetically by the Competent Authority of this Organisation after taking into account all the aspect relevant to the matter but could not be considered for want of vacancy.

WHEREAS, the Hon'ble Central Administrative Tribunal, Calcutta Bench in consideration of the Original Application No. 615 of 2009 filed by Smt. Archana Biswas & Another against the order of this office refusing appointment in respect of Shri Shubhashis Biswas on compassionate ground passed an order dated 23/09/2011 directing that the applicant's case should be considered for compassionate appointment on merit along with others in the next meeting of the Circle Relaxation Committee. It was also directed by the Hon'ble Tribunal that the Circle Relaxation Committee will consider the applicant's case untrammelled by DOP&T's O.M dated 05/05/2003 which has been quashed. Being aggrieved the department filed Writ Petition No 322 of 2012 challenging the order of the Hon'ble Tribunal in the Hon'ble High Court Kolkata. The Hon'ble High Court, Kolkata vide order dated 15/01/2013 in WPCT No 322 of 2012 pronounced the verdict as "We see no reason to interfere with this order passed by the Tribunal. The Circle Relaxation Committee will naturally consider whether the respondents are in penury and whether there is any need for appointing on compassionate grounds. Apart from this, such appointment, if found necessary, can only be given if there are vacancies".

WHEREAS, to comply with the directives of the Hon'ble Central Administrative Tribunal order dated 23/09/2011 & the Hon'ble High Court order dated 15/01/2013, the request of the applicant was examined with due sympathy as per DOP&T OM NO. 14014/02/2012-Estt (D) dated 16/01/2013, by a duly constituted Board of Officers and the



Board found that the case lacks merit and finally rejected vide Speaking Order No. 778/AN-II/COMP.APPTT/SB dated 25/03/2013.

WHEREAS, the Hon'ble Central Administrative Tribunal, Calcutta Bench in consideration of the Original Application No.1046 of 2013 filed by Smt. Archana Biswas & Another against the speaking order dated 25/03/2013 of this office refusing appointment in respect of Shri Shubhashis Biswas on compassionate ground passed an order dated 05/09/2013 directing the authority to re-consider the case of the applicant in accordance with law and pass necessary reasoned speaking order.

WHEREAS, the request of the applicant was examined with due sympathy as per DOP&T OM NO. 14014/6/94/Estt-(D) dated 09/10/98, DOP&T F. No. 14014/02/2012-Estt. (D) dated 16/01/2013 & DOP&T OM No. 14014/02/2012-Estt. (D) dated 30/05/2013 and it was opined that the request of the applicant could not be acceded to as the case was not deserving for appointment on compassionate grounds. The son of the deceased was of 40 years of age at that time and married. As per Sl. No 13 of DoP&T No. 14014/02/2012-Estt.(D) dated 30/05/2013 a married son is not considered dependent on a government servant. As per para 2 of DoP&T OM No. 14014/02/2012-Estt.(D) dated 16/01/2013, the scheme of compassionate appointment is applicable to a dependent family member. The financial condition of the family did not reveal that the family was in penury/financial hardship or financial destitution and without any means of livelihood and from the marriage of the applicant, Shri Shubhashis Biswas i.e. son of said Smt. Archana Biswas it was evident that the family had got over the emergency occurred on 01-01-2000. The family had managed the long 13 years without service, which was adequate proof that the family had some dependable means of subsistence and the marriage of the son has established the fact that he was financially capable to manage the affairs of a family dependent on him and as such the applicant did not deserve extension of the benefit of compassionate appointment. The financial condition of the family did not fulfil the objective of compassionate appointment and hence the case was not recommended for appointment by the Board of Officers. Speaking Order No.778/AN-II/COMP.APPTT/SB dated 02/01/2014 was issued accordingly.

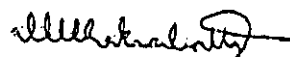
WHEREAS, being aggrieved, the applicants filed OA No. 350/00161 of 2014 before Hon'ble CAT, Calcutta Bench against the Speaking Order dated 02/01/2014. Hon'ble CAT Calcutta vide order dated 09/02/2015 directed the respondent to consider the case ignoring the fact that he is a married son in accordance with the decision of the Hon'ble High Court in WPCT 322 of 2012 which stipulates that We see no reason to interfere with this order passed by the Tribunal. The Circle Relaxation Committee will naturally consider whether the respondents are in penury and whether there is any need for appointing the respondent No. 2 on compassionate grounds. Apart from this, such appointment, if found necessary, can only be given if there are vacancies.

WHEREAS, to comply the Hon'ble CAT Calcutta order dated 09/02/2015, the request of the applicant has been re-examined with due sympathy as per provisions contained in DOP&T F. No. 14014/02/2012-Estt. (D) dated 16/01/2013 and 25/02/2015 and it has been opined by the Board Of Officers that the family of the medically boarded out Government servant has been able to manage somehow all these years since 2000 and this fact itself should normally be taken as adequate proof that the family has some dependable means of subsistence and as such benefit of compassionate appointment need not be extended to the applicant at this belated stage. Moreover, FAQ No.60 of DOP&T OM 14014/02/2012-Estt(D) dated 25/02/2015 stipulates that 'married son' can be considered for compassionate



appointment if he otherwise fulfils all the other requirements of the Scheme i.e. he is otherwise eligible and fulfils the criteria in this department's OM dated 16/01/2013. This would be effective from the date of issue of this FAQ viz. 25/02/2015 and the cases of compassionate appointment already settled with reference to DOP&T OM No. 14014/02/2012-Estt. (D) dated 30/05/2013 may not be reopened. Since request of the applicant for appointment on compassionate grounds was rejected earlier as per DOP&T OM dated 30.05.2013, there exists no provision to recommend the case for appointment on compassionate grounds as per existing order dated 25.02.2015.

AND WHEREAS, the undersigned, the Competent Authority in this regard, after careful consideration of the request of the said Shri Shubhashis Biswas and taking into account all the aspect relevant to the matter, has agreed to the views expressed by the Board of Officers constituted for the purpose and decided that the said Shri Shubhashis Biswas is not deserving for appointment on compassionate ground in the department and accordingly informs the said Shri Shubhashis Biswas that his request for appointment on compassionate ground has not been acceded to.



(M C Chakraborty)
Controller of Accounts (Fys)

3. A bare perusal of the speaking order supra would demonstrate that the respondents have failed to ascertain whether the family has any dependable means of sustenance. The Controller of Accounts has simply observed that the family has managed for long 13 years without service is itself an adequate proof that they had some dependable means of sustenance which is incomprehensible. The respondents ought to have enquired into the financial condition of the family and then commented on the same.

4. Further, when an earlier order directed them not to hold back considerations of a "married son", the respondents ought to have applied a circular of 2015 to reject his case thereby, sitting over a judicial decision in an attempt to scuttle the power of judiciary. The respondents have not deliberated upon the claim in regard to Respondent no. 5.

5. In such view of the matter, the speaking order is quashed and the matter is remanded back to the respondents to pass appropriate order taking in to consideration the financial condition of the family, within two months of the next meeting of Board of Officers.



6. Accordingly the O.A stands disposed of. No costs.


(Bidisha Banerjee)
Judicial Member

sb

