

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 107 of 2019

Present : Hon'ble Mr. Gokul Chandra Pati, Member (A)

Jitendra Kumar Paikray, aged about 43 years, S/o. Late Subash Chandra Paikaray, At/PO-Malipada, PS-Chandaka, Via-Bhubaneswar-3, Dist;Khurda-751 003.

.....Applicant

VERSUS

1. Union of India represented through it's Director General, Central Public Works Department, Nirman Bhawan, New Delhi-110 011.
2. Special Director General (ER), CPWD 234/4, AJC Bose Road, Nizam Palace, Kolkata-700 020.
3. ADG (ER-1), 234/4, AJC Bose Road, Nizam Palace, Kolkata-700 020.
4. Chief Engineer (B2-V), CPWD, Nirman Bhawan, At/PO/Pokhariput, Bhubaneswar-751 020, Dist-Khurda.
5. Superintending Engineer (EI), Patna Central Electrical Circle, PWD 7th Floor), Indira Bhawan, West Boring Canal Road, Patna-800 001.
6. Executive Engineer (Elect.), Bhubaneswar Central Electrical Division, CPWD, Plot No.3A, Unit-VIII, Bhubaneswar-751 012.

.....Respondents.

For the applicant : Mr.Satyajit Behera, Counsel

For the respondents: Mr.A.Pradhan, Counsel

Heard & reserved on : 17.7.2020

Order on :30.07.2020

O R D E R

Per Mr. Gokul Chandra Pati, Member (A)

The present OA has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking the reliefs as under:-

“Under the circumstances it is humbly prayed therefore that the Hon'ble Tribunal may graciously be pleased to direct the Respondents more particularly Respondent No. 2, 4 and 5 to consider the case of the applicant for appointment under compassionate ground in an early date.

Or pass any other order/orders as this Hon'ble Tribunal may think fit and proper;

And allow this Original Application with Cost.”

2. The facts in this case are that the applicant's father, while working under the respondents as Assistant Wireman, expired on 6.12.2002. The applicant, being the elder son of the deceased employee, filed an application for compassionate appointment on 12.9.2003, which was forwarded to the

respondent no. 4 on 6.9.2004 (Annexure-A/4 of the OA) for consideration. Vide order dated 16.5.2007 (Annexure-A/6 of the OA), the applicant was informed that his case was rejected by the Regional Compassionate Appointment Board (in short RCAB) in 2004 due to non-availability of vacancies for compassionate appointment quota.

3. It is averred in the OA that the CPWD Mazdoor Union requested the respondents through a letter dated 25.6.2008 to consider the applicant's case and in reply, a letter dated 14.7.2008 (Annexure-A/7) was issued by respondent no. 5 to the Union representative. When no further action was taken, the applicant submitted a representation dated 4.8.2011 (Annexure-A/8) for consideration of his case. Thereafter, he obtained information under the RTI Act, 2005 and it is averred that his case was approved by the RCAB on 10.3.2014 for appointment on compassionate ground vide documents at Annexure-A/10 series and Annexure-A/11 of the OA. Representations dated 2.6.2014 (Annexure-A/12) and dated 4.2.2016 (Annexure-A/14) were submitted by the applicant and his mother respectively to consider the case. He also furnished the affidavit on 10.3.2017 (Annexure-A/15) on being advised by the respondent no. 4. Since no action was taken, the applicant again submitted a representation dated 5.2.2018 (Annexure-A/16) and also filed this OA.

4. The grounds advanced in the OA are that although applicant's case was approved by RCAB in 2004 and on 10.3.2014, but the respondents did not consider the case 'for an oblique motive' and his case was not considered in order to accommodate another case of Sri Nrusingha Sethi, whose case is stated to have been rejected by the Screening Committee. The applicant avers that he is 'continuing in financial stringency' since his case was not considered and that having passed Class VIII, he was eligible for appointment against the post of Khalasi.

5. The respondents filed their Counter stating that the RCAB considered the applicant's case on 15.9.2006 and rejected it due to non-availability of vacancy for compassionate appointment for which 5% of vacant posts were earmarked. It is further stated in para 7(ii) of the Counter as under:-

"That again his case placed before the RCAB meeting held in March, 2014 under the chairmanship of Spl. Director General (ER). This time it was rejected with direction to decide the case another applicant, namely Sh. Nrusingha Sethi, 2nd son of late Sarathi Sethi, who died in harness in 1988, i.e. prior to the death of father of applicant in this case. Copy of Office Note dt. 11.03.2014 annexed as Annexure-R/3."

6. It is further averred in the Counter in para 17 as under:-

“17..... Further, his case has been considered as per guidelines of DoPT as well as M/o UD issued from time to time. His case for compassionate appointment has already been considered by the concerned authority twice. 1st the case is rejected for non availability of vacancies and 2nd time it was held up as the application of other candidate was not decided by the screening committee. As the case is still under consideration by the competent authority, there is no cause for action by the petitioner.”

7. Rejoinder has been filed by the applicant reiterating the stand taken in the OA and stating that for no fault of the applicant, he is suffering even after his case was approved by the RCAB on 10.3.2014 as per the documents at Annexure-A/10 series and A/11 of the OA. Referring to the judgment of Hon'ble Apex Court in the case of Susama Gossain, it is averred that in case of non-availability of post, a supernumerary post could have been created. It is further averred that the departmental instructions regarding the scheme have not been followed by the respondents. It is also averred that the applicant has secured 67% of merit points as per the his assessment record.

8. It is further averred in para 24 of the Rejoinder as under:-

“24.That as regards averments made in para-17 of the counter, it is submitted that as stated in the previous paragraph that case of the applicant has been approved twice i.e. in the year 2004 and 2014 but due to non-application of mind of the Respondents at the 1st instance they have rejected due to non-availability of vacancies, even though 26 Nos. of vacancies are available as on 20.07.2014, 2ndly the RCAB has considered favourably and recommended for appointment of applicant for appointment under compassionate ground. Further as alleged that the case of the applicant for 2nd time has not been held up as the application of other candidature was not decided by the screening committee, to this regard applicant humbly submitted that as mentioned in para-9(iv) of the counter that the case of the other candidates i.e., Nrushingha Sethi cannot be considered as it has not finalized. So the case of the applicant should have been considered. For that necessary direction may be issued to the respondents to consider the case of the applicant and issue order of appointment under compassionate ground as the RCAB has approved the case of the applicant for appointment under compassionate ground”.

9. Learned counsels for the applicant and the respondents were heard. They reiterated the stand taken by the parties in the pleadings on record. Learned counsel for the respondents also submitted a copy of the letter dated 12.2.2019 issued by the respondent no. 1, which referred to a meeting in which maintenance of quarters/offices through outsourcing was discussed and it was decided not to fill up the posts of work charged staff, which have fallen vacant due to retirement and he wanted to file additional counter. Such request, which was made by the respondents' counsel at the time of final hearing, was rejected, taking into consideration the fact that the Counter filed by the respondents in October, 2019 (subsequent to the letter dated 12.2.2019) did not mention anything about the decision referred to in the letter dated 12.2.2019 and the contentions in paragraph 17 of the Counter that the applicant's request was under consideration of the competent authority. The

reason for not referring to the letter dated 12.2.2019 in the Counter has not been explained by the respondents. Further, no document was furnished to show if any action has been taken by the respondents as per the letter dated 12.2.2012 for actually abolishing the work charged posts.

10. The pleadings of both the parties on record have been duly considered by me. The instructions of the DoPT vide the OM dated 26.7.2012 (Annexure-R/5 of the Counter) referred to the OM dated 9.10.1998 and stated as under:-

“2..... While considering such belated requests it was, however, to be kept in mind 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 OM dated 26.07.2012 (Annexure-R/5) also stipulated that the cases involving belated request for compassionate appointment are to be decided by the Secretary of the Department/Ministry concerned. However, in this OA, it is not the case of the respondents that the request of the applicant for compassionate appointment was a belated request. It is contended in paragraph 5 of the Counter that the applicant's request for compassionate appointment was submitted on 6.9.2004 when it was forwarded to the competent authority for consideration. His case was rejected on 3.11.2006 (Annexure-R/2) due to non-availability of vacancies to consider his case.

11. The Counter did not disclose the reason for not considering the case from 3.11.2006 till March, 2014, when his case was considered by RCAB again. Non-consideration of the case for about 8 years (from 2006 to 2014) for compassionate appointment, is not as per the instructions of the DoPT in OM dated 9.10.1998 and dated 26.07.2012 (Annexure-R/5). Since no explanation for delay has been furnished in the Counter, it is clear that the case was not handled by the respondents in accordance with the scheme for compassionate appointment.

12. It is further noticed that although the applicant's case was considered again in 2014 after about 10 years from the date of his application for compassionate appointment, but no final decision was taken by the competent authority. The averments in paragraph 9 (iii) of the Counter are relevant in this regard, which state as under:-

“That the Superintending Engineer being the Member Secretary of the committee Presented case before the RCAB meeting held on 10.03.2014 alongwith screening committee note dated 15.01.2014. The Chairman, RCAB returned the file with the direction to decide the case of Late Sarathi Sethi as he was expired in 1998 as Late Subhas Chandra Paikray, i.e. father of applicant expired in the year 2002.”

It is also averred in the Counter that the case of Late Sarathi Sethi could not be decided by the screening committee since the whereabouts of the wife of the deceased elder son of Late Sarathi Sethi were not known and hence, no decision was taken in the applicant's case. The respondents have not furnished any rule or guidelines of Government permitting linking of the applicant's case for compassionate appointment to the case of Late Sarathi Sethi, whose death was prior to the death of the applicant's father.

13. The instructions of Government as referred to in the OM at Annexure-R/5 of the Counter required the respondents to take a decision in the applicant's case for compassionate appointment to provide immediate assistance to the family of the deceased government servant, subject to eligibility for such assistance under the rules/instructions of DoPT. There is no provision in the scheme for compassionate appointment to justify linking applicant's case with the case of another person and not to take any decision in the matter on the ground that another case of earlier death was pending. It is noticed that the applicant has secured 67% marks as per the assessment of the respondents as furnished at Annexure-A/10 series of the OA, which has not been contradicted by the respondents.

14. In the facts and circumstances as discussed above and taking into consideration the averments in paragraph 17 of the Counter stating that the applicant's case is still under consideration of the respondents, this OA is allowed with a direction to the respondents to dispose of the applicant's case for compassionate appointment in accordance with the instructions of the Government on the subject and to communicate the decision taken in this regard to the applicant through a speaking and reasoned order within 3 (three) months from the date of receipt of a copy of this order.

15. There will be no order as to costs.

(Gokul Chandra Pati)
Member(A)