

12


IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.645 of 2006
Cuttack, this the 18th day of January, 2008

Shri Amiya Mohapatra ... Applicant
Versus
Union of India & Others ... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? No X
2. Whether it be circulated to all the Benches of the CAT or not? X No.


(C.R. MOHAPATRA)
MEMBER(A)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.645 of 2006
Cuttack, this the 18th day of January, 2008

C O R A M:

THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (A)

Shri Amiya Mohapatra,
aged about 31 years,
Son of Radhashayarn Mohapatra
resident of Village Madhapur,
PS: Banki, Via: Tigiria, Dist. Cuttack
at present residing in house No. LB-163,
Stage-11, BDA Colony, Laxmisagar,
Bhubaneswar, Dist. Khurda, Orissa.

..... Applicant,

By legal practitioner: M/s. K.C. Kanungo, S.C.Beura, Advocates.

-Versus-

Union of India represented through:

1. Comptroller and Auditor General of India (C&AG),
Bahadurshah Jafar Marg, New Delhi-1.
2. Accountant General (A&E) Orissa, Bhubaneswar-1, Dist.
Khurda.
3. Deputy Accountant General (Admn.), Office of A.G.(A&E),
Orissa, Bhubaneswar, Dist. Khurda.

... Respondents.

By legal practitioner: Mr.U.B.Mohapatra, SSC



ORDER

MR.C.R.MOHAPATRA, MEMBER(A):

Tersely stated the case of the Applicant, Shri Amiya Mohapatra, aged about 31 years is that his mother (Smt.Basanta Kumari Mohapatra) while working as an Accountant in the Office of the Accountant General (A&E), Orissa, Bhubaneswar, took voluntary retirement on medical ground (blindness) on 23rd December, 1985. His father who was also an employee of the Accountant General, Orissa was removed from service on 23rd January, 1995 as a result of disciplinary proceedings. However, this punishment of removal was subsequently converted to Compulsory retirement by an order dated 24.08.2000 of this Tribunal rendered in Original Application No. 668 of 1995. Both father and mother of the Applicant entered the service of the Respondents on 30.11.1970 and 21.08.1972 respectively. After the Applicant become a graduate, the mother of the Applicant submitted an application on 10.06.1996 seeking his appointment, on compassionate ground. In continuation of the aforesaid representation, the Applicant submitted another representation to the Accountant General, Orissa on 22.08.2005 seeking employment on compassionate ground in any class III post befitting to his qualification. As there was no response to the grievance of

13

Applicant, he approached this Tribunal in Original Application No. 191 of 2006. On 03.03.2006 the aforesaid Original Application was disposed of by directing the Respondents to consider, on merit, the prayer of the Applicant for providing appointment on compassionate ground (Annexure-A/13). Also it was directed that this exercise should be concluded within a period of 90 days. Thereafter, the Senior Deputy Accountant General (Admn.) in his letter dated 04.08.2006 (Annexure-A/15) conveyed the order of rejection of the representation of the Applicant dated 22.06.2006 for providing employment on compassionate ground. This letter of rejection dated 04.08.2006 (Annexure-A/15) is under challenge in this Original Application filed U/s.19 of the Administrative Tribunals Act, 1985 with the following prayers:

“To direct the Respondents to consider the appointment of applicant in group C or even in group D post on compassionate ground for the ends of justice;

To quash Annexure-A/15 for the ends of justice;

To issue any other/further order(s) or direction(s) to the Respondents in the interest of justice.”

2. In the counter filed by the Respondents it has been averred that in pursuance of the direction of this Tribunal dated 03.03.2006 in OA No. 191 of 2006 the case of Applicant received due

2

consideration of the competent authority but his case was rejected as he did not fulfill the terms and conditions of the scheme for providing appointment on compassionate ground. This was intimated by the Senior Deputy Accountant General (Admn.) in letter dated 04.08.2005 (Annexure-A/15). They have averred that when the mother of the Applicant retired on medical ground (blindness) on 23.12.1985, the father of the Applicant was working as Accountant in the office of the Accountant General, Orissa, Bhubaneswar. As such, at that relevant time, the condition of the family was not indigent warranting appointment on compassionate ground. Further, the representation dated 01.06.1994 submitted by the mother of the Applicant for providing appointment on compassionate ground was considered and rejected as intimated to her under Annexure-A/2 dated 05.09.1994. Prior to this, the Applicant's mother had submitted two representations on 02.06.1987 and 19.02.1988 seeking appointment in favour of her daughter Ms. Asima Mohapatra on compassionate ground which were also considered and rejected as the mother was getting pension and her husband was still working in the office of the Accountant General Orissa. Their further stand is that the father of the Applicant is now getting pension consequent upon

conversion of the order of punishment of 'removal' to 'compulsory retirement' and, since both father and mother of the Applicant are getting pension, the family cannot be said to be continuing in indigence so as to be provided with an appointment on compassionate ground after a lapse of 21 years. As regards the plea of competence of the Senior Deputy Accountant General (Admn.), it has been clarified by the Respondents that the Respondent No.3 (Senior Deputy Accountant General (Admn.)) has not taken the decision on the request of Applicant. He being the Head of the Office of the Respondent No.2 has only communicated the decision taken by the competent authority. In support of their stand, Learned Senior Standing Counsel relied on the following observations of Their Lordships of the Hon'ble Supreme Court in the case of **Umesh Kumar Nagpal v State of Harayana & Ors, and Anil Mallik v State of Harayana & Ors** [JT 1994 (3) SC 525]:


“.....As a rule, appointments in the Public Services should be made strictly on the basis of open invitation of application and on merit....However, to this general rule, there are some exceptions carried out in the interest of justice and one such exceptions is in favour of the dependants of any employee dying in harness and leaving his family in penury and without any means of livelihood....The whole object of granting compassionate employment is to tide over the sudden crisis.”

18

3. By filing rejoinder, the Applicant has refuted the contentions made by the Respondents in their counter and has submitted that meager amount of pension of both mother and father having no other source of income was required to be considered objectively by the Respondents. He has stated that extension of benefits of compassionate appointment, in his case, is justified since his family was in distress condition due to his mother's premature retirement on medical grounds.

4. Heard Mr. K.C.Kanungo, Learned Counsel for the Applicant and Mr. Uma Ballav Mohapatra, Learned Senior Standing Counsel for the Respondents and perused the materials placed on record.

5. During the course of hearing, Learned Counsel for the Applicant submitted that the order dated 04.08.2006 issued by the Respondent No.3 does not disclose the details of the grounds for rejecting the case of the Applicant for compassionate appointment. The Senior Deputy Accountant General (Admn.)/Respondent No.3 has also not mentioned as to whether the matter has been considered by the competent authority in terms of DOP&T guidelines/instructions on the subject. The order is an unreasoned one and is not inconsonance with the order dated 03.03.2006 passed by this Tribunal in OA No. 191 of 2006. He has



9

further argued that the order has been issued by an authority that is not competent to take decision regarding compassionate appointment. He has stated that since the merit of the matter has not adequately been considered and detailed procedure laid down in DOP&T guidelines/instructions i.e. constitution of a Committee and consideration of indigent circumstances by the Committee has not been clearly brought out by the Respondents, the impugned order under Annexure-A/15 needs to be annulled.

Per contra, while refuting the arguments advanced by Learned Counsel for the Applicant, it has been stated by the Learned Senior Standing Counsel for the Respondents that as per the instructions of the DOP&T the maximum time a person's name can be kept under consideration for offering compassionate appointment will be three years and after three years compassionate appointment is not possible to be offered to the Applicant and his case will be finally closed and cannot be considered again. Applicant's mother took voluntary retirement in the years 1985 and the family has been able to sustain for about 21 years without any compassionate appointment. He has, therefore, prayed that

2


there being no wrong in the decision making process of the Respondents, this OA needs to be dismissed.

6. Considering various submissions made by the parties what is required to be settled is whether appropriate consideration has been given to the financial condition of the family and whether the family was in indigent condition to claim an appointment on compassionate appointment. In this connection I have gone through the consolidated instructions of DOP&T dated 09.10.1998. The very object of the scheme is to grant appointment on compassionate grounds to a dependent family member of a Government servant dying in harness or who is retired on medical grounds. By this welfare measure, it is intended to ensure that the family is not left in penury and does not remain without any means of livelihood. In this case there were two bread earners in the family both father and mother of the Applicant were employed in the office of the A.G.Orissa, Bhubaneswar from 1970 and 1972 onwards and it is in the year 1985 the mother of the applicant ceased to remain in-service due to medical ground and got pension. But the father of the applicant continued to be in service and has finally been compulsorily retired as a result of disciplinary proceedings and he is also getting pension as admissible

under the Rules. Various decisions of the Hon'ble Apex Court on the subject make it clear that compassionate appointment cannot be claimed as a matter of right. In the case of Indian Drugs and Pharmaceutical Ltd v Devki Devi, 2007 (1) AISLJ 224, the Apex Court held that the compassionate appointment is not a right. In the case of State of J& K v Sajad Ahmed Mir, 2007 (1) AISLJ 219 the Apex Court held that when the family could survive in spite of the death of the employee at a belated stage the family should not get employment on compassionate ground. In the case of National Institute of Technology and another v Niraj K. Singh, 2007 1 SCC (L&S) 668 by the time the employee died the son was a baby, still the Hon'ble Apex Court held that compassionate appointment cannot be granted to the son after getting majority more than 15 years after the death of the employee. The very objective of the scheme is to help the family to tide over the sudden financial crisis faced by the family due to retirement on medical ground/death of the Government servant. Pleadings of the parties reveal that at the relevant point of time the case for compassionate appointment has been considered by the concerned authorities but they have not found the condition of the family to be indigent warranting employment assistance on compassionate

ground. The mother of the applicant took voluntary retirement on medical ground in 1985 and at that point of time father was in service. The father had to face disciplinary proceedings because of his conduct and by an order of this Tribunal the punishment of removal from service was converted to Compulsory retirement thereby enabling him to receive pension as admissible under the Rules. The claim of the Applicant who is now 31 years to get him to a job in Government on the ground that his mother took voluntary retirement due to medical ground before 21 years and the father is not getting adequate pension because of compulsory retirement cannot be cited as adequate ground to prove the indigent condition of the family. It reveals from Annexure-A/15 that Respondent No.3 while conveying the rejection has referred to the consideration meted out to the representation dated 01.06.1994 which was rejected as the father of applicant was an earning member. This is the only ground taken while rejecting the representation of applicant dated 22.06.2006. The Respondents could have done better had they clearly brought out in the order under Annexure-A/15 that the procedure prescribed in DOP&T instructions dated 09.10.1998 was scrupulously followed while rejecting the case of Applicant.

7. In the light of the discussions made above, I find no merit in this Original Application and the same stands dismissed. Parties to bear their own costs.


(C.R. MOHAPATRA)
MEMBER (A)

KNM,PS

