

CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH  
O.A.NO. 649 of 2006

Cuttack, this the 21<sup>st</sup> day of September,, 2007

CORAM:

HON'BLE SHRI N.D.RAGHAVAN, VICE-CHAIRMAN

.....

Shri S.Rabana Reddy, aged about 33 years, son of late S.Ramdas Reddy, permanent resident of village Puruna Chatrapur, P.S.-Chamakhandi, Dist.Ganjam, at present residing at Labour Tenement, Qrs. No. 127, P.O.Charbatia, Dist. Cuttack 754028

..... Applicant

Advocates for applicant - M/s B.S.Tripathy, M.K.Rath & J.Pati

Vrs.

1. Union of India, represented through the Cabinet Secretary, Cabinet Secretariat, Bikaner House Annexe, Sahajahan Road, New Delhi 110 001.
2. The Special Secretary, Aviation Research Centre (A.R.C.), Headquarters, D.G.(S), Cabinet Secretariat, East Block-V, R.K.Puram, New Delhi 110 066.
3. The Chief Engineer, Aviation Research Centre (A.R.C.), Air Wing, Headquarters, East Block-V, R.K.Puram, New Delhi 110066.
4. The Deputy Director (Admn.), Air Wing, A.R.C., Headquarters, East Block-V, R.K.Puram, New Delhi 110066.
5. The Deputy Director (Admn.), Aviation Research Centre (ARC), Charbatia, At/PO-Charbatia, Dist. Cuttack 754028      ..... Respondents

Advocate for Respondents - Mr.D.K.Behera, ASC.

.....  
ORDER

SHRI N.D.RAGHAVAN, VICE-CHAIRMAN

Applicant Shri S.Rabana Reddy has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985, praying for quashing the order, communicated vide letter dated 6.5.2005 (Annexure A/5), refusing to



provide him employment assistance on compassionate ground. He has also prayed for a direction to the Respondents to provide him an employment on compassionate ground in any post commensurating with his educational qualification.

2. Brief facts of the case of the applicant are that his father late S.Ramdas Reddy, while working as an Aircraft Assistant in Aviation Research Centre at Charbatia, took voluntary retirement from Government service on 1.3.2004 and passed away on 18.3.2004 due to prolonged cancer. At the time of his death, the father of the applicant left behind him the widow, 5 sons and 2 daughters. After the death of the father of the applicant, who was the sole bread winner of the family, the condition of the family became indigent as the retiral benefits were spent towards repayment of loan incurred for treatment of prolonged tonsil cancer. The applicant submitted a representation dated 5.4.2004 (Annexure A/1) requesting Respondent No.2 to provide him employment assistance on compassionate ground. He also made similar approach by his representation dated 5.7.2004 (Annexure A/2) and also sought for permission to meet Respondent No.2 on his visit to ARC, Charbatia, vide Annexures A/3 and A/4. Thereafter Annexure A/5, a communication dated 6.5.2005 was issued by the Respondents intimating that the applicant's case was examined for compassionate appointment and put up before the Compassionate Appointment Committee on 31.3.2005 along with 39 others who were dependants of deceased Government servants of the Department and that having regard to the Government instructions on the subject and after taking into consideration the liabilities/assets/number of dependants, etc., the



Committee could not find his case more deserving than those two cases recommended for compassionate appointment. After this decision was communicated, the applicant claims to have once again submitted a representation dated 27.7.2006 (Annexure A/6) to Respondent No.2 to reconsider his case for compassionate ground. The said representation having yielded no response, the present O.A. has been filed by the applicant.

3. The applicant has challenged the decision as contained in Annexure A/5 on the grounds that the said decision is cryptic and smacks of total non-application of mind; that the indigent condition of the family of the deceased Government servant has not been considered in its proper perspective; and that the fact of death of the applicant's father due to prolonged cancer has not at all been considered by the authorities.

4. The Respondents, in their counter, have stated that there is no illegality in the order dated 6.5.2005. It has been stated by the Respondents that as the father of the applicant died after his voluntary retirement from Government service, the applicant's case did not come within the purview of the Department of Personnel & Training O.M. dated 9.10.1998 containing the scheme for compassionate appointment. However, his case was referred to the Compassionate Appointment Committee on 31.3.2005 and 1.8.2006 only on humanitarian ground, and as there were more deserving cases coming within the purview of the scheme for compassionate appointment, the applicant's case was not recommended. The

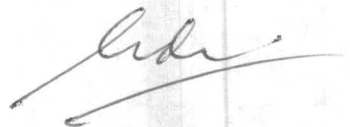




Respondents have stated that the representation dated 27.7.2006 (Annexure A/5) is not pending with Respondent No.2 for consideration.

5. The applicant has not filed rejoinder refuting the stands taken by the applicant.

6. The matter was placed before the Bench for hearing on 27.7.2007 when the learned counsels M/s B.S.Tripathy, M.K.Rath and J.Pati for the applicant and Mr.D..Behera, the learned Additional Standing Counsel for the Respondents remained absent on account of Advocates' strike on Court work before this Bench on the basis of purported CAT Bar Association resolution. In this connection, I would like to refer to the decision in the case of **Ramon Services Private Limited vrs. Subash Kapoor and others, reported in JT 2000 (Suppl.2) S.C. 546**, wherein at paragraphs 24, 27 and 28 Their Lordships have held that no Advocate could take it for granted that he would appear before the Court according to his whims and fancies or conveniences. It would be against professional ethics for a lawyer to abstain from the Court when the cause of his client is called for hearing or further proceedings. In appropriate cases, the Court itself could pass effective orders for dispensation of justice with the object of inspiring confidence of the common man in the effectiveness of judicial system. Inaction will surely contribute to the erosion of ethics and values in the legal profession and the defaulting Courts might also be contributory to the contempt of the Hon'ble Supreme Court. Keeping in view the decision of the Hon'ble Apex Court, I perused the record and reserved the order.



7. In order to consider the respective cases of the parties, I have gone through the Department of Personnel & Training O.M.No. 14014/6/94-Estt.(D) dated October 9, 1998 containing the scheme for compassionate appointment in supesession of all instructions issued by the Government of India on the subject as on that date. It is, therefore, apt to quote here-in-below the relevant provisions from the DoP&T O.M.No. 14014/6/94-Estt.(D) dated October 9, 1998:

**"SCHEME FOR COMPASSIONATE APPOINTMENT**

**1. OBJECT**

The 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, thereby leaving his family in penury and without any means of livelihood, to relieve the family of the Government servant concerned from financial destitution and to help it get over the emergency.

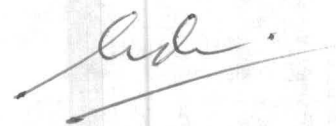
**2. TO WHOM APPLICABLE**

To a dependent family member –

(A) of a Government servant who –

- (a) dies while in service (including death by suicide); or
- (b) is retired on medical grounds under Rule 2 of the CCS (Medical Examination) Rules 1957 or the corresponding provision in the Central Civil Service Regulations before attaining the age of 55 years (57 years for Group 'D' Government servants); or
- (c) is retired on medical grounds under Rule 38 of the CCS (Pension) Rules, 1972 or the corresponding provision in the Central Civil Service Regulations before attaining the age of 55 years (57 years for Group 'D' Government servants); or"

The applicant has not mentioned about the above O.M. dated 9.10.1998 in the Original Application. The Respondents in their counter have relied on the said O.M. to contest the claim of the applicant. It is the admitted case of the applicant that his father took voluntary retirement on 1.3.2004 and passed away on 18.3.2004 'due to prolonged cancer'. The 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, thereby leaving his family in penury and without any means of livelihood, to relieve the family of the Government servant concerned from financial destitution and to help it get over the emergency. The Scheme is applicable to a dependent family member of a Government servant who dies while in service (including death by suicide) or is retired on medical grounds under Rule 2 of the CCS (Medical Examination) Rules 1957 or the corresponding provision in the Central Civil Service Regulations before attaining the age of 55 years (57 years for Group 'D' Government servants), or is retired on medical grounds under Rule 38 of the CCS (Pension) Rules, 1972 or the corresponding provision in the Central Civil Service Regulations before attaining the age of 55 years (57 years for Group 'D' Government servants). It is thus clear that the applicant's case is not coming within the purview of the scheme for compassionate appointment, as has been rightly contended by the Respondents.

3. The applicant's contention is that due to non-cooperation on the part of the departmental authorities, his father had to go on voluntary retirement from service w.e.f. 1.3.2004 due to his prolonged suffering from cancer and soon thereafter passed away on 18.3.2004, which, according to the applicant, shows that his father took retirement only on medical ground. There being no provision in the scheme for compassionate appointment that if a Government servant takes voluntary retirement and passes away shortly thereafter, his retirement is to be construed as 'retirement on medical ground' and a dependent family member can be considered

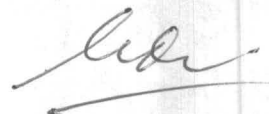




for grant of appointment on compassionate ground, the contention of the applicant is untenable.

4. The next contention of the applicant is that the decision as contained in Annexure A/5 is cryptic and smacks of total non-application of mind and that the indigent condition of the family has not been considered in its proper perspective.

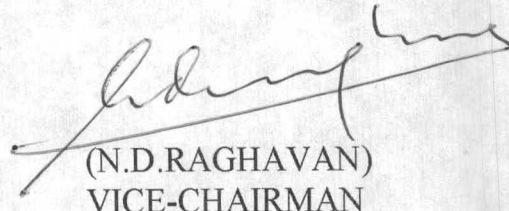
I have carefully gone through Annexure A/5, the letter dated 6.5.2005 and the reply given by the Respondents in their counter. The Respondents have clearly stated in their counter that though the applicant's case did not come within the purview of the scheme for compassionate appointment as his father died after voluntary retirement from service, his case was referred to the Compassionate Appointment Committee which met on 31.3.2005 and 1.8.2006 only on humanitarian ground and that his case was not recommended for compassionate appointment as the same was not found more deserving than those cases coming within the purview of the scheme and recommended for compassionate appointment. It has been clearly mentioned in the communication date 6.5.2005 (Annexure A/5) that the applicant's case was put up before the Compassionate Appointment Committee on 31.3.2005 along with 39 others who were dependants of deceased Government servants of the Department and that having regard to the Government instructions on the subject and after taking into consideration the liabilities/assets/number of dependants, etc., the Committee could not find the applicant's case more deserving than those two cases recommended for compassionate appointment under 5% of the vacancies in Groups C and D posts against direct recruitment quota allotted for compassionate



appointment. In consideration of all this, I do not find that the decision as contained in Annexure A/5 is cryptic or unreasonable and shows non-application of mind by the departmental authorities. Rather the departmental authorities were sympathetic towards the applicant, and even in the absence of any provision in the scheme for considering the applicant's case, the competent authority as well as the Compassionate Appointment Committee considered the applicant's case not only once but twice and as his case was not found more deserving than those cases coming within the purview of the scheme, his claim could not be acceded to. There is thus no illegality or infirmity in the decision contained in Annexure A/5.

5. Apart from the case failing thus on merits, the order impugned in this O.A. is dated 06.05.05 but the O.A. has been filed on 13.09.2006 with the Registry of the Tribunal, that is more than one year and four months and that therefore this O.A. is also time barred u/s 21 of the Administrative Tribunals Act, 1985. Furthermore, the representation dated 27.07.2006 of the applicant to the Special Secretary to the Government of India filed as Annexure A/6 is not a copy of the original of the representation given but typed anew/afresh and only attested by the Advocate of the applicant himself, especially when no acknowledgement thereof by the office of the Special Secretary to Government is also furnished by the applicant raising thus a doubt about the bona fide of such representation. Even assuming it to be a genuine document of representation, no such representation can renew limitation period stipulated under the aforesaid provisions of the A.T. Act. Thus viewed from the point of limitation also, the O.A. is time barred.

6. In the result and in any event, this O.A. is dismissed hereby. No costs.

  
(N.D. RAGHAVAN)  
VICE-CHAIRMAN

PPS

fix for pronouncement on  
21-09-07 at 230 PM.  
