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O.A. No. 774/06

ORDER DATED 16<sup>th</sup> MARCH, 2009

Coram:

Hon'ble Mr. Justice K. Thankappan, Member (J)  
Hon'ble Mr. C.R. Mohapatra, Member (A)

Heard Mr. R.C. Praharaj, Ld. Counsel for the applicant and Mr. A. Kanungo, Ld. Additional Standing Counsel for the Respondents.

2. This is an unfortunate case where the applicant has approached this Tribunal in the 3<sup>rd</sup> round of litigation seeking compassionate appointment. The father of the applicant, one Sridhar Behera died in harness while working as Data Entry Operator 03.11.1999, leaving behind his wife and three children including the applicant. After the death of the father of the applicant, his mother represented to the Department to give an appointment under the compassionate appointment scheme to the applicant on 01.01.2001 (Annexure-A/6). Since the prayer for compassionate appointment had not been considered properly, the applicant approached this Tribunal by filing two different O.A.s, i.e., O.A. Nos. 240/03 and 1298/04 respectively. Although O.A. 240/03 had been disposed of by directing the Respondents to consider the prayer for compassionate appointment of the applicant as per law, however, the said direction issued by this Tribunal having not been implemented this Tribunal issued another order on 08.04.2004 in O.A. No. 1463/03, which reads as follows:-

“Having regard to the above facts and circumstances of this case, one is bound to form an

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opinion that the case of the Applicant did not receive due consideration ( of the Respondents) and, in the said view of the matter, the Respondents are hereby directed to redress grievance of the Applicant by keeping in view the above discussions and the law laid down by the Hon'ble Apex Court within a period of 120 days from the date of receipt of a copy of this order. In the result, this Original Application is disposed of. No costs."

In compliance with the above order of this Tribunal, the Respondents passed Annexure-A/10 order dated 26.09.2006, rejecting the claim of the applicant, which reads as under:-

"All applications have been examined comprehensively in the light of Government of India's instructions. The application of Sri Jayant Kumar Behera has also been examined accordingly. In view of the position explained above, it has not been found possible to appoint Shri Jayant Kumar Behera on compassionate ground in any of the Directorate of Census Operations."

Aggrieved by the above order and the stand taken therein by the Respondents, the present O.A has been filed for the following relief:-

" (a) To quash the order dated 26.09.06 passed by the Respondent No.2 under Annexure-10.

(b) Further direction/directions be issued to Respondents to give appointment to the applicant befitting to his qualification and eligibility.

(c) And pass any such other order or directions as this Hon'ble Tribunal deem fit and proper."

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3. In response to the notice issued by this Tribunal, the Respondents have filed counter affidavit, to which the applicant has also filed a rejoinder on 26.08.08.

4. We have heard the Ld. Counsel for both sides and perused the documents produced along with the O.A.

5. The fact that the applicant's father Sridhar Behera expired during 1999, while he was in service, is not disputed before us. The Ld. Counsel for the applicant submitted that as per the directions issued by this Tribunal successively in the two O.As, the Respondents were bound to consider the case of the applicant for providing appointment on compassionate ground. The Ld. Counsel for the applicant further submitted that the Respondents have not rejected the claim of the applicant on the ground of any deficiency, viz., the applicant is not indigent and/or eligible for appointment under compassionate appointment scheme, but they have rejected the claim keeping in view the financial condition and merit of the applicant against the limited number of vacancies to accommodate ~~the~~ him against compassionate appointment quota. However, the Ld. Counsel for the applicant submitted that as per the latest Office Memorandum of the Government of India, Department of Personnel & Training, dated 05.05.2003, it is imperative on the part of the Respondent-Department to consider the applicant's case for compassionate appointment for three consecutive recruitment years. But it is only stated in Annexure-A/10 that "*if compassionate appointment is not possible to be offered to the applicant, his case must be finally closed after 03 year of death of the*

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*Government employees and must not be considered again".*

This stand taken by the Respondents, according to the the applicant, is illegal. To the above contentions, the Ld. Counsel for the Respondents submited that there were applications of more deserving and indigent candidates than the applicant to be accommodated under the scheme, and that apart, as per the decision of the Hon'ble Apex Court, only the limited vacancy of 05% of Direct Recruitment quota earmarked for compassionate appointment could be utilized under the scheme. The Ld. Counsel also relied on the O.M. of DOP&T dated 05.05.2003 to show that the Respondents have considered the applicant's case three times.

6. On anxious consideration of the contentions of the Ld. Counsel for either side and the order of this Tribunal in O.A No.1298/04 and the judgements of the Hon'ble Apex Court in a catena of cases, the only point to be decided is whether the applicant has been considered properly in line with the O.M issued by the DOP&T from time to time.

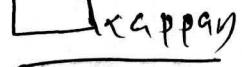
7. The father of the applicant passed away on 03.11.99 while in service. However, by the intervention of this Tribunal the case of the applicant was considered and rejected vide Annexure-A/10 dated 12.09.06. It is to be noted that the claim of the applicant has been rejected on the ground that there was no vacancy. This apart, it is not reasonable to hold that the application of the applicant has been considered properly in three consecutive recruitment years even with the limited quota for 05 % reserved for compassionate appointment as per Annexure-A/10.

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8. In the above circumstances we are of the considered view that Annexure-A/10 is liable to be quashed. Accordingly, we quash the same and direct the Respondent No.1 to reconsider the application of the applicant in the light of what we have observed above as well as the order of this Tribunal passed in O.A. No.1298/04, within a reasonable time, at any rate within 60 days from the receipt of the copy of this order. Ordered accordingly.

9. This Original Application is allowed to the extent indicated above. No costs.

  
MEMBER (A)

  
MEMBER (J)