

4

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO.56 OF 2007
Cuttack, this the 15th Day of November, 2007

Suvendu Kumar Das..... Applicant

Vs.

Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not? — not —
2. Whether it be circulated to all the Benches of the Central
Administrative Tribunal or not? — not —


(G. SHANTHAPPA)
MEMBER(J)

15

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO.56 OF 2007
Cuttack, this the 15th Day of November, 2007

CORAM:

HON'BLE SHRI G. SHANTHAPPA, MEMBER(J)

IN THE CASE OF:

Suvenu Kumar Das, aged about 30 years, Son of Late Sushil Kumar Das, Ex-Works Sirkar, Grade-III, At-Kusumasole, Via-Chandua, Dist-Mayurbhanj
..... **Applicant**

By the Advocate(s) **M/s.B.R. Sarangi, L. Bhuyan**
Vs.

1. Union of India represented through the Secretary, Water Resources Department, 6A-Hondeo Complex, Andrew Ganj, New Delhi- 110 001.
2. Superintending Engineer, Hydrological Observations Circle, Central Water Commission, Bhubaneswar, Plot No.A/13 and 14, Bhoi Nagar, Bhubaneswar-751022.
3. Executive Engineer, Central Water Commission, Bhubaneswar, Plot No.A/13 and 14, Bhoi Nagar, Bhubaneswar-751022.

..... **Respondent(s)**
By the Advocate(s)..... **Mr. P.R.J. Dash**

O R D E R

SHRI G. SHANTHAPPA, MEMBER(J)

I heard the Ld. Counsel for the applicant and the Respondents on 14.11.07. The Ld. Counsel for the applicant sought time to clarify the facts. It was already finally heard and it was about to proceed to pass final order at that time the Ld. Counsel for the applicant took time, it was adjourned to today. Today none appears from either side. Since it was already heard I proceed to pass final order.



The above application has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

“(1) To admit the O.A., call for the records, quash the impugned order in Annexure-8 dt.05.01.07 and issue necessary direction to consider for compassionate appointment befitting to his qualification either in Group ‘C’ or Group ‘D’ bringing his name in the panel of candidates seeking compassionate appointment against 5 % quota reserved for them by condoning the age, if necessary.

(2) And pass such other orders or directions as deem just fit and proper within a stipulated period of two months from the date of passing of the order.”

2. The brief facts of the case according to the applicant are the father of the applicant died while in service on 07.03.2003 leaving behind his wife Smt. Susama Das and 02 sons, one of them is the applicant herein. The applicant is a qualified in a technical qualification. The family of the deceased have Income of Rs.10,000/- per annum and is in indigent condition hence mother of the applicant made an application on 21.08.03 for compassionate appointment to one of the sons (Annexure-A/4). When the request of the applicant was pending, the mother of the applicant submitted an application to the Hon’ble Minister, Water Resources, Government of India on 22.08.06 (Annexure-A/7). Earlier applications were the correspondence in the Department as per Annexure-A/6 dated 13.02.04. The respondents have considered the application dated



22.08.06 and rejected on the ground of non-availability of vacancy under 5% quota reserved for compassionate appointment as per the guidelines issued by DOP&T OM No.14014/6/94-Estt.(1) dated 09.10.1998 and OM No.14014/19/2002-Estt.(D) dated 03.12.1999.

3. The respondents have stated as per DOP&T OM dated 05.05.03 for compassionate appointment can be considered only for 03 years after the death of the official concerned. Since this period is over the request of the applicant cannot be entertained and there is no need to pursue this case with the office.

4. The applicant is challenging the impugned order on the grounds that it is arbitrary, un-reasonable and violative of Article 14 and 16 of the Constitution of India. The rejection cannot be sustainable as the applicant satisfies all the requirements under the Scheme/Guidelines.

5. Per contra the respondents have filed a detailed reply statement rejecting the relief of the applicant on the ground that O.A. is not maintainable in absence of the proper party, after the death of the Government servant the widow has made representation seeking employment assistance in favour of the applicant but he has not filed this O.A. Hence, on that ground this O.A is liable to be dismissed. The applicant has not exhaust the remedy available under the rules.

6. The father of the applicant died on 07.03.03, the mother of the applicant submitted her application for compassionate appointment to her son on 21.08.03. Thereafter, the applicant applied



for appointment on compassionate ground on 16.01.04. The action on the applicant could not be taken due to want of post against compassionate quota. Moreover, filling up of the Work charged posts under this Organisation was held up on account of Writ Petition OJC No.6521 of 1999 pending before the Hon'ble High Court of Orissa, Cuttack against the judgement dated 21.01.1998 in the Review Petition No.35 of 1993 of this Hon'ble Tribunal. As per the existing provisions laid down by DOP&T only 5% quota of the total vacancy pertaining to DR quota post in a year shall be filled up against compassionate appointment. As per the existing provisions of DOP&T dated 05.05.03 the compassionate appoint can be considered only within 03 years after the death of the official concerned. Since the period of 03 years is over, her request for compassionate appointment could not be entertained. The cases of the compassionate appointment have to be considered by a Screening Committee after taking into consideration financial condition and social status of the bereaved family. The procedure to be followed in the matter of consideration of the cases of compassionate appointment has been standardized by DOP&T to ensure the objectivity in assessment vide their order No.14014/6/94-Estt.(D) dated 09.10.1998 and amendments issued thereafter from time to time. The Screening Committee has considered all the pending cases for compassionate appointment under its jurisdiction including the cases which are even more than 03 years old. The cases of the other candidates including the applicant were considered in a meeting held on 22nd and 23rd of March, 2007. This general rule should not be departed from except where compelling circumstances demand, such as, death of the sole breadwinner and



-5-

likelihood of the family suffering because of the set back. Once it is proved that in spite of the death of breadwinner, the family survived and sustantial period is over, there is no necessity to say "goodbye" to the normal rule of appointment and to show favour to one at the cost of the interests of several others ignoring the mandate of Article 14 of the Constitution of India. The respondents have justified their action while rejecting the case of the applicant.

7. The applicant has filed rejoinder refuting the averments made in the O.A. on the ground the stand taken by the Respondents that due to non-availability of the post the applicant's application was not taken into consideration on the other hand it is alleged that as per the DOP&T only 5% of the total vacancy pertaining to DR quota post in 03 years shall be filled up against compassionate appointment quota. There is no much clarification remaining para of the rejoinder.

8. Since I heard the Ld. Counsel from either side on 14.11.07 I proced to pass orders today and the Counsel from either sides are absent today.

9. The admitted fact from either side are that the father of the applicant died on 07.03.03 in harness, leaving behind the mother of the applicant, the applicant and younger brother of the applicant. The applcinat is qualified for appointment under the compassionate appointment. The respondents have considered the case of the applicant in a Circle Relaxation Committee which was held on 22nd



20

~~6~~

and 23rd of March, 2007. The application of the applicant for compassionate appointment was not considered on the ground that non availability of vacancy under 5% quota reserved for compassionate appointment as per OM dated 09.10.98 and 03.12.98.

10. If the vacancies are not available under 5% quota the respondents could have considered the case of the applicant under DOP&T OM dated 05.05.03. It is referred in the 2nd Para of the impugned order, that, for compassionate appointment can be consider only for 03 years after the death of the official concerned. Since this period is over, request for compassionate appointment cannot be entertained and there is no need to pursue this case in the office. The observations made by the respondents by applying OM dated 05.05.03 is totally eronuious. They have wrongly interpreted the OM dated 05.05.03. It is relevant to extract the entire O.M. dated 05.05.03 which is given below:-

" G.I., Dept. of Per. & Trg. O.M. No.14014/19/2002-Estt.
(D), dated 05.05.03.

Time-limit for Compassionate Appointment

The undersigned is directed to refer to Department of Personnel and Training O.M. No.14014/6/94-Estt. (D), dated 09.10.1998 and O.M. No.14014/23/99-Estt. (D), dated 03.12.99 (Sl. Nos,229 and 235 of Swamy's Annual, 1998 and 1999 respectively) on the above subject and to say that the question of prescribing a time-limit for making appointment on compassionate grounds has been examined in the light of representations received, stating that the one-year limit prescribed for grant of Compassionate Appointment is often resulting in depriving genuine cases seeking compassionate appointments, on account of regular vacancies not being available, within the prescribed period of one year and within the prescribed ceiling of 5 % of Direct Recruitment quota.



21

-7-

2. It has, therefore, been decided that if Compassionate Appointment to genuine and deserving cases, as per the guidelines contained in the above OMs is not possible in the first year, due to non-availability of regular vacancy, the prescribed Committee may review such cases to evaluate the financial conditions of the family to arrive at a decision as to whether a particular case warrants extension by one more year, for consideration for Compassionate Appointment by the Committee, subject to availability of a clear vacancy within the prescribed 5% quota. If on scrutiny by the Committee, a case is considered to be deserving, the name of such a person can be contained for consideration for one more year.

3. The maximum time a person's name can be kept under consideration for offering Compassionate Appointment will be three years, subject to the condition that the prescribed Committee has reviewed and certified the penurious condition of the applicant at the end of the first and the second year. After three years, if Compassionate Appointment is not possible to be offered to the Applicant, his case will be finally closed, and will not be considered again."

4. The instructions contained in the above mentioned OMs stand modified to the extent mentioned above.

5. The above decision may be brought to the notice of all concerned for information, guidance and necessary action.

11. The DOP&T has decided that the case of the applicants are to be considered for 03 consecutive years as and when the vacancies arise. The Committee consider the cases of the applicant for compassionate appointment in a particular, if there are no

22

-8-

vacancy the applicants are to be consider further in a next meeting when the vacncnies under 5 % quota reserved under compassionate appointment aroses. In the present case the respondents are considered the 03 years period from the date of death of the father of the applicant. The observations made in 2nd part of the impugned order is totally against the O.M. dated 05.05.03. Accordingly, the impugned order is not sustainable in the eye of law. Accordingly, the impugned order is quashed.

12. The respondents are directed to consider the case of the applicant under OM dated 05.05.03 as and when the vacancy arise under 5% quota in the future CRC Meeting to be held.

13. Accordingly this O.A. is allowed in part. The impugned order at Annexure-A/8 is quashed and direct the respondents to consider the case fo the applicant in a future Circle Relaxation Committee Meeting to be held.

14. With the observations and directions this O.A. is allowed in part. No order as to cost.


(G. SHANTHAPPA)
MEMBER(J)

Kalpeswar