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OA No.250 of 2008

Asma Khatun & Another Applicants
Versus
UOI & Ors. Respondents

1. Order dated 20th August, 2009.

C O R A M

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

The widow and son of Late Agha Ahmed are the

Applicant Nos.1&2 in this OA. They challenge the action of the Respondents in rejecting their grievance for providing appointment on compassionate ground in favour of Applicant No.2 after the premature death of the Agha Ahmed on 14.1.1987 while working as LSG Sorting Assistant in RMS North Division, Cuttack leaving behind a large family consisting of his widow, two sons and two minor daughters in destitution; especially there being no other source of income of the family according to Applicants. It is born out from the record that such grievance of Applicants was rejected under Annexure-A/4 & A/5. They challenged the said order of rejection by filing OA No.808 of 2006. Their stand in the said OA was that Late Agha Ahmed was a regular Sorting Assistant working under RMS 'N' Division Cuttack. He expired on 14.01.1987. As Applicant No.1 was illiterate and with none else to take care of the minor children (two daughters and two sons) she made a representation expressing her unwillingness to take up employment with request to keep the opportunity of scheme of compassionate appointment open, till her son attains majority. Her request was accepted and she was intimated vide letter No. B9-11/Ch.II/CH-1 dated 11.05.1988 that as per the

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instructions from CO vide CPMG Letter No. RE/17-29/87 dated 06.05.1988, she may renew her prayer no-sooner her son (Applicant No.2) attains majority. Applicant No.2 attained majority in 1998 and on 11.06.1998 Applicant No.1 requested for consideration of the case of Applicant No.2 for employment on compassionate ground. On receipt of the request the Division Office collected the relevant documents i.e. synopsis, brief history, income certificate undertakings etc and sent the same to the Circle Office vide Letter No. B9/11/Ch-11 dated 15/16.09.1998 for according approval. The matter was under correspondence between Division Office and Circle office for a long time and finally, the Applicants were intimated to submit willingness as per the instructions of the CO No. RE/17-29/87 dated 28.11.2000. She submitted her willingness in time which was sent to CO vide Division Office letter No. B9-11/CH-111 dated 19.12.2000. Since this is a belated claim (five years or so), as per the standing instruction dated 28.12.1998, the matter was referred to the Directorate/Ministry for taking a decision in the matter. The Directorate in letter No. 24-476/2002-SPB-I dated 11.06.2004 intimated that "the case has been recommended by the circle concerned. Further it was also intimated that the applicant cannot be appointed within one year due to non-availability of vacancy. The case has been considered by the competent authority i.e. Secretary (Posts) and rejected the same and the case does not deserve any sympathetic consideration, as the basic purpose of providing the immediate assistance to the family after the lapse of 16 years is

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not relevant". Accordingly, the Applicant No.2 was intimated in letter dated 1st July, 2004 that "your compassionate appointment case was considered by the Secretary (Posts) and rejected". Applicant preferred appeal but the same was rejected by referring the letter of the Directorate. However, taking into consideration all aspect of the matter, disposed of the matter in its order 23rd April, 2007. Relevant portion of the order is quoted herein below:

"3. Learned Counsel for both sides resisted their arguments based on the submissions made in the pleadings. I have carefully gone through the records placed by the parties. Now it is to be decided as to whether the Respondents were justified in rejecting the claim of applicant on the ground of delay and if delay is over come as to whether the Applicant can be appointed in absence of any vacancy. Before coming to the merit of the matter, I would like to observe that the scheme for employment assistance on compassionate ground is a benevolent legislation made by the Government to see that after the death of the bread earner the livelihood of the rest of the dependent family members does not suffer as a consequence. In this connection, the Government of India has issued various circulars during last decade. But without touching the main stay of judging the financial conditions of the deceased family the grievance of Applicants is rejected. No doubt delay defeats the purpose. But if the delay is condoned, the next question comes for judging the financial conditions of the family of a deceased Government employee. In the present case, it is seen that at the time of the death of the Government Servant, Applicant No.2 was a minor. His mother (Applicant No.1) expressed her inability to take up employment due to illiteracy and there was no other member in the family to take care the minor children. She, therefore, requested to keep the claim open till her elder son attains majority. Such request of the Applicant No.1 was accepted by the Respondent No.2 (Chief Postmaster General, Orissa Circle, Bhubaneswar) and she was intimated by the SSRMS 'N' Division, Respondent No.3 vide his letter No. B9-11/CH-II/CH-1 dated 11.5.1988 permitting her to renew her representation when her son Respondent N.2

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attains majority. It is not in dispute that no sooner her son attains majority i.e. during 1998, than she preferred representation on 11.06.1998 praying for employment on compassionate ground. From the averments made in the counter it implies that though the Circle Office was convinced this to be a case to be provided with employment on compassionate ground. But for the standing instructions of the Government dated 28.12.1998 vide Annexure-R/1 (since this is a case beyond five years) they referred the matter to the Directorate for consideration. Clause 8(a) of the circular under Annexure-R/2 also empowers the Secretary of the Department/Ministry concerned to accept the belated claim of employment assistant if indigent condition still exists. As regards non availability of vacancy, it is seen that in the counter it has not specifically been stated that at the time of consideration i.e. during 1998, there was no vacancy under compassionate quota. There are instructions that if there is no vacancy the name of the candidate considered for appointment on compassionate ground can be kept in the waiting list. It is also not the case of the Respondents that from 1998 till the order of rejection none was appointed on compassionate ground and/or the financial status of the said appointee is inferior to the present Applicant. Besides on scrutiny it is seen that the Respondents rejected the claim of applicant without considering the indigent condition of the family which is the paramount consideration as per the existing instructions of the Government of India. I have gone through the decisions relied on by the Respondents in their counter. I find that in the cases of **Dinesh Kumar** (Supra) and **Smt.A.Radhika Thirumalai** (Supra), the Hon'ble Supreme Court held that appointment on compassionate ground can be made only if a vacancy is available. In the case of **Asha Ramachandra Ambekar and another** (supra) it has been held that Courts/Tribunal can only direct consideration and cannot direct for appointment on compassionate ground. In this case there is no direction for giving appointment to the applicant; nor the decision that there is no vacancy under compassionate ground is genuine. Similarly the decision of the Hon'ble Apex Court in the case of **U.K.Nagpal** (surpa) is of no help to the applicant; because of the fact that the case is different than the present case. **In the present case liberty was given to the applicant No.1 to renew her prayer for compassionate appointment after the applicant No.1 attains majority. Circulars under**

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Annexure-R/2 also empowers for condonation of such delay based on which the matter was referred to the Directorate. But the Directorate without considering the indigent condition of the family rejected the claim of applicant on technical ground. In view of the above, it cannot be said that the order of rejection is in any way sustainable in the eyes of law. (emphasis supplied)

4. In the light of the discussions made above, I find substantial force in support of the prayer of the Applicants to quash the order of rejection of their claim for providing employment on compassionate ground and to direct the Respondents to reconsider the case of providing employment to Applicant N.2 on the basis of the indigence of the family instead of throwing the claim on the ground of delay. It is so ordered and the Respondents are hereby directed to complete the entire process within a period of 60(sixty) days from the date of receipt of a copy of this order.

5. In the result, this OA stands allowed to the extent stated above. There shall be no order as to costs."

As it appears, the case of the Applicants again has been rejected and communicated under Annnexure-A/7 dated 06.07.2007. The main reason of rejection as pointed out in the order of rejection is quoted herein below:

"In pursuance of the Hon'ble CAT order dated 23.4.2007 the Department has reconsidered the case of the Applicant and observed that the family has no specific social liabilities like marriage of daughters or education of minor children. The two daughters of the ex-official are married and living with their respective husbands. Both the sons are major and hence can earn their livelihood. It is further observed that the ex official expired on 14.1.1987 i.e. more than 20 years ago. The rule governing compassionate appointment does not allow consideration of cases, which are more than 20 years old. However, keeping in view the Hon'ble CAT order this case was given special consideration. The basic purpose of compassionate appointment scheme is to help the family, which is indigent and deserve immediate assistance for relief from

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financial destitution to get over the emergency. In this case the family **does not appear to be in indigent condition** and no vacancy is available under the stipulated quota in the circle concerned. The case therefore is not covered by the guidelines governing compassionate appointment.

Further, as per the Nodal Department fresh case should be given preference over past cases so as to help the family which is indigent and deserve immediate assistance for relief from financial destitution to get over the emergency. **The family does not appear to be indigent condition.** As per the instruction of the Nodal Department i.e. DOP&T the committee while considering the request for appointment on compassionate ground should take into account the position regarding availability of vacancy for such appointment and should recommend in a really deserving case and only if vacancy meant for appointment on compassionate grounds will be available within a year in the concerned Ministry/Department/Office.

In view of the foregoing, the case of Shri Agha Hasmat for appointment on compassionate grounds is not covered by the guidelines governing compassionate appointment and hence rejected. This has the approval of Secretary and Director General, Department of Posts, Ministry of Communications and Information Technology." (Emphasis supplied)

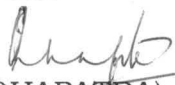
2. Hence this OA.
3. By filing counter, the Respondents opposed the stand of the Applicant by reiterating and elaborating the grounds taken in the order of rejection,
4. Heard Learned Counsel for both sides and perused the documents placed on record. On a careful reading of the earlier order of this Tribunal as also the order of rejection impugned in this OA, this Tribunal is of the opinion that importance is given on the delay rather than considering the case of the applicant on the ground of indigence and there has

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been no firm view on the indigent condition of the applicant as it has been stated in the order of rejection that the "The **family does not appear to be indigent condition**". In view of the above, it seems that there has been miscarriage of justice in the decision making process of the matter. Further it is seen that while the case of the applicant is under consideration DoP&T instruction dated 05.05.2003 came into effect providing three times consideration of the case of compassionate appointment. Hence, the impugned order under Annexure-A/7 dated 06.07.2007 is hereby quashed and the matter is remitted back to the Respondents to consider the case of the Applicant No.2 for providing employment on the basis of the indigence of the family to be verified in the manner as provided DoP&T OM No.14014/94-Estt.(D) dated 09.10.1998 twice in term of the instruction of the DoP&T dated 05.05.2003 and communicate the result of such consideration to the Applicant.

5. In the result, this OA stands disposed of in terms of the observation and direction made above. No costs.


(C.R. MOHAPATRA)
Member (Admn.)