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OA No. 351 of 2008

Manoj Kumar Mahanty Applicant
Versus
UOI & Ors. Respondents

Order dated ~~20th~~ August, 2009.

C O R A M

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

The fact of the matter is that Applicant's father while working in the ARC, Charbatia as AFO (G) died prematurely on 24.01.2007. After the death, the Applicant applied for appointment on compassionate ground. The said prayer of the applicant was rejected and communicated to the Applicant under Annexure-A/7. The ground of rejection attributed in the order under Annexure-A/7 was that the committee could not find his case more deserving than the other two cases recommended for compassionate appointment to the post of Air Craft Assistant and Safaiwala so as to be accommodated within the 5% of the Gr.C and D to be filled up by way of direct recruitment, earmarked for compassionate appointment. The Applicant, in this Original Application challenges the said order of rejection under Annexure-A/7 with prayer to direct the Respondents to provide him appointment on compassionate ground.

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2. Respondents filed their counter. In the counter it has been stated that as there was no vacancy under the quota earmarked to be filled up on compassionate ground, the case of the Applicant was rejected. However, it was fairly stated in the counter that the case of applicant will receive due consideration for the next two consecutive years i.e. 2008 and 2009 as per the Government of India, Ministry of Personnel, Public Grievances and Pensions, DoP&T OM No. 14014/19/2002-Estt.(D) dated 5.5.2003. On the above ground, the Respondents have opposed the prayer of the Applicant and prayed for dismissal of this OA being devoid of any merit.

3. Applicant has also filed rejoinder to the counter filed by the Respondents. While reiterating some of the points raised in the OA, it has been stated that the consideration given to the case of the applicant was no consideration as even though the financial condition of Shri Prakash Nayak is not bad, he was adjudged more indigent and provided employment on compassionate appointment whereas the case of the Applicant was rejected.

4. Heard rival submission of both sides and perused the materials placed on record.

5. Learned Counsel for the Applicant in course of argument put emphasis on the ground taken in the pleadings that as per DOP&T OM No.14014/94-Estt.(D) dated 09.10.1998 Welfare Officer of the concerned Ministry/Department/Office is/was required to collect material information regarding the distress and financial condition of each case to be placed before the Committee for subjective and comparative assessment of each case. But no such information was collected prior to the first consideration of the case of the Applicant. He has also reiterated that the financial condition of the Applicant is worse than said Prakash Nayak whose brother is an employee of the Indo Tibetan Border Police. Notwithstanding the above, Shri Prakash Nayak was provided appointment on compassionate ground whereas Applicant's case was rejected though the family of the applicant has no other means of livelihood. Further it was contended by Mr. Ojha, Learned Counsel for the Applicant that as per extant instruction, 5% direct recruitment Gr.C and D vacancy

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is earmarked for compassionate appointment. Whereas, the Respondents while calculating the vacancy deducted 25% of the vacancy in the name of non-operational post though it has not been specifically stated or produce any order of the DOP&T for exclusion of such non-operational post from the purview of compassionate appointment. By stating so, the Learned Counsel for the Applicant has prayed for quashing the order of rejection under Annexure-A/7 with direction for providing employment to the applicant on compassionate ground.

6. On the other hand learned ASC, relying on the averment made in the counter, strongly opposed the contention of the Learned Counsel for the Applicant. However, it has been stated that meanwhile the case of the applicant also received due consideration for the vacancy of 2008 but he could not be accommodated within the available vacancy.

7. I have given my thoughtful consideration to all the points raised by the parties. Though the DOP&T instruction provides for collection of information of the indigence of the deceased family by the Welfare Inspector, it does not mean that the Welfare Inspector

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has to personally go and collect the information. Such information can be gathered from the record produced by the candidate seeking employment. However, it is not the case of the Applicant that information of financial indigence of the family placed before the committee was in any way wrong or based on no material. In absence of such averment, I am not inclined to accept the above argument put forward by Learned Counsel for the Applicant. However, Learned Counsel for the Applicant has a case so far as exclusion of the certain percentage of post out of the total vacancy in the name of non-functional post. If such post is coming under the direct recruitment quota, then exclusion of such post is not in accordance with the DOP&T instruction providing reservation of 5% vacancy under compassionate appointment quota. So far as providing appointment to Shri Nayak is concerned, I also do not find any substantial force on this submission of learned counsel for the Applicant as this is not the job of this Tribunal to assess whose indigent condition is worse. As duly constituted committee recommended the case of Shri Nayak on the basis of comparative analysis and consequently he was

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appointed in preference to Applicant, being not the appellate authority of the said committee this Tribunal lacks jurisdiction to interfere in it. In view of the above, I find no irregularity, illegality or infirmity in the order of rejection under Annexure-A/7.


However, it has been fairly stated by the Respondents in the counter that the case of the applicant will have to receive due consideration on two more occasion as per the DOP&T circular. During course of argument, it was stated by Learned ASC that meanwhile his case has already received consideration for the vacancy of 2008 but rejected. This was denied by the Applicant as he was not intimated anything in this regard. Hence, the Respondents are directed to communicate the result of such consideration to the applicant forthwith.

8. However, as admitted by the Respondents the case of the Applicant will have to receive consideration for another occasion. While considering the case of the Applicant for the third time, the Respondents shall first take a decision on the issue whether exclusion of non-operational post while

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calculating the vacancy is in accordance with the
DOP&T instruction.

9. With the above observation and
direction this OA stands disposed of. No costs.


(C.R. Mohapatra)
Member (Admn.)