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OA No.390/2010
Bharati Panda & Another Applicants
-Versus-
Union of India & Ors. Respondents
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Order dated: the 27th July, 2010.

C O R A M
THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)

Having heard Mr.D.K.Mohanty, Learned Counsel for the Applicant and Mr.U.B.Mohapatra, Learned Senior Standing Counsel for the Union of India, appearing on notice for the Respondents MA No. 448/2010 filed by the Applicants seeking permission to prosecute this case jointly stands allowed and is accordingly disposed of.

2. It is the case of the Applicant that the husband of Applicant No.1 and father of Applicant No.2 while working as Draftsman in Map Section of the Directorate of Census, Orissa, Bhubaneswar prematurely died on 5th April, 1997 leaving behind two minor sons (applicant N.2 is one of them) and the widow. To overcome the financial indigence/distress condition occasioned due to/after the death of the sole bread earner of the family, Applicant No.1 applied for appointment on compassionate ground. Respondents considered and found Applicant No.1 eligible for appointment on compassionate ground, taking into consideration of her educational qualification in Gr. D post but regretted to provide such appointment due to dearth of vacancy in the said category and communicated the said decision to the Applicant No.1 in letter under Annexure-A/1 dated 20th November, 1998. Meanwhile, Applicant No.2 attained 16 years and passed HSC Examination. Therefore, by making representation dated 10.12.1999, Applicant No. 1 prayed for appointment in favour of Applicant No.2;

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followed by series of representations one after the other reiterating the prayer to provide appointment on compassionate ground to Applicant No.2. Finally, Respondents rejected the prayer of the applicant in the letter dated 17.5.2010 copy of which was forwarded to the Applicant in letter under Annexure-A/3 dated 21.6.2010. Hence applicants assail the said order of rejection on various grounds such as the Respondents rejected the claim of the applicant on technical ground of limitation without taking into consideration the persisting financial distress condition of the family; Applicant No.1 denied appointment due to non-availability of vacancy in Gr. D category in the Directorate of Census Operation without considering her case as against the vacancy available in the other Directorates through out India; Soon after the Respondents provided appointment on compassionate ground in Gr.D category to others without considering the case of the applicant No.1; if there was no vacancy available as on the date of rejection her case ought to have been considered in subsequent years; Applicant No.2 got majority sometime in 2002 and there from applicant no.1 has been representing for providing appointment in favour of her son (applicant No.2) respondents sat tight over the matter all these years and finally rejected the claim of the applicants only in 2010 without considering the fact that the delay was attributable to them for which the applicants should not be made to suffer and that the rejection was without consideration of the Government of India decision dated 5.5.2003 that there should be three times consideration. Accordingly, Learned Counsel for the Applicant prayed for the reilefs claimed in this OA.

3. On the other hand Learned Senior Standing Counsel objected to the prayer of the applicant, besides delay and laches, on the

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ground that efflux of time forfeits the claim of applicant for appointment on compassionate ground as compassionate ground is not provided as a matter of right but to prove solace to the bereaved family for survival of the existing members after the death of the bread earner of the family. Hence he has prayed for dismissal of this OA.

4. It is seen that the Respondents rejected the prayer of the applicant on the following grounds:

"I am directed to refer to your letter No. 50/1/98-Estt. dated 16.04.2010 and also an application dated 19.1.2010 directly received in this office from Sh. Surya Kant Panda on the subject cited above and to say that as per the existing instructions of the Govt. a case of compassionate appointment can be kept under consideration only upto 3 yrs. This case is now 13 yrs old and has become badly time barred and it is not possible to reopen and consider the request for compassionate appointment. Hence the request made by Shri Surya Kanta Panda is not acceded to."

From the above it reveals that the case of the applicants was rejected as per the existing instructions of the Govt. i.e. a case of compassionate appointment can be kept under consideration only upto 3 yrs and that this case is now 13 yrs old and has become badly time barred and it is not possible to reopen and consider the request for compassionate appointment. But I see none of the grounds is sustainable because Government of India instruction does not provide for keeping the name for three years rather it says for three times consideration. Further it is the Respondents who delayed the matter for giving consideration to the case of the applicants. Applicants have been going on making representation which was the remedy available to them. However, delay itself cannot be a ground to throw the case to the dustbin without considering the basic requirement for providing appointment on compassionate ground i.e. indigence of the family.

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Since the order of rejection itself does not seem sustainable, I do not see any reason to keep the matter pending by issuing notice to the Respondents especially when this OA is going to be disposed of with direction for reconsideration without expressing any opinion on the merit of the matter.

5. For the discussions made above, without expressing any opinion on the merit of the matter, this OA is disposed of at this admission stage, with direction to the Respondent No.1 to give fresh consideration to the case of the Applicant No.2 in the light of the discussions made above and communicate the result of such consideration to the Applicants, at an early date, preferably within a period of three months from the date of receipt of this order. Send copies of this order along with copy of the OA to the Respondent No.1 for compliance and free copies of this order be given to Learned Counsel for both sides.


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