

V
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A No.523 of 2010
Cuttack this the 27th day of July, 2012

CORAM:

THE HON'BLE SHRI C.R.MOHAPATRA, MEMBER(A)
AND
THE HON'BLE SHRI A.K.PATNAIK, MEMBER(A)

1. Taramani Patra, aged about 63 years, W/o. late Ananta Charan Patra, At-Raghunathpur (Mahura), PO-Paramahansa, Dist-Cuttack
2. Ghanashyam Patra, aged about 40 years, S/o. late Ananta Charan Patra, At-Raghunathpur (Mahura), PO-Paramahansa, Dist-Cuttack

...Applicants

By the Advocates:Mr.T.Rath

-Versus-

1. Union of India represented through the Director General, Geological Survey of India, Govt. of India, 27-Jawaharlal Nehru Road, Kolkatta, West Bengal
2. Sr.Deputy Director General, Geological Survey of India, Eastern Region, Geological Survey of India Complex, Block-DK-6, Karunamayee, Sector-2, Salt Laka, Kolkatta, West Bengal
3. Dy.Director General and H.O.D. , Geological Survey of India, Eastern Region, Bhu-Binjan Bhawan, BlockDK6, Sector-II, Salt Lake, Kolkatta, West Bengal-700 091
4. Dy.Director General, Geological Survey of India (Operation Orissa), Unit-8, Nayapalli, Bhubaneswar-751 012, Dist-Khurda

...Respondents

By the Advocates: Mr.U.B.Mohapatra,SSC

...

ORDER

C.R.MOHAPATRA, MEMBER (A):

This is the third round of litigation which has been resorted to by the Applicants being aggrieved with the decision of the Respondent-Department vide Annexure-A/19 dated 11.5.2010, in compliance of the order dated 31.3.2010 of this Tribunal in O.A.No.30/2009. The prayer of the

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Applicants in the present OA is to quash the impugned order at Annexure-A/19 with direction to Respondent-Department to appoint applicant No.2 on compassionate ground in any Group-C or Group - D post.

2. Gist of the case is that this Tribunal in the earlier round of litigation in O.A.No.30/2009 disposed of the matter on the following terms.

“...It is also trite law that discretion cannot be used discriminatorily. Similarly consideration does not mean mere formality without due application of mind which is lacking in the instant case. Besides the above, in terms of the instructions, recommendation by the CAC is always against a vacancy. If there was no vacancy it is not known how the CAC recommended the case of the applicant No.2. If recommended why the case of the applicant no.2 could not be kept alive till vacancy arose as in the case of others whose life of the panel was extended awaiting fulfillment of the requirements of the selectees. In view of the above, I find sufficient force in the contention of the learned counsel for the applicant that there has been no free and fair treatment extended to the case of the applicant No.2. Mr.Sway, Deputy Director General, Eastern Region, GSI, Kolkata has fairly submitted that he has no objection for consideration of the case of the applicant No.2 for appointment under compassionate ground against Group D vacancy but he was unable to state out rightly the vacancy position. For aforesaid reason, I am of the considered view that the case of the applicant No.2 needs reconsideration.

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 In view of the above, the order under Annexure-A/13 stands quashed and the matter is remitted back to the Respondents for giving reconsideration to the case of the applicant No.2 for providing him an appointment on compassionate ground in Group D within a period of 45 days from the date of receipt of copy of this order. The outcome of the consideration, as directed above, shall also be communicated to the applicant No.2 within the period stipulated above".

3. The Respondents, in compliance of the aforesaid order of this Tribunal considered/reconsidered the case of the applicant No.2 for compassionate appointment against Group-D post and communicated their decision vide Annexure-A/19. The relevant portion of the order reads as under.

"A meeting of the Compassionate Appointment Committee (CAC) of the Eastern Region, GSI was held on 22.04.2010, in compliance of the Hon'ble CAT, Cuttack Bench order.

As per the extant Govt. rules and DOPT guidelines pertaining to Compassionate Appointment the following criteria were uniformly maintained for comparative analysis of family condition cum financial liability of the applicants vis a vis respective family pension and other gross benefits obtained or obtained in revised mode as per available documents.

(i). Date of death of deceased Govt. servant or date of retirement on medical ground is taken for calculation of date of expiry of the

applications(three years) for compassionate appointment.

(ii). The validity of the applicant's consideration for Compassionate Appointment has been strictly calculated to be 3 years from the above date.

(iii) The Pension and other gross monetary benefits received are clubbed together to identify the lowest beneficiary. For determination of relative family liability of the applicants, a grading scheme is adopted giving due stress on unmarried daughter (major and minor), minor son(s), and widow, besides consideration of other liabilities if mentioned in the claims.

(iv) 5% of the Direct Recruitment (DR) posts falling vacant in Group D and C categories including technical ones as on 22.04.2010 has been considered for determination of clear vacancy portion for Compassionate Appointment.

(v) The possibility of Sri Ghanasyam Patra, S/o. late Ananta Charan Patra, Ex-Technical Helper, for compassionate appointment has been considered again to comply with the order of the Hon'ble CAT, Cuttack Bench, although his last date for consideration for Compassionate Appointment expired long back on 26.10.2013 and he was communicated accordingly (vide letter No.1121/B-12011/Comp./Gen/Adm/ER/92-95 dated 19.11.2004). Two vacancies are available at 5% of D.R. vacancy and it is found that he does not fulfill the criteria of being within the two most deserved candidates as on date. He has received much higher financial benefits relative to last three deserving candidates considered by the CAT. The Committee thus considered his case in compliance to the judgment along with other eligible candidates awaiting compassionate appointment but the candidate did not find a place a place in the select list of the recommended candidates as per CAC recommendation as

pointed out in Paras 1 to 5 above in accordance to G.I. DOPT OM No.14014/6/94-Estt(D) dated 9.10.98, OM No.14014/19/2002-Estt(D) dated 5.5.2003

Thus the prayer of Smt.Taramani Patra and Sri Ghahashyam Patra is rejected in view of the observation and recommendation of the Compassionate Appointment Committee which considered the case afresh in compliance of the Hon'ble CAT, Cuttack order dtd. 31.3.2010 in O.A.No.30/2009 filed by Smt.Taramani Patra and Sri Ghanashyam Patra. Hence, the judgment order of the Hon'ble Tribunal passed in the aforesaid OA stands complied with the issuance of this Speaking Order".

On the above lines, the Respondents have also opposed the prayer of the Applicants in their counter filed in the instant OA.

4. Mr.T. Rath, Learned Counsel appearing for the Applicant has taken us through the earlier order of this Tribunal vis-à-vis the order impugned in this OA. His contention is that since the consideration given by the Respondents to the case of the applicant is not in accordance with the direction of this Tribunal, the impugned order is liable to be set aside. On the other hand, Mr. U.B. Mohapatra, Learned SSC appearing for the Respondents vehemently objected to the contention advanced by Mr. Rath, Learned Counsel appearing for the Applicant.

Mr. Mohapatra, Learned SSC's contention is that the age of the applicant No.2 and time elapsed from the date of death of his father are sufficient ground to come to the conclusion that there exists no case to provide appointment on compassionate ground and, as such, this OA is liable to be rejected.

5. We have considered the rival submissions of the Parties and perused the materials placed on record. It is noticed that the father of the Applicant No.2 died in harness in the year 2000 and that the applicant would be aged about 42 years of age now as by the time this OA was filed he was 40 years. This was filed on 13th September, 2010. On the other hand, it is noticed that the manner in which Compassionate Appointment Committee considered the case of the applicant, in compliance of the earlier order of this Tribunal speaks volumes inasmuch as the language couched in Paragraph-5 above (Annexure-A/19), "although his last date for consideration for Compassionate Appointment expired long back on 26.10.2003 and he was communicated accordingly (vide letter No.1121/B-12011/Comp./Gen/Adm/ER/92-95 dated 19.11.2004)", gives

a hint that the Respondent-Department were bent upon to reject the case of the applicant on some pretext or the other. The direction to consider does not mean "only bring the name of the applicant within the zone of consideration". The cardinal principle for considering the case of applicant is the evaluation of the indigent condition of the family of the deceased at the crucial time. It is the specific case of the Applicants that the family of the deceased is still in indigence. It is for the Department to consider whether at this distance of time, age of the applicant No.2 and the financial condition of the family deserve appointment on compassionate ground. In view of the fact that the consideration given to the case of the applicant is not in accordance with the earlier order of this Tribunal, the impugned order under Annexure-A/19 is hereby quashed. The matter is remitted back to the Respondents to consider/reconsider the case of the applicant taking into consideration the observations made above and intimate the decision to the Applicant No.2 within a period of ninety days from the date of receipt of copy of this order. With the



observation and direction made above, this OA stands disposed of. No costs.

A.K.Patnaik
(A.K.Patnaik)
Member(Judl.)

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