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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO.754 OF 2010

Cuttack this the 25th day of June, 2012


Biwanath MahaliApplicant

Versus

UOI and OrsRespondents

FOR INSTRUCTIONS

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


(A.K.PATNAIK)
Member (Judl.)

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ORIGINAL APPLICATION NO.754 OF 2010

Cuttack this the 25th day of June, 2012

CORAM:

HON'BLE SHRI A.K.PATNAIK, JUDICIAL MEMBER

...
Sri Biswanath Mahali, aged about 21 years, Son of late Karma Mahali,
C/o. Budhadev Mahali of Vill/PO-Bagdega, PS-Bisra, Dist-Sundargarh
...Applicant

By the Advocates:M/s.B.Dash & C.Mohanta

-VERSUS-

1. Union of India represented through its Secretary in the Ministry of Defence, Department of Defence Production & Supplies Defence Head Quarters, New Delhi-110 011
2. Director General of Quality Assurance Directorate General Quality Assurance, DGQA (ADM-7A), Government of India, Defence Head Quarters, Dakghar, New Delhi-110 011
3. Quality Assurance Officer, Government of India, Ministry of Defence (D.G.Q.A.) Quality Assurance Estt. (Metals), Hot Mill Road, R.S.P., Rourkela-769011
4. Sr.Scientific Officer-II, Government of India, Quality Assurance Estt(Metals) Hot Mill Road, R.S.P., Rourkela, PIN-769 011

...Respondent

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By the Advocates:Mr.P.R.J.Dash,A.S.C.

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ORDER

A.K.PATNAIK, MEMBER(J): In this Original Application under

Section 19 of the A.T.Act, 1985, applicant has sought the following relief.

- i) The Original Application may be allowed.
- ii) The impugned order dt. 08.09.010(Annexure-A/18) and 25.01.2011 (Annexure-A/19) may be quashed.
- iii) The Respondents may be directed to consider the case of the applicant for a compassionate appointment.
- iv) And such other order(s) direction(s) may be given in giving complete relief to the applicant.

2. Brief history of this matter is that applicant's father while working as Orderly under the Respondent-Department

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passed away in the year 1994. Consequently, wife of the deceased employee (mother of the applicant) was offered with appointment on compassionate grounds in the year 2000. Before completion of certain administrative formalities, mother of the applicant also passed away on 02.12.2000. At the relevant point of time, the children of the deceased were minor. However, on the application made on behalf of the applicant seeking compassionate appointment, the ^{same} was turned down vide Annexure-A/2 dated 23.9.2003 on the ground that there is no provision to give employment to minor children unless they attain the age of 18 years as per existing Government Rules. Thereafter, the applicant after having attained majority in July, 2007, applied for compassionate appointment, in response to which, he was advised by the Respondents for submission of documents regarding age proof etc. Accordingly, the applicant submitted the required documents vide letter dated 24.11.2007 Annexure-A/5). Having received no intimation, the applicant went on preferring representation after representation. Vide letter dated 11.5.2009(Annexure-A/12) applicant was intimated that although his application for compassionate appointment for the post of Mazdoor had already been sent to the Director General, but no reply had yet been received. Again vide letter dated

same

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20.07.2009(Annexure-A/13 the applicant was communicated that his application for compassionate appointment would be considered in due course of time along with others. In the meantime, applicant was again asked vide letter dated 30.9.2009(Annexure-A/14) for submission of certain documents and in compliance of the above, the applicant submitted the required documents vide letter dated 13.10.2009(Annexure-A/15). Since the applicant did not receive any information he again submitted a representation dated 26.3.2010 followed by reminder dated 18.6.2010 vide Annexures-A/16 and A/17 respectively. While the applicant was waiting for a reply, he received a letter dated 8.9.2010(Annexure-A/18) stating therein that his request for compassionate appointment had been closed since it was not considered to be a fit case for extending compassionate appointment. While the matter stood thus, applicant again received a letter dated 25.1.2011(Annexure-A/19), the gist of which reads as under:

“Request for Appointment on compassionate ground:

- Ref: i) Our letter No.QMR/EST/FS/001/km
DATED 8TH September, 2010
ii) Head Qtr., New Delhi letter
No.A/89942/Screening-
I/2008/DGQA/Admn.7A dated
26.8.2010
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With reference to above, our letter under reference (i) may please be treated as CANCELLED. In the above connection it is intimated that your application dated 31.12.2007 for compassionate appointment was forwarded by this establishment to HQ DGQA, New Delhi for consideration being the competent authority on such matters. Your above said application was accordingly examined at HQ DGQA, New Delhi by the Board of Officers constituted for the subject purpose as per governing policy and procedures on the subject matter. The Board of Officers on examination of your case however did not consider it a fit case for consideration for compassionate appointment as requested by you in your application. The observations of the BOO in this regard as communicated vide HQ DGQA, New Delhi letter No.A/89942/Screening-I/2008/DGQA/Admn-7A dt. 26.08.2010 are reproduced below for your kind information please.

The request of Shri Biswanath Mahali for compassionate appointment was considered belated by Head Qtr., because his father, late Karma Mahali, Orderly of QAE(Met), Rourkela had expired on 27.12.1994 while in service and his mother Late Kuni Mahali was offered compassionate appointment to the post of Orderly At QAE(Met), Rourkela who also expired on 02.12.2000 before completion of requisite formalities in respect of that appointment. Therefore, the Board of Officers (Constituted by Head Qtrs. New Delhi) in meeting held on 25.06.2010 for considering the cases for compassionate appointment examined the belated request of Shri Biswanath Mahali in the light of para - 8 of DOP & T OM No.14014/6/94 Estt(D) dated 09 Oct. 98.

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While examining the case, the Board of Officers observed that Late Smt.Kuni Mahali, W/o. Late Karma Mahali had expired on 02.12.2000 and her children were minor at that time. Shri Biswanath Mahali, s/o. late Shri Karma Mahali applied for appointment on compassionate ground in Dec. 2007 on attaining the age of 18 years. Although, Kum.Bidyabati Mahali, D/o. late Karma Mahali is the eldest of the dependent children, yet, she did not apply for compassionate appointment on attaining the age of 18 years in June, 2006. The Board of Officers was therefore of the opinion that the case was very old and there must have been some dependable means of subsistence for the family all these years. Moreover, the elder sister could have applied for compassionate appointment immediately on attaining the age of 18 years if the family had been without adequate means of livelihood. Therefore, the Board of Officers did not consider it a fit case for consideration for compassionate appointment.

In view of the above, the case of Shri Biswanath Mahali for compassionate appointment may be treated as closed".

2. Aggrieved with the above, applicant has moved this Tribunal in the present Original Application.
3. Respondent-Department have filed their counter opposing the prayer of the applicant as quoted above.
4. I have heard Shri Bimbisar Dash, learned counsel for the applicant and Shri P.R.J.Dash, learned Addl. Standing Counsel for the Respondents and perused the materials on record.

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5. Admittedly, the Respondent-Department having considered the indigent condition of the family offered compassionate appointment in favour of the mother of the applicant in the year 2000 after the death of his father. As the ill luck would have it, before completion of certain administrative formalities, the mother of the applicant also passed away in the year 2000. It is also not in dispute that by the time mother of the applicant had passed away, the children were all minor. On attaining majority in the July, 2007, applicant applied for compassionate appointment. Vide letter dated 11.5.2009(Annexure-A/12) he was intimated that although his application for compassionate appointment for the post of Mazdoor had already been sent to the Director General, but no reply had yet been received. While the matter stood thus, he was again communicated vide communication dated 20.07.2009(Annexure-A/13) that his case would be considered in due course of time. Further the applicant was communicated with letter dated 30.9.2009(Annexure-A/14) for submission of certain documents in compliance of which he did submit the required documents vide letter dated 13.10.2009(Annexure-A/15). This gives an impression that the prayer of the applicant for compassionate appointment was under active consideration by the Respondent-Department all through at no point of time there was no

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repugnance by the Respondents. In the above backdrop of the facts, the grounds on which applicant's prayer for compassionate appointment has been turned down are three fold, viz., (i) although, Kum.Bidyabati Mahali, D/o. late Karma Mahali is the eldest of the dependent children, yet, she did not apply for compassionate appointment on attaining the age of 18 years in June, 2006 (ii) the case is very old and (iii) there must have been some dependable means of subsistence for the family all these years.

6. Perusal of records reveals that although the father of the applicant passed away in the year 1994, his mother was offered with compassionate appointment in the year 2000, i.e., within about six years. This gives out a clear indication that the Respondents had considered and registered the family indigent requiring compassionate appointment. It is not the case of the Respondents that in the time between there has been some development in the family in so far as indigent condition is concerned. Therefore, the findings of the Board of Officers that there must have been some dependable means of subsistence for the family all these years are ruled out.

7. In so far delay as ~~delay~~ is concerned, it is an admitted position that the applicant on attaining majority in the year 2007

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applied for compassionate appointment and the Respondents have communicated him that approval of D.G. Q.A had been sought for appointment to the post of Mazdoor on compassionate grounds and that the outcome would be communicated in due course of time. It is also the own admission of the Respondents that minor children are not eligible to be employed. Therefore, there was no scope left for the applicant to apply for compassionate appointment before attaining majority. Be that as it may, having slept over the matter from 2007, the Respondents – Department ought not to have turned down the prayer for compassionate appointment in the year 2011 vide Annexure-A/11 on the ground of delay. There being admittedly delay of about six years in offering compassionate appointment in favour of the wife of the deceased, in similar analogy, in my considered view, the ~~applicant's~~ consideration of the prayer for compassionate appointment of the applicant after attaining majority in the year 2007 does not suffer from delay.

8. In so far as plea of the Respondent-Department that the sister of the applicant having attained majority in the year 2006 could have applied for compassionate appointment, it is too late in the day for the Respondent-Department to come out with such a plea inasmuch as, when the applicant in the year 2007 had applied for compassionate appointment, he could have been instantly

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advised in that manner – instead, he was given a commitment that approval of D.G., Q.A. for appointment to the post of Mazdoor on compassionate ground had been sought. This being the backdrop of the facts, the plea as raised above by the Respondents is nothing but after thought.

9. For the reasons discussed above, I have no hesitation to quash ~~Annexure~~ ^{cal} Annexure-A/18 and Annexure-A/19 to the O.A. respectively, and accordingly, the same are quashed. In effect, Respondents are directed to reconsider the case of the applicant for compassionate appointment within a period of sixty days from the date of receipt of this order.

10. In the result, the O.A. is allowed to the extent indicated above. No costs.


(A.K.PATNAIK)
JUDICIAL MEMBER