

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

OA NO.146 OF 2011

Cuttack this the 4th day of September, 2013

CORAM

HON'BLE SHRI R.C.MISRA, MEMBER(A)

1. Smt.Bharati Panda,
Aged about 49 years
Wife of late Ghahashyam Panda
2. Sri Suryakanta Panda
Aged about 28 years, Son of late Ghanashyam Panda
Both are of Village-Barimundi,
PO-Bagal Sahi
Dist-Cuttack
At present residing at C/o.Padmacharan Panda
Of Sriram Nagar
PO-Kalyaninagar
Dist-Cuttack

By the Advocate(s)-M/s.D.Ku.Mohanty
D.Pratihari

-VERSUS-

Union of India represented through

1. The Secretary to Govt. of India
Ministry of Home Affairs
Central Secretariat
New Delhi-110 001
2. Registrar General of India
Govt. of India
Ministry of Home Affairs
21-A, Mansingh Road
New Delhi-110 011
3. Deputy Director of Census Operations
Govt. of India,
Ministry of Home Affairs
Janpath, Unit-IX
PO-Bhoinagar
Bhubaneswar
Dist-Khurda

...Respondents

By the Advocate(s)-Mr.U.B.Mohapatra

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ORDER**HON'BLE SHRI R.C.MISRA, MEMBER(A):**

Applicants in this Original Application are ^{widow} ~~wife~~ and son of late Ghanashyama Panda, who was working in the Office of the Director of Census Operations, Bhubaneswar as Draftsman. They have approached this Tribunal seeking a direction to the Respondents to provide compassionate appointment in favour of the applicant No.2. They have also prayed for quashing the order of rejection dated 8.11.2010 issued by the Respondents, which has been filed as Annexure-A/4 to this O.A.

Short facts:

2. Late Ghanashyama Panda, while working as Draftsman in the Office of Director, Census Operations at Bhubaneswar died on 5.4.1997 leaving behind his widow and two sons, who were minor at that time. The applicant No.1, i.e. the widow of the deceased Government servant made an application to the Respondents for compassionate appointment and in response to that, the Respondents informed applicant No.1 vide a letter dated 20.11.1998 that she was eligible for appointment in a Group-D post, but she could not be appointed because of non-availability of vacancy in the Group-D. Thereafter, the applicant No.1 made another application dated 10.12.1999 requesting for provision of compassionate appointment in favour of the applicant No.2 in a Class-III vacancy considering the fact that in the meantime, the applicant No.2 had passed the H.S.C. Examination and had also attained majority to be considered for such appointment. The applicants pursued this letter with further correspondence with the Respondents and finally, Respondent No.4, in a letter dated 21.6.2010,



communicated the order of respondent No.2 dated 17.5.2010 to the applicants. This order was one of rejection of the prayer of the applicants mentioning that as per the existing instructions of the Government of India, a case of compassionate appointment can be kept under consideration upto a period of three years and this case being 13 years old, had become time barred and therefore, could not be considered. After receiving the order of rejection, the applicants approached the Tribunal in O.A.No.390/2010 challenging the said order. This case was heard and disposed by this Tribunal vide order dated 27.7.2010 with a direction to Respondent No.1 to give a fresh consideration to the case of the applicant No.2 in the light of certain observations made therein by this Tribunal. In pursuance of the directions issued by this Tribunal, the Respondents have issued a speaking order dated 8.11.2010, in which, the case of compassionate appointment of the applicant No.2 has been rejected. This order is under challenge in the present Original Application.

Position taken by the Respondents in the counter-affidavit:

3. The Respondents have taken a stand that the applicant No.1, widow of the deceased Government servant is getting a monthly pension of Rs.3900/- per month. She also has agricultural as well as residential lands and the family lives in its own house. It was already intimated to applicant No.1 that although she was considered eligible for compassionate appointment, no Group-D vacancy was available at that time in the Directorate of Census Operations, Orissa and therefore no compassionate appointment could be offered. Subsequently, the applicant No.1 in a letter dated 20.12.1999 made a request that appointment may be given to

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applicant No.2 who had attained majority in a Class-III post. The case was considered by a designated Committee on 24.4.2004, but her name did not figure in the merit list among the most deserving candidates. According to Department of Personnel & Training O.M. dated 5.5.2003, the maximum period for which a persons' name can be kept under consideration for offering compassionate appointment will be three years. Since the applicants' case could not be considered, therefore, a letter of rejection was sent on 17.5.2010 and accordingly, the applicant No.2 was informed in the letter dated 21.6.2010. Subsequently, as per the orders of the Tribunal in O.A.No.390/2010, the case of the applicant No.2 has been dealt in a speaking order dated 8.11.2010, but has been rejected.

4. According to Respondents, in the present O.A. no new material has been submitted by the applicants in order to warrant any reconsideration. As per the scheme of compassionate appointment, only 5% of Direct Recruit vacancies in Group-C and D posts are available for the same. But that does not imply that the applicants against the available vacancies have a matter of right. In only deserving cases such appointments can be given. As per the provisions of DOP&T, the case of compassionate appointment can be considered for a maximum period of three years and since in the present case a number of years have passed, it was not possible to offer the appointment again to the applicant No.2. In the present case, there is no immediate distressed condition in the family in view of the fact that so many years since the death of the Government servant have passed and even the very fact that the applicant No.1 was prepared to wait till her son attained majority to become eligible for a Class-III post clearly



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indicates that it was not a case of financial destitution. Therefore, the case of the applicants is without any merit and the present O.A. is liable to be dismissed.

Contentions by the parties:

5. In course of hearing of this case, the learned counsel for the applicant has emphasized the point that the speaking order dated 8.11.2010, which was passed in compliance with the order dated 27.7.2010 of this Tribunal in O.A.No.390/2010 has not considered the case in true spirit of the order issued by the Tribunal in the said O.A. The applicant No.1 made her application way back on 9.9.1998 and the Respondents wrote to the applicant on 20.11.1998 that she was eligible for consideration for such appointment, but there was no vacancy in Group-D to consider her candidature. Subsequently, the Respondents have offered compassionate appointments to many other persons, but did not consider the case of the applicants against the vacancies arising in the subsequent years. The applicant No.1 also had made another application in the year 1999 to offer a compassionate appointment to applicant No.2 as per his eligibility and qualification. But only in a letter dated 21.6.2010, it was communicated to the applicant No.2 that his application has been rejected. Therefore, the delay in consideration of the case of the applicants was due to the inaction of the Respondents. Subsequently, in compliance of the orders of the Tribunal dated 27.7.2010 in O.A.No.390/2010, the Respondents have rejected the case of the applicants on the ground that after the passage of such a long time, the case of compassionate appointment could not be taken up again.



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6. On the other hand, Shri U.B.Mohapatra, learned Senior Central Govt. Standing Counsel for the Respondents has argued that the decision of the Respondents is perfectly all right and is as per law. There is no right to get an offer of compassionate appointment after the applicants are not found to be living in indigent conditions. Further, Shri Mohapatra has pointed out that appointment on compassionate ground can be made only if a vacancy is available for the purpose. Since in the present case, such a vacancy was not available, the application for compassionate appointment could not be considered. Further, he has cited the judgment in Umesh Kumar Nagal (JT 1994 (3) SC 535) in which the Hon'ble Apex Court has laid down that compassionate appointment cannot be granted after a lapse of reasonable period and it is not a vested right which can be exercised at any time in future. Another argument advanced by Shri Mohapatra is that in the speaking order, the Department have considered all the necessary points as per the directions of this Tribunal and the applicants have failed to bring any new facts in the present O.A. which could merit consideration of this Tribunal. Since the earlier order of this Tribunal has been carried out by the Respondents by issuance of the speaking order dated 8.11.2010, and there being no fresh substance brought out in the present case, there was absolutely no need for fresh consideration of this matter.

Discussion:

7. Having heard the contentions of the learned counsels for both parties and upon perusal of records, it is now time to discuss all aspects of this matter. Compassionate appointment is a scheme formulated to provide long term succor to a family that has been distressed by the

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untimely passing away of its bread-winner. It is but natural that when a Government servant dies in harness, the family members are suddenly confronted with a situation which is painful not only in economic terms, but also highly demoralizing in the context of long term survival of the family. The distress of the family could be exacerbated by a situation where children have not grown up, or there are immediate and impending social liabilities to discharge, or the family has no other viable source of income to fall back upon.

8. Having said so, it is to be remembered that this laudable scheme as formulated by the Department of Personnel & Training has to be implemented by the various Departments of the Government within the four corners of the provisions enshrined therein. At the same time, it has to be borne in mind that compassionate appointment is not another method of recruitment. This has been most succinctly pronounced by the Hon'ble Apex Court in the case of State of Gujarat & Ors. Vs. Arvind Kumar T. Tiwari and another in C.A.No.6468 of 2012 as reported in 2013(1) SLR 1(SC) as quoted below.

"It is a settled legal proposition that compassionate appointment cannot be claimed as a matter of right. It is not simply another method of recruitment".

9. The same ratio has been underlined in the judgment of the Hon'ble Apex Court in the case of Union of India & Anr. Vs. Shashank Goswami & Anr. in CA No.6224 of 2008 as reported in 2013(2) SLR 429 (SC), which is reproduced below.

"There can be no quarrel to the settled legal proposition that the claim for appointment on compassionate


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ground is faced on the premises that the applicant was dependent on the deceased employee. Strictly such a claim cannot be upheld on the touchstone of Article 14 or 16 of the Constitution of India. However, such claim is considered as reasonable and permissible on the basis of sudden crisis occurring in the family of such employee who has served the state and dies while in service”.

10. As evidenced from above, the law in respect of compassionate appointment to family members of Government servants who die in service has been enunciated in crystal clear terms by the Hon'ble Supreme Court in several of their judgments. I am to however, consider the specific facts of the present case. The deceased Government servant in this case was an employee in the office of Director of Census Operations, Orissa functioning under the control of Registrar General of India, Government of India, Ministry of Home Affairs, and was working as a Draftsman. He died on 5.4.1997. At the time of death he left behind his widow and two minor children. It can be said without any doubt that the family was left in a state of destitution. An application for compassionate appointment was made on 9.9.1998. The Deputy Director Census in his letter dated 20.11.1998 wrote to the applicant informing that she was eligible for consideration for compassionate appointment, but there was no vacancy in Group D to consider her^P candidature. In a case which is eligible, there should not have been such a terse communication of total refusal. In the spirit of the guidelines, the case could have been kept alive for consideration for the subsequent years when vacancies could have been located. When the authorities have admitted eligibility of the case, the objectives of the scheme would have been better met by locating vacancies at subsequent point of time. Now, the applicants have complained that Respondents

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closed their case, but extended compassionate appointments in Group D to other cases, even though they have not mentioned specific names. Meanwhile, applicant No.2 had become major, and applicant No.1 put forth the case of applicant No.2 for appointment in Class-III vacancy, since vacancy was reported to be unavailable in Group D category. Now, I find letter dated 21.6.2010 from the Joint Director, Census Operations, Bhubaneswar addressed to applicant No.2 in which it was communicated that the case being 13 years old is time barred and therefore, not acceded to by Registrar general's Office. A letter dated 17.5.2010 from the office of Registrar General, India is also enclosed which says that the case cannot be re-opened being 13 years old, since "as per existing instructions of the Government a case of compassionate appointment can be kept under consideration only upto 3 years". The applicants approached this Tribunal for relief by filing O.A.No.390/2010, challenging the communications dated 17.5.2010 and 21.6.2010 emanating from the Respondents.

11. The order of the Tribunal dated 27.7.2010 in the previous O.A. directed the Respondent No.1 to reconsider the case, without expressing any opinion on the merits of the matter. However, the Tribunal pronounced the view that "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". The Tribunal also made pertinent observations about the delay committed by the authorities. The following lines quoted from the order speak for themselves.



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"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 therefrom 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 applicant only in 2010 without considering the fact that the delay was attributable to them for which the applicants should not be made to suffer. ..."

12. The Deputy Director in the office of Registrar General of India brought out the order dated 8.11.2010 in compliance of the orders of this Tribunal as discussed above. The salient aspects of this speaking order are as follows.

(i) The first aspect is that compassionate appointment was refused in letter dated 20.11.1998, since there was no vacancy available. The Respondents have defended their stand by quoting judgments of Hon'ble Supreme Court to the effect that compassionate appointment can be made only if a vacancy is available for the purpose.

(ii) The second aspect is the line of defence taken by the respondents that even though applicant No.1 on 10.12.1999 wrote that the compassionate may be given to her elder son, applicant No.2 when he attains majority, the case was not liable to be considered because of the very fact that the applicant was prepared to wait till her son attains majority and becomes eligible for a better, i.e., Class-III post, ^{and} it was clear that it was not a case of financial destitution.

(iii) The third aspect of the speaking order is that the Respondents by quoting from DoP&T's instructions dated 5.5.2003 have concluded that the maximum time a person's name can be kept under consideration for offering compassionate appointment will be three years, and that the present case was not a deserving one and was badly time barred.

(iv) Finally, the Respondents have rejected the representation dated 30.7.2010 of the applicant No.2 in

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compliance with this Tribunal's order dated 27.7.2010 in O.A.No.390/2010.

13. In the speaking order, the respondents have highlighted the principal aspect of delay, and one could say that the delay was glaringly visible. But the Tribunal in its earlier order in O.A.No.390/2010 has clearly pronounced that delay was attributable to the Respondents who could have considered the case in subsequent years having said on 20.11.1998 that no Group D vacancy was available. But what is apparent in the face of this speaking order is that this defends itself against all observations made by this Tribunal in disposing of O.A.No.390/2010 by giving counter arguments. The Tribunal in that O.A. had made itself clear that it was not expressing anything on the merit of the case. However, it did observe that delay itself was no ground to consign the matter to the dustbin, particularly when delay was attributable to Respondents. So, it was finally an order ^{for R} fresh consideration on merit. Every order of a Court or Tribunal has to be complied with both in letter and spirit. The order of the Tribunal in O.A.No.390/2010 has not been challenged by the Respondents in any higher forum. So they are bound by this order, and should have given a fresh consideration to this case. There is no doubt that they have complied with the order of the Tribunal by issuing a speaking order dated 8.11.2010. But the tenor of the speaking order is one of resistance, rather than compliance. It is not very difficult to detect that the spirit of fresh consideration is lacking, even though the formal aspect of the compliance of this Tribunal's order has been fulfilled.

14. The spirit of reconsideration or fresh consideration was the most vital requirement in the context of the directions of this Tribunal given in

the earlier O.A. In the absence of that spirit, the form of passing a speaking order by building defence against every observation of the Tribunal is stupefying and unwholesome. As per this Tribunal's order, decision on merits was in the hands of the Respondents, subject, of course, to certain observations made by the Tribunal based upon the factual matrix of the case. Therefore, the Respondents should have taken into account the directions in the right spirit, and considered the case afresh, within the parameters of Government Rules and guidelines. There was no room for the Respondents to turn defensive and combative. To take an example, in the speaking order, the respondents mentioned, "it is clear that it was not a genuine case for compassionate appointment". This runs entirely contrary to the contents of the letter dated 20.11.1998 in which it was communicated to the applicant No.1 that she was eligible for consideration for compassionate appointment.

Conclusion:

15. Having observed as above on the basis of the available records and having regard to the contentions of the learned counsels for both the parties, I am of the considered view that since the order dated 8.11.2010 (Annexure-A/4) is not in true spirit a compliance of the directions for fresh consideration passed by this Tribunal on 27.7.2010 in O.A.No.390/2010, the same is not sustainable in the eye of law and accordingly, Annexure-A/4 dated 8.11.2010 is quashed. Consequently, Respondent Nos. 1 and 2 are directed to give a fresh consideration to the claims of the applicants in the light of what has been observed above, and also in accordance with the extant rules and instructions on the subject, and pass a reasoned and



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speaking order and communicate the decision to the applicants within 90 days of receipt of copy of this order.

With the observations and directions as mentioned above, the O.A. is disposed of. No costs.



(R.C.MISRA)
MEMBER(A)

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