

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

O.A. NO.666 of 2011  
Cuttack this the 26<sup>th</sup> day of February, 2013

CORAM  
HON'BLE SHRI A.K.PATNAIK, MEMBER(J)

Amiya Kumar Naik,  
aged about 41 years,  
S/o Alekh Charan Nayak,  
At: Darada,  
PO/Via : Berikina,  
District Jagatsinghpur

.... Applicant

By the Advocates: M/s.B.R.Sarangi, S.N.Jena

-VERSUS-

1. Chief Commissioner of Income Tax,  
Government of India,  
waykar Bhawan,  
Rajaswavihar,  
Bhubaneswar,  
Dist. Khurda.
2. Assistant Commissioner of Income Tax,  
Headquarters (Administration),  
Waykar Bhawan,  
Rajaswavihar,  
Bhubaneswar,  
District Khurda.
3. Commissioner of Income Tax (Appeals),  
Cuttack, Stoney Road,  
PO Chandinichouk,  
Town & Dist. Cuttack.
4. Income Tax Officer (Headquarters) (Admn.),  
Bhubaneswar, Dist . Khurda.

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5. Assistant Commissioner of Income Taxes (Headquarters)  
(Administration),  
Bhubaneswar,  
District Khurda.

6. Shri D.P . Agrawal,  
Asst . Commissioner of Income Taxes ( Headquarters)  
(Administration),  
Bhubaneswar,  
District Khurda.

... Respondents

By the Advocates: Mr.S.B.Jena(Res.1 to 5)

## O R D E R

### A.K.PATNAIK, MEMBER(J)

The applicant is in the thick of fight in this 3<sup>rd</sup> round of litigation before this Tribunal.

2. The entire gamut of the case is that his prayer for compassionate appointment having not been considered by the Respondent-Department, the applicant had moved this Tribunal in O.A.No.390/2007, which was disposed of on 23.10.2007 with direction to Respondents therein to give due consideration to the pending grievance for providing an employment on compassionate ground and take a decision thereon within a specific time. In compliance with the above direction, Respondents, vide Annexure-A/12 dated 17/18<sup>th</sup> March, 2008 rejected the claim of the applicant as under.

“This letter is in response to your application for extension of benefits of compassionate appointment to you after your father’s voluntary retirement in the year 1998. I am directed to request you to note that as per para-2A© of the scheme of compassionate appointment 1998, circulated

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vide DOP&T.s OM No.14014/6/94-Estt.(D) dt. 09.10.1998, for eligibility of a dependent family members under compassionate appointment, the concerned Govt. servant should have retired under Rule-38 of CCS(Pension) Rules, 1972 before attaining the age of 55 years. I am also directed to convey that your father Shri Alekh Chandra Nayak was retired on medical invalidation under Rule 38 of CCS(Pension) Rules, 1972 on 31.03.1999, as per the order dt. 31.03.1999 of CIT(A), Cuttack after attaining the age of 55 years. In view of this, the compassionate appointment constituted by the CCIT in the year 2002 found your case ineligible for consideration and accordingly did not consider your case for appointment under the compassionate appointment. Therefore, your application for consideration of your case for appointment under compassionate ground may be treated as disposed”.

3. Aggrieved with the above rejection order, applicant again approached this Tribunal by filing O.A.No.395/2008. This Tribunal vide order dated 16.12.2009 (Annexure-A/13) disposed of the said O.A with the following observation:

“...We also notice that the authority rejected the grievance of the applicant straightaway without considering the fact that it was not within the domain of his father to retire unless he is relieved by his authority pursuant to the order under Annexure-A/4 and, as such this is a case which needs exercise of discretionary power for providing employment on compassionate ground. For the aforesaid reason, we feel ends of justice would be met if we quash the order under Annexure-A/12 and remit the matter back to the Respondents for giving a fresh look to the grievance of the applicant by taking into consideration the situation narrated above...”

4. The Respondents moved the Hon'ble High Court of Orissa in W.P.(C) No.4728/10 challenging the order of this Tribunal in OA No. 395 of 2008. The Hon'ble High Court, vide judgment and order dated 23.8.2010 disposed of the said Writ Petition with the following observations:

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"In view of the above, this Court is not inclined to interfere with the impugned ordr. However, this Court directs the petitioners to dispose of the matter within sixty days from today by passing a reasoned order after giving personal hearing to the opposite party. To the above extent, this Court modifies the order of the Tribunal".

5. In implementation of the order of this Tribunal in O.A.No.395/2008 read with the judgment of the Hon'ble High Court of Orissa passed in W.P.(C) No.4728/10, the Compassionate Appointment Committee which met on 5.8.2011 reconsidered the case of the applicant, but did not find him suitable for appointment under the scheme of compassionate appointment by recording the following reasons.

i) Vacancies in the grade of Tax Assistant only are available for filling up under the scheme of compassionate appointment for the Recruitment Year 2009-10. As per the Recruitment Rules for the post of Tax Assistant, the basic educational qualification is degree from a recognized Uni versity. As per your application dated 23.3.2011, it is seen that you have passed H.S.C. Examination only. Thus, you do not possess the minimum educational qualification for the post earmarked for compassionate appointment.

ii) Also you case has not been found to be one where the family of the deceased/taken voluntary retirement on medical ground is in penury and without means of livelihood leading to final destitution".

6. From the pleadings of the parties, the short point to be decided herein is whether the Respondents, while considering the case of the applicant for compassionate appointment, have considered the same with due application of mind to the order of the Tribunal in O.A.No.395/2008 read with the judgment and order of the Hon'ble High Court of Orissa in W.P.(C) No.4728/10.

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7. I have heard Dr. B.R.Sarangi, learned counsel for the applicant and Shri S.B.Jena, learned Addl.Central Government Standing Counsel appearing on behalf of Respondent Nos. 1 to 5 and perused the materials on record.

8. Confronted with the 1<sup>st</sup> ground for rejection of the claim as quoted above, it is reduced in writing that admittedly, the applicant does not possess the qualification prescribed for the post of Tax Assistant. To this extent, the Respondents cannot be said to be at fault in not considering the applicant for the post of Tax Assistant for appointment on compassionate grounds. In this context, it is note worthy to mention that while disposing of the O.A.No.395/2008, this Tribunal had never indicated that the applicant should be considered for compassionate appointment against any particular post. Therefore, the consideration of the applicant's candidature against a post to which he was not at all eligible for not having the prescribed qualification and the inevitable conclusion drawn up therby by the Compassionate Appointment Committee, in my considered opinion, is a futile effort and as such the said so called consideration is construed to be "NO CONSIDERATION".

9. In regard to second part of the grounds as indicated above, the Respondents have made an attempt to justify their stand that it was ascertained, in consequence of an independent and confidential inquiry that the applicant's family is not impecunious. Confidential inquiry in such matters, as has been stated in the counter, depicts the conduct and approach as to how the authorities have acted in a bona fide manner.

However, Respondents have not been able to substantiate their stand point regarding penurious condition of the family by adducing any irrefutable proof. This apart, in the earlier round of litigation in O.A.No.395/2008, apparently, no such grounds had ever been urged by the Respondents and therefore, the grounds as urged, has been so urged in a camouflage manner in order to frustrate the claim of the applicant. Viewed from the above, the second ground as urged by the Respondents has no leg to stand.

10. In or under the circumstances, it is held that the Respondents, while considering the case of the applicant for compassionate appointment, have not considered the same with due application of mind to the order of the Tribunal passed in O.A.No.395/2008 read with the judgment and order of the Hon'ble High Court of Orissa passed in W.P.(C) No.4728/10. In the circumstances, the order dated 5.8.2011 (Annexure-20) is hereby quashed and the matter is remitted back to the Respondents, particularly, Respondent No.1 with direction to reconsider the case of the applicant strictly in line with what has been discussed and observed above and in the light of what had been directed in O.A.No.395/2008 and communicate the decision thereon to the applicant within a period of three months from the date of receipt of this order.

11. With the above observation and direction, this O.A. is disposed of. No costs.

  
**(A.K.PATNAIK)**  
**MEMBER(JUDL)**