

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.NO.704 OF 2011
Cuttack this the 9th day of May, 2013

CORAM

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

Raja Kumar Dalai, aged about 41 years, S/o. Prananath Dalai, At-Jhatinuagaon, PO-Bhusandpur, Dist-Khurda, Odisha

...Applicant

By the Advocate(s)-M/s.K.P.Mishra
S.Mohapatra
T.P.Tripathy
L.P.Dwivedy

-VERSUS-

1. Secretary-cum-Director General (D.G.) Posts, Dak Bhawan, News Delhi-1
2. Chief Post Master General (C.P.M.G.), Odisha Circle, Bhubaneswar, Dist-Khurda, Odisha

...Respondents

By the Advocate(s)-Mr.J.K.Khandayatray

ORDER

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

Applicant in this Original Application has made a prayer for compassionate appointment on the basis of the submission that his father while working as Sub-Post Master of Tangi S.O. died prematurely on 17.5.2000.

2. The facts which have been submitted before this Tribunal in this O.A. are that Respondent No.2, viz., Chief Post Master General, Orissa Circle, rejected the application for compassionate appointment on 26.12.2001 on the ground that the family got Rs.4.96 lakhs as terminal benefits along with family pension and hence, it was not in an indigent condition and was not a fit case for granting compassionate



appointment. The applicant being aggrieved on account of this decision of Respondent No.2 filed an Original Application No.981/2002 before this Tribunal. The ground on which compassionate appointment was refused by the Circle Relaxation Committee, i.e., that the family had ~~worked out~~ ^{received} its terminal benefits as admissible and therefore, was not in indigent condition was not accepted by the Tribunal. In this case the Tribunal relied on the judgment of the Hon'ble Supreme Court of India rendered in the case of Balbir Kaur and another vs. Steel Authority of India & Ors. (AIR 2000 SC 1596), in which the Apex Court had decided that the terminal benefits granted to the family of the prematurely deceased Government servant are not to be computed to find out the indigent condition of the family. Therefore, the Tribunal quashed the order of rejection of compassionate appointment and remitted the matter to the Respondents again for reconsideration of the grievance of the applicant. After the orders of the Tribunal, the Circle Relaxation Committee met again on 14.1.2004 and reconsidered this matter and again rejected the applicant's request for compassionate appointment due to want of vacancy under compassionate appointment quota. Once again the applicant challenged this order of rejection in O.A.No.856/2004 before this Tribunal. The Tribunal decided this O.A. by observing that the Circle Relaxation Committee did not apply its mind while considering the case of the applicant, which ought to have been considered against the vacancy which was available as on 17.5.2000, which is the date of death of the Government servant. The Respondents were directed again to assess the indigent condition of the family of the deceased Government servant leaving apart the retiral dues, which the family has got and consider the case of the applicant for providing employment



assistance against the vacancy available at the time of death of the Government servant.

3. In spite of the direction issued by this Tribunal twice as stated above, the Respondents have not provided compassionate appointment to the applicant. The allegation of the applicant is that although the authorities are refusing to provide compassionate appointment on the ground of lack of vacancy, the applicant has obtained documents regarding the vacancy position through RTI Act, which reveals that the vacancies are available. The RTI document showing the vacancy position as obtained by the applicant has been filed at Annexure-A/3 to the O.A. It is specifically alleged by the applicant that for the year 2010, nine vacancies were available in respect of which the Respondents did not consider the case of the applicant for compassionate appointment in his favour. Therefore, the applicant has again made his prayer before the Tribunal to direct the Respondents to provide compassionate appointment as per the vacancies available, as revealed from the RTI document, which has been obtained.

4. In the counter affidavit that has been filed by the Respondents, it has been submitted that they have complied with the direction of this Tribunal in O.A.No.856/2004 and the Circle Relaxation Committee had met on 22.5.2006 to reconsider the matter. However, the Circle Relaxation Committee did not recommend the case of the applicant for compassionate appointment due to want of vacancy. This has been conveyed to the applicant vide letter dated 2.6.2006 which has been filed as Annexure-R/2 to the counter. The relevant part of communication is quoted below.



"On rejection of the case for the 2nd time, the applicant filed OA No.856/2004 and Hon'ble Tribunal in order dtd. 24.03.2006 has quashed the rejection order and directed the respondents to assess the indigent condition of the family of the deceased Government Servant and consider the case of the applicant for providing employment assistance against the vacancy available at the time of death of the Government servant within a period of 30 days from the date of receipt of the order.

In pursuance of the direction of the Hon'ble Central Administrative Tribunal, Cuttack Bench, Cuttack the Circle Relaxation Committee which met on 22.05.2006 reconsidered the case of the applicant for compassionate appointment.

The committee observed that the Ex.Government servant expired during the year 2000. But there was no vacancy available in PA/SA cadre during the year 2000 under compassionate appointment quota. Therefore, the case was reconsidered by the CRC and the CRC did not recommend the case of compassionate appointment of Shri R.K.Dalai due to want of vacancy".

5. It is found that in this communication the Circle Relaxation Committee has not again gone into the question of indigent condition of the family of the deceased Government Servant, but has rejected the case on account of lack of vacancy.

6. I have heard Ms.S.Mohapatra, learned counsel for the applicant and Shri J.K.Khandayatray, learned Addl.Central Government Standing Counsel.

7. In course of hearing, learned counsel for the applicant has put hard emphasis on the fact that the Respondents have repeatedly declined to consider the case of compassionate appointment on some pretext or the other in spite of directions issued by this Tribunal in both the Original Applications as mentioned above. The RTI document reveals vacancies whereas the concerned authorities are mentioning that vacancies are not available. In reply to this, the learned



counsel for the Respondents has submitted that vacancy for compassionate appointment is not available because only 5% of the Direct Recruitment Quota can be considered for compassionate appointment. In this case the vacancies for compassionate appointment was not available during the year 2000, the year when the father of the applicant had expired, which is clearly mentioned in the order dated 2.6.2006(Annexure-R/2). Further, he mentioned that the Tribunal had in the O.A.No.856/2004 again issued a direction that the case of the applicant ought to have been considered against the vacancies available as on 17.5.2000, which is the date of death of the Government servant. The sum total of submission of the learned counsel for the Respondents is that the Respondents in compliance with the directions of the Tribunal, have duly considered the case of the applicant for compassionate appointment, but could not provide ^{relief} ~~so~~ because of lack of vacancy. The learned counsel for the applicant, however, contended that this was a case where the Respondents knowingly are declining to consider the case of the applicant on some pretext or the other.

8. The law laid down by the Hon'ble Apex Court is very clear that compassionate appointment is not an alternative mode of providing employment and that it cannot be claimed as a matter of right. The purpose of providing compassionate appointment is to come to the rescue of the family in distress and help the family ⁱⁿ ~~in~~ meeting a sudden crisis. It will be pertinent in this regard to cite below the judgment of the Hon'ble Supreme Court of India in Civil Appeal No.6224/2008 decided on 23.5.2012 (2013(2) SLR 429(SC)) in the case of **Union of India & Another vs. Shashank Gowsami and Another.**



“There can be no quarrel to the settled legal proposition that the claim for appointment on compassionate ground is based 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. Appointment on compassionate ground cannot be claimed as a matter of right. As a rule public service appointment should be made strictly on the basis of open invitation of applications and on merit. The appointment on compassionate ground is not another source of recruitment but merely an exception to the aforesaid requirement, taking into consideration the fact of the death of the employee while in service leaving his family without any means of livelihood”.

9. The Tribunal, therefore, can only direct the concerned authorities to consider the case of the applicant in such matters taking into account the financial condition of the deceased family and also the availability of vacancy as well as other administrative rules in force.

10. In this particular matter, the Tribunal has directed the Respondents twice to consider the case and the concerned authorities on some ground or the other have not approved the case of the applicant for compassionate appointment. Admittedly, in the first instance, the departmental authorities have not correctly considered the indigent condition of the applicant. In their 2nd consideration, they have advanced a reason that the vacancy is not available. When the learned counsel for the applicant produced RTI document regarding the vacancies, the learned counsel for the Respondents had no specific instruction regarding this matter. It is, however, for the departmental authorities to assess the vacancies under compassionate quota and this Tribunal does not have any specific information to give a specific direction about the availability of vacancy under

compassionate appointment quota. However, considering the submissions made by the learned counsel for the applicant, I feel that this matter requires a further reconsideration basing on the plea taken by the learned counsel for the applicant that vacancies have been available from year to year and the applicant could have been considered against any of these vacancies. I would, therefore, direct Respondent No.2 to consider this case once again on the basis of the facts as well as administrative rules, which are in force on the subject and if the applicant is found indigent and suitable vacancies under compassionate quota are available, the departmental authorities should give a fresh consideration in the light of what has been discussed above.

In the result, with the observations and directions made above, the O.A. is disposed of. No costs.



(R.C.MISRA)
MEMBER(A)