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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

O.A.No.756 of 2011

Cuttack this the 8<sup>th</sup> day of Aug. 2013

CORAM

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

Smt.Laxmilata Sahoo  
Aged about 43 years  
W/o.Debendra Kumar Sahoo,  
Ex-Poultry Attendant  
Central Poultry Development Organization (ER)  
At/PO-Nayapalli  
Bhubaneswar-12

...Applicant

By the Advocate(s)-Ms.C.Padhi

-VERSUS-

Union of India represented through

1. The Secretary,  
Government of India, Ministry of Agriculture (Poultry)  
Department of Animal Husbandry Dairy and Fisheries,  
Krishi Bhawan  
New Delhi-110 001
2. The Director,  
Central Poultry Development Organization(ER)  
At/PO-Nayapalli  
Bhubaneswar-12

...Respondents

By the Advocate(s)-Mr.P.R.J.Dash

**ORDER**

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

Applicant is the wife of one Debendra Kumar Sahoo, who was working as Poultry Attendant in the Central Poultry Development Organization at Bhubaneswar. She has approached this Tribunal for reconsideration of her prayer for compassionate appointment. She has simultaneously <sup>submitted</sup> ~~brought~~ that the orders of the Respondents dated 27.6.2011 passed in compliance of the order of this

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Tribunal dated 17.3.2011 in O.A.No. 217/2011 refusing to grant her compassionate appointment may be quashed.

2. The applicant has been approaching this Tribunal in connection with this relief and it is found that she has filed three Original Applications previously in this regard. The present O.A. therefore, is the fourth round of litigation by the applicant in this respect. In O.A.No.220/2009, the applicant made a prayer before this Tribunal that her husband had retired on medical grounds on 6.11.2008 and under the DoP&T O.M. No.14014/6/1994-Estt.(D) dated 9.10.1998, the applicant is entitled to be considered for compassionate appointment since her husband retired from service being medically invalid. This Tribunal, after hearing the matter directed Respondent No.2, i.e. Director, Central Poultry Development Organization at Bhubaneswar to process the case for compassionate appointment on the basis of the application already submitted by her as per rules and communicate the decision to the applicant with a reasoned order within a period of 60 days from the date of receipt of copy of the order. In compliance of the orders of this Tribunal, the Respondents considered the matter and sent a communication to the applicant on 3.7.2009. It was mentioned in this communication that the Committee for compassionate appointment considered the prayer of the applicant along with other applications. It was further conveyed that the applicant's case for compassionate appointment was not considered due to non-availability of any more existing or anticipated vacancy. It was not possible to grant compassionate appointment to the applicant in place of her husband. The next development in this case is that the applicant again approached this



Tribunal by filing O.A.No.308/2009. This O.A. after being heard was disposed of by this Tribunal with the following directions.

“We find from Annexure-A/2 dated 3.7.2009 issued by the Respondent-Department, in compliance of the order of this Tribunal in the earlier round of litigation that the name of the applicant, Smt.Laxmilata Sahoo, W/o. Shri D.K.Sahoo, ex/Poultry Attendant, CPDO, Bhubaneswar had been considered by a duly constituted Committee, her name being placed at Sl.No.(iv). It reveals that the husband of the applicant retired from service voluntarily with effect from 6.11.2008. If that be so, the scheme for compassionate appointment is not at all applicable to the applicant. Be that as it may, in so far as consideration of the applicant's case for compassionate appointment, we are of the view that the instructions as set out in Office Memorandum dated 5.5.2003 issued by the DOP&T have not been followed by the Respondents in letter and spirit as no remark has been passed with regard to financial condition of the applicant and/or as to whether her case deserves to be taken up for consideration in the next recruitment year and her request has been turned down solely on the ground of non-availability of any more existing/anticipated vacancies. This being the situation, we have no hesitation to remit back the matter to the Respondent-Department for reconsideration within the four corners of the instructions contained in DOP&T Office Memorandum (supra) and in the circumstances, we quash the impugned Annexure-A/2 dated 3.7.2009. Ordered accordingly. It is, however, made clear that the compliance of the above direction shall be subject to the condition that the applicant's husband has retired from service on being medically invalidated”.

3. As revealed from the above quoted paragraph of the order, this Tribunal had made an observation that the husband of the applicant had retired from service voluntarily and if it be so, the scheme for compassionate appointment is not applicable to this case. However, the Tribunal remitted the matter back to the Respondent-Department for reconsideration within the four corners of



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instructions as contained in DOP&T O.M., by quashing the impugned order dated 3.7.2009. Thereafter, the Respondents sent a communication dated 16.2.2010 informing the applicant <sup>that</sup> since her husband had taken voluntary retirement, her request for compassionate appointment was not covered under the scheme. It was further mentioned that the Director In-charge of CPDO, Bhubaneswar outsources the labour from time to time through labour contractor and if the applicant or her family member was interested to work in the farm, the concerned labour contractor could be contacted. Challenging this order of the Respondents, the applicant again filed O.A.No.217/2010 in the Tribunal. The Tribunal in its order dated 17.3.2011 traversed the entire length of the history of the application for compassionate appointment and came to a conclusion that the applicant would not have indulged in protracted litigation had the Respondents at the threshold intimated that the applicant's case was not covered by the DoP&T instructions. However, in the order dated 3.7.2009, the applicant was intimated that due to non-availability of vacancy it was not possible to give her compassionate appointment. In the order of the Tribunal in O.A.No.308/2009, when the Tribunal pointed out that the applicant's husband had retired voluntarily with effect from 6.11.2008, taking a cue from this, the Respondents have rejected the case of the applicant by their communication dated 16.2.2010 stating that the case was not covered under the scheme of compassionate appointment. However, the Tribunal was of the considered view that this action of the Respondents was unbecoming of a benevolent employer who has changed



<sup>his</sup> ~~their~~ stand to deprive the applicant of a meaningful consideration for sustenance after medical invalidation of the husband who was the only bread earner in the family. Therefore, the Respondents were directed by the Tribunal to consider the case of the applicant as per the DOP&T instructions dated 5.5.2003. In compliance of the order of this Tribunal in O.A.No.217/2010, the Respondents have issued an order dated 27.6.2011 placed at Annexure-A/7 which is the subject matter of challenge in this O.A.

4. This letter mentions that the scheme of compassionate appointment is applicable to family members of a Government servant in case he had sought voluntary retirement on being medically invalidated. Since the applicant's husband one D.K.Sahoo had taken voluntary retirement on personal ground the request of the applicant was not covered under the scheme of compassionate appointment framed by the DoP&T. Regarding the change of stand of the Department, at the time of the implementation of the judgment dated 6.8.2009 of this Tribunal in O.A.No.308/2009, it was explained in the speaking order that the application dated 10.6.2009 given by the applicant indicated that her husband had sought voluntary retirement due to his illness whereupon the Department processed the application on the basis of this statement. Subsequently, at the time of implementation of the judgment dated <sup>6.8</sup> ~~8.6~~ 2009, it came to light that the applicant's husband had applied for voluntary retirement on personal ground, <sup>not</sup> not on medical ground. Accordingly, the decision was taken that the application for compassionate appointment was not covered by the

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scheme framed by the DoP&T. The Respondents have attributed this situation due to the incorrect information given by the applicant. By this letter of compliance, the Respondents have refused the prayer for compassionate appointment on the ground that the applicant's husband having taken voluntary retirement on personal grounds, was not eligible under the scheme for compassionate appointment.

5. The learned counsel for the applicant in the present O.A. has not contested that the applicant's husband had taken voluntary retirement on personal grounds. She has filed a written note of submission also in which she has pleaded that when the applicant's case was first considered by the Committee, the prayer was turned down solely on the ground of non-availability of vacancy. In O.A.No.217/2010, the Tribunal had made an observation that the action of the Respondents was <sup>e</sup>an unbecoming of a benevolent employer since they have changed their stand thereby depriving the applicant of a meaningful consideration of her prayer. Even thereafter, the Respondents have not acceded to the prayer of the applicant. Although it is agreed that the applicant had taken voluntary retirement on personal grounds and this has been brought to the notice of the Tribunal during adjudication, the Tribunal has allowed discretion to the authorities to consider the scheme judiciously and generously for the purpose of compassionate appointment. It is pleaded in the written note of submission of the applicant's counsel that the applicant cannot be denied <sup>e</sup>of the benefit of the scheme by reading the letter of law to its bitter end and the language of the

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scheme must be read in a reasonable manner keeping in mind the objectives of the scheme. Further the applicants' counsel has quoted Rule-24 of the A.T.Act, 1985, which reads as follows.

"The Tribunal may make such orders or give such direction as may be necessary or expedient to give effect to its order or to prevent abuse of its process or to secure the ends of justice".

6. The final prayer made by the applicant's counsel in this written note of submission is that the Tribunal may give a direction for reconsideration of the case in order to secure the ends of justice.

7. On the other hand, learned Add. Central Govt. Standing Counsel appearing for the Respondents has submitted strongly that the prayer for compassionate appointment must be considered strictly under the Rules and within the four corners of the approved scheme. He has submitted an O.M. dated 16.1.2013, by which consolidated instructions on compassionate appointment have been issued by the DoP&T, Government of India. Under the Rules, the scheme for compassionate appointment is applicable to dependent family member of a Government servant who (a) dies while in service including death by suicide (b) is retired on medical ground under Rule 2 of the CCS(Medical Examination) Rules, 1957 or the corresponding provision in the Central Civil Service Regulations before attaining the age of 55 years (57 years for erstwhile group D Government servants) or (c) is retired on medical grounds under Rule 38 of the CCS(Pension) Rules, 1972 or the corresponding provision in the Central Civil Service Regulations






before attaining the age of 55 years (57 years for erstwhile Group D Government servants).

8. In view of the fact that the case of the applicant does not fall into any of the mentioned categories, the question of granting compassionate appointment to the applicant does not arise as argued by the learned Addl. Central Government Standing Counsel for the Respondents.

9. Having considered the arguments advanced by the learned counsel for both the sides and perusing the earlier orders made by this Tribunal as well as other related documents, I find that initially the prayer for compassionate appointment was processed wrongly by the concerned Department. The Respondent-Department have taken the plea that the applicant made a false application suppressing the fact that her husband had retired from service on <sup>personal</sup> ~~medical~~ ground but not on <sup>medical</sup> ~~personal~~ ground. Even though the applicant made a false statement, yet, the Respondent-Department had a responsibility to check the service records of the applicant's husband before considering the application for compassionate appointment. The consideration by a Government Department should not be made only on the basis of the statement made by an applicant seeking a particular relief. Thus, a duty is cast on the Respondents also to verify the authenticity of the application vis-à-vis the records <sup>properly</sup> ~~properly~~ available in the Department before disposing of the matter. Had the application been correctly disposed in the beginning, there would not have been such a protracted litigation

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on the prayer for compassionate appointment. Having observed as above, when I come to the merits of the case, it is seen clearly that the applicant does not fit into any of the the entitled categories under the scheme for compassionate appointment as decided by the DoP&T under the consolidated instructions on compassionate appointment issued on 16.1.2013, to which the Addl. Central Govt. Standing Counsel has invited my attention. The observation of this Tribunal in O.A.No.308/2009 is very pertinent in this regard. The applications for compassionate appointment should be disposed of within the four corners of the rules that have been framed by the DoP&T. If there are violations, then the flood gates for inappropriate applications will be opened and the Department would face a very undesirable situation. If a particular category is not entitled under the scheme for compassionate appointment, then selecting one person for this relief will encourage all other similarly placed to make such applications. Even though an initial mistake has been committed which is a most <sup>avoidable</sup> ~~indefinite~~ one, on that  ground reconsideration of the application for compassionate appointment cannot be directed since the Tribunal is conscious of the matter that such a scheme can be operated only within the four corners of the rules that have been laid down in this regard.

10. The learned counsel for the applicant has very patiently pleaded that the matter should be considered with sympathy and compassion in the spirit of compassionate appointment and if necessary, the discretionary powers of the authorities should be used for considering this prayer. I  however, do not agree 

with this submission, because, purely on the basis of discretion and sympathy, it will be dangerous to dispose of such matters. The Hon'ble Apex Court in a number of judgments has observed that compassionate appointment is not a matter of right and wherever this is granted, it should be strictly according to Rules and also under the scheme. There is no question of exercising any discretion in this regard. In this connection, it will be pertinent to quote the judgment of the Hon'ble Supreme Court in case of Chief Commissioner, Central Excise & Customs, Lucknow & Ors. Vs. Prabhat Singh (C.A.No.8635 of 2012 decided on 30.11.2012), which reads as under.

"Courts and Tribunals should not fall prey to any sympathy syndrome so as to issue directions for compassionate appointments without reference to prescribed norms. Courts are not supposed to carry Santa Claus's bag on Christmas eve, to disburse the compassionate appointment, to all those who seek a Court's intervention".

11. There is also a responsibility on the part of the applicant to give absolutely correct facts and not to manipulate the facts being consciously <sup>aware</sup> ~~away~~ of what benefits might be conferred on her. It is also equally enjoined upon the Department to check the service records thoroughly while considering the prayer and not to create a false hope <sup>in</sup> ~~with~~ the applicant. In the present case there has been a failure on these grounds and a series of litigations have therefore <sup>been</sup> ensued on this matter.

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12. Considering all the facts and circumstances as discussed above, I am of the considered view that the applicant is not entitled to any relief in this matter.

Accordingly, the O.A. being devoid of merit is dismissed. No costs.

  
(R.C.MISRA)  
MEMBER(A)

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