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OA No. 30 of 2009

Taramani Patra & Anr. Applicants
Versus
Union of India & Others Respondents

1. Order dated: 31.03.2010

CORAM**THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (ADMN.)**

Factual aspects of the matter is that Applicant No.1 (Taramani Patra) and Applicant No.2 (Ghanashyam Patra) are the widow and son of Late Ananta Charan Patra who expired on 27-10-2000 while working as Technical Helper of Geological Survey of India (Operation Orissa) leaving behind the widow, three sons and one unmarried daughter. After the death of the Government servant, Applicant No.1 submitted a representation on 09-01-2001 requesting employment assistance on compassionate ground in favour of Applicant No.2 to overcome the distressed condition of the family. The said representation was forwarded by the Respondent No.4 to the Respondent No.3 on 16-03-2001/19-03-2001. Ultimately, the Compassionate Appointment Committee (CAC) in its meeting dated 02-01-2003 recommended the case of Applicant No.2 for appointment in any group C posts on compassionate ground. While waiting for the offer of appointment, under Annexure-A/8 dated 19th November, 2004, the Applicant was intimated that since no offer could be made to him within three years due to non-availability of sufficient vacancies, his appeal for providing employment on compassionate ground was rejected. It was further intimated to him that no further correspondence in this regard will be entertained. Being aggrieved by the aforesaid order of rejection, both the Applicants approached this Tribunal in OA No.125 of 2005 seeking to quash the impugned order of rejection dated 19th November, 2004 and to direct the Respondents to provide Applicant No.2 an employment on compassionate ground. Upon considering all aspects of the matter, this

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Tribunal disposed of the above Original Application in order dated 31.08.2006 by directing the Respondents to reconsider the case of the Applicant No.2 for employment on compassionate ground. Relevant portion of the order of this Tribunal, for the sake of clarity, is extracted herein below:

“5. Having heard the Learned Counsel appearing for the parties, perused the materials placed on record including the notes of arguments submitted in this case. It may be recorded that constitutional mandate provides equal opportunity to all the citizens in the matter of public employment and, therefore, there should be no departure from the general rule except under compelling circumstances such as death of the sole bread earner and the consequential sufferance of the family. Once it is proved that in spite of the death of the bread earner, the family (has) survived and a substantial period is over, there is no necessity to take leave of the normal rule of appointment and to show favour to one at the cost of several others, ignoring the mandate of Article 14. The Tribunals should not confer benediction impelled by sympathetic consideration to make appointments on compassionate grounds when the regulations did not cover and contemplate such appointment. The appointment on compassionate ground cannot be a source of recruitment. It is merely an exception to the requirement of law keeping in view the fact of the death of the employee while in service, leaving his family without any means of livelihood. . In such cases, the object is to enable the family to get over the financial crisis and such appointments have, therefore, to be made in accordance with rules, regulations or administrative instructions taking into consideration the financial condition of the family of the deceased. Equally, it is the rulings of various Courts that consideration must be fair, reasonable and with due application of mind.

6. Keeping in mind the above principles, now it is to be decided as to whether the case of the Applicant No.2 has received due consideration as per the instructions issued by the Government from time to time and if so, as to whether such consideration was just, fair and reasonable. It has been admitted by the Respondents that on 02-01-2003, CAC was convened and recommended the case of the Applicant No.2 for providing employment on compassionate ground and he was kept at Sl.No. 106 of the waiting list maintained by the Respondents. But the name of the Applicant No.2 was deleted in order under Annexure-A/8 dated 19th November, 2004, after lapse of three years as per the circular dated 05-05-2003 of the DOP&T. Relevant portion of the circular of the DOP&T dated 05-05-2003 is quoted herein below:-

“It has, therefore been decided that if compassionate appointment to genuine and deserving case, as per the guidelines contained in the above OMs is not possible in the first year, due to non-availability of regular vacancy, the prescribed committee may review such cases to evaluate the financial conditions of the family to arrive at a decision as to whether a particular case warrants extension by one more year for consideration for compassionate appointment by the committee subject to availability of a clear vacancy within the prescribed 5% quota. If on scrutiny by the committee, a case is considered to be deserving the name of such a person can be continued for consideration for one more year.

The maximum time a person's name can be kept under consideration for offering compassionate appointment will be three years, subject to the condition that the prescribed committee has reviewed and certified the penuries condition of the applicant at the end of the first and the second year. After three years if compassionate appointment is not possible to be offered to the Applicant, his case will be finally closed, and will not be considered again.”

7. Going through the circular, I find that no where in the above circular it has been provided that in case no appointment is provided to the son/ward of a Govt. Servant within three years, from the date of death of the Govt. Servant, the case should be closed. It provides that a person's name can be kept under consideration for offering compassionate appointment for three years subject to condition that the prescribed committee has reviewed and certified the indigent condition of the applicant at the end of the first and second year and after three years if compassionate appointment is not possible his case will be finally closed and will not be considered again. In the present case, it has been admitted by the Respondents that the CAC recommended the case of the Applicant No.2 only on 02-01-2003 and, therefore, at no stretch of imagination it can be said that three years completed by 19th November, 2004. Besides, the circular in question is not applicable to the case of the Applicant; for the same having no retrospective application, as decided by the Hon'ble Apex Court in the cases of **Y.V.RANGAIAH AND OTHERS vs. J. SREENIVASA RAO AND OTHERS** (reported in AIR 1983 SC 852) and (b) in the case of **P.MAHENDRAN AND OTHERS vs. STATE OF KARNATAKA AND OTHERS** (reported in AIR 1990 SC 405).

8. Another important fact of the matter is that from the record it is seen that the case of the Applicant No.2 has been considered for providing employment on compassionate ground against the vacancies available as on 02-01-2003 which is the date of recommendation of the Committee. The crucial date of consideration of the case of compassionate appointment has received consideration of the Hon'ble High Court of Orissa in the case of **UNION OF INDIA & ORS. vs. PURNA CHANDRA SWAIN (W.P.(C) No.13377 of 2003)** and while disposing of the aforesaid Writ Petition, the Hon'ble Court directed as under:-

"For the foregoing discussions, we direct that in case any vacancy was existing in any other department during the period when the application for compassionate appointment of the opposite party remained pending and in fact was not considered, he shall be entitled to be considered now, as there is definite provision in the rules that appointment on compassionate ground should be provided in any vacancy existing in the department other than where the deceased employee was serving. Since that provision was not followed in the case of the Opposite Party, he should not be a sufferer for the slackness on the part of the petitioners. Therefore, his appointment is liable to be considered on that ground. It is also to be considered whether the family of the deceased is in distress condition or not and on that ground also the appointment of the petitioner on compassionate ground is liable to be considered. It is also to be seen as to whether any dependants of any of the deceased employee who died after the death of the father of the opposite party were, in fact, given appointment in any department of the Central Government other than that in which the deceased employee was working, and if so, the opposite party was entitled to be considered for appointment on compassionate ground before the appointment of those dependants. The petitioners are directed to implement this order within three months from today".(emphasis supplied)

9. In view of the aforesaid discussions and provisions of various judge-made-laws, I have no option but to quash the impugned order under Annexure-A/8 dated 19th November, 2004 and direct the Respondents to reconsider the case of the Applicant No.2 for providing employment on compassionate ground, in the light of the decisions made in the case of **Union of India vs. Purna Chandra Swain** (Supra) within a period of 60 (sixty) days from the date of communication of this order.

In the result, this Original Application is allowed in the afore-stated terms. There shall be no order as to costs."

2. As it appears, the case of the Applicant No.2 was reconsidered by the Respondents but rejected/regretted to provide employment on compassionate ground and communicated the said order through letter under Annexure-13 dated 02.11.2006. Reasons of rejection as communicated to the Applicants are as under:

"In compliance of the Hon'ble CAT order, the matter was referred to the Compassionate Appointment Committee (CAC) who considered at length the case of Smt. Patra on October 18, 2006 keeping in view the DOP&T guidelines and factual position at hand. While considering again her legal rejoinder, another factor that was considered by the CAC for compassionate appointment of Smt. Patra's son was that she was financially well placed relatively, as the following table will show:

Name of Candidate	F/Pension	DCRG	CGEGIS	GPF	Lave Encash.	Edu Qualf.
Abani Gorai	1480+DP	40,140	17,952	15,885	27,318	Class IX Std.
Sabitri Debnath	1650+DP	66399	40,257	1850	21232	Class IV Std
Saraswaati Singh	525+DP	59987	18593	2495	NIL	Illiterate
Taramoni Patra	1720+DP	1,30,950	21687	58696	48500	Graduate

In view of the above reasons and after due consideration as per recommendations of the CAC dated October 18, 2006, the Deputy Director General & HOD has been unable to accept the case of Smt. Taramani Patra and hence her case stands rejected."

3. In view of the above, in order dated 25th November, 2008, the Contempt Petition No.73 of 2006 filed by the Applicants alleging non-compliance of the aforesaid order of this Tribunal was dismissed by this Tribunal. Thereafter by filing the present Original Application the Applicants seek to quash the order under Annexure-13 and to direct the Respondents to appoint the applicant No.2 on compassionate ground in any Group C or Group D post OR alternatively direct the Respondents to reconsider the prayer of the applicants for compassionate appointment by taking into account the income and liability of the family and keeping in mind the cases of Serial Nos.1&2 of the table at para 5.6 of the OA and the candidates named in order under Annexure-A/15.

4. In the counter, the Respondents' stand is that initially the CAC recommended the case of the Applicant No.2 for appointment on compassionate ground. In view of lower position of the name of applicant in the priority list prepared by the Respondents he could not be provided

appointment on compassionate ground . Non-availability of the vacancy under 5% quota meant for appointment on compassionate ground as also better financial condition in comparison to others were also the reason for rejection of the case of Applicants even after the order of this Tribunal in OA No. 125 of 2005. Further stand of the Respondents that there was no injustice caused in the decision making process of appointing M/s. Abani Bhusan Gouri Saraswati Singh and Sabitri Debnath; because the CAC recommended the names of the aforesaid candidate in its meeting held on 1.7.1999 and 29.3.1999 but the process of appointment took a bit longer time as those candidates delayed in submitting their necessary credentials for appointment and as such on fulfillment of the formalities the offer of appointment was issued to those three candidates on 20.4.2004 and 20.1.2004 respectively. Next contention of the Respondents is that after expiry of three years of the death of the Government employee, in terms of the DOP&T instruction the cause of action so far as appointment on compassionate ground ceased to exist. But the said DOPO&T instruction dated 5.5.2003 is not applicable to the cases of the others who were named above as in their cases although recommendation of the CAC came earlier, they could not be given offer of appointment due to non-completion of the pre-requisite formalities. Accordingly, Respondents opposed the prayer of the Applicants and have prayed for dismissal of this OA.

5. Heard Mr. Trilochan Rath, Learned Counsel appearing for the Applicant and Mr. D.K. Behera, Learned Additional Standing Counsel appearing for the Respondents as also Mr. M.M. Swamy, Deputy Director General, Eastern Region, GSI, Kolkata who was present in Court in compliance of the order of this Tribunal dated 19th February, 2010 and perused the materials placed on record. Learned Additional Standing Counsel

appearing for the Respondents filed a written note of arguments by citing some of the decisions of the Hon'ble Apex Court to strengthen their stand taken in the counter and reiterated in the notes of the arguments. Similarly, to show how discrimination, disparity and injustice has been caused in the decision making process of providing appointment on compassionate ground a self contained note showing names of different persons on whose favour appointment on compassionate ground has been made has been produced by the Learned Counsel for the Applicants and relying on the same it has been contended by him that there was no reason not to appoint the applicant No.2 in Group D post on compassionate ground while considering and providing such appointment in favour of the others although death of their fathers occurred much prior to the Applicant No.2's father. It was also contended by the Learned Counsel for the Applicants that the grounds based on which the Applicant No.2 was deprived of earlier and even after the orders of this Tribunal, his legitimate right for appointment on compassionate ground are opposed to the public policy framed by the Government in regard to the compassionate appointment. He has submitted that delay in considering the case of the Applicant being attributable to the Respondents, the family members of the Government servant should not be allowed to suffer; as the family has no other source of income for its maintenance. Once the Government have admitted that the family is indigent and there is need to provide employment to Applicant No.2, they are estopped to deprive the applicant employment, if there is no vacancy in Group C, in the Group D against which others were appointed. Hence according to the Learned Counsel for the Applicant, the entire action of the Respondents smacks of mala fide and, as such, the applicant No.2 is entitled to be appointed retrospectively against one of the Group D vacancies when others were appointed. This was

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strongly opposed by the Learned Additional Standing Counsel appearing for the Respondents. But on a focused question if there was no vacancy how the CAC recommended his case and whether the applicant was given opportunity at that relevant time; especially due to non-availability of vacancy in Group C category, it was fairly submitted by Mr. Swamy, Deputy Director General appearing in person that no such opportunity was granted to him and the case of applicant No.2 had never been considered against the vacancy of Group D. From the list prepared and produced by the Learned Counsel for the Applicant it is seen that candidates whose bread earners' death occurred much before the death of the applicant No.2's father have been provided appointment even after more than three years whereas in the present case it is the stand of the Respondents that after three years of the death of the father of applicant No.2 his case in terms of the DOP&T instruction ceased to exist. Even if the scheme for compassionate appointment is out of compassion there can be no discrimination. It is also trite law that discretion cannot be used discriminatorily. Similarly consideration does not mean mere formality without due application of mind which is lacking in the instant case. Besides the above, in terms of the instructions, recommendation by the CAC is always against a vacancy. If there was no vacancy it is not known how the CAC recommended the case of the Applicant No.2. If recommended why the case of the Applicant No.2 could not be kept alive till vacancy arose as in the case of others whose life of the panel was extended awaiting fulfillment of the requirements of the selectees. In view of the above, I find sufficient force in the contention of the Learned Counsel for the Applicant that there has been no free and fair treatment extended to the case of the Applicant No.2. Mr. Swamy, Deputy Director General, Eastern Region, GSI, Kolkata has fairly submitted that he has no objection for consideration of the case of the


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applicant No.2 for appointment under compassionate ground against Group D vacancy but he was unable to state out rightly the vacancy position. For the aforesaid reason, I am of the considered view that the case of the Applicant No.2 needs reconsideration.

6. In view of the above, the order under Annexure0-A/13 stands quashed and the matter is remitted back to the Respondents for giving reconsideration to the case of the Applicant No.2 for providing him an appointment on compassionate ground in Group D within a period of 45 days from the date of receipt of copy of this order. The out come of the consideration, as directed above, shall also be communicated to the Applicant No.2 within the period stipulated above.

7. In the result, this OA stands allowed to the above extent by leaving the parties to bear their own costs.


(C.R. MOHAPATRA)
MEMBER (ADMN.)