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O.A. No. 646 of 2009

Order dated: 12.01.2010

CORAM:

Hon'ble Shri C.R.Mohapatra, Member (A)

The applicant is the son of late Shri Y.Appana. Late Y. Appana, while working as Cook in the ARC, Charbatia died prematurely on 20.12.1999 leaving his family members in distress. Alleging non-consideration of his case for providing employment on compassionate ground after the death of his father, the applicant earlier filed O.A. No. 434/09 in this Tribunal. This Tribunal by order dated 04.09.2009 disposed of the matter directing the Respondents to consider and dispose of the pending representation of the applicant.

2. As it appears, the Respondents considered and rejected the representation of the applicant. The said order of rejection is at Annexure-A/3 dated 17.12.2009 to this O.A. Applicant challenged the said order of rejection in this O.A. filed under Section 19 of the Administrative Tribunals Act, 1985 praying to quash the impugned order under Annexure-A/3 dated 17.12.2009 and to direct the Respondents to provide him employment on compassionate ground.

3. The order under Annexure-A/3 reads as under:

- (i) The orders dated 4.9.09 of Hon'ble CAT, Cuttack Bench have been examined thoroughly at this Hqrs. in the light of Govt. instructions on the subject Shri Y.Appana while working as Cook at ARC Charbatia expired on 20.12.1999. But his appointment was not found feasible as the case for compassionate appointment is now more than 3 years old from the date of death of the Govt. servant.
- (ii) In terms of DOP&T OM No. 14014/19/2002-Estt.(D) dated 5.5.2003, the compassionate appointment is required to be made within a period of 1 year from the date of the death. However, if it is not possible due to non-availability of vacancies, the case can be considered from a maximum of 3 years from the date of death that too only in deserving cases.
- (iii) As the case for compassionate appointment is more than 3 years old, it cannot be considered as per Govt. Instructions on the subject....."

4. Heard Mr. D.K.Mohanty, Ld. Counsel for the applicant and Mr. S.Mishra, Ld. Additional Standing Counsel appearing for the Respondents on notice.

5. From the order under Annexure-A/3, it reveals that the case of the applicant has been rejected by the Respondents on the ground that (i) the applicant seeks appointment on compassionate ground after three years from

the date of death of his father; although under instruction of the DOP&T dated 5.5.2003, the appointment on compassionate ground is required to be made within a period of one year from the date of death of the Govt. employee. Further, the order of rejection under Annexure-A/3; (ii) as per the instruction of DOP&T dated 5.5.2003, if it is not possible to provide appointment on compassionate ground to a claimant due to non-availability of vacancy, the case can be considered for a maximum period of 3 years from the date of death that too only in deserving cases.

5.1 But, nothing is forthcoming from the order of rejection as to whether after the death of the father of the applicant, the case of the applicant had ever been considered or the Department had ever taken any step to intimate the family of the applicant for applying appointment on compassionate ground. Therefore, it can easily be concluded that the case of the applicant had not at all received due consideration for appointment on compassionate ground, although as per the various instruction, grievance of the applicant ought to have received due consideration even accepting the plea of the Respondents within a period of 3 years.

5.2 Similarly, the interpretation given in the impugned order that DOP&T instruction dated 5.5.2003 merely provides consideration of the case of applicant for providing employment within three years and after three years the applicant <sup>lost</sup> ~~seized~~ his right to claim any appointment on compassionate appointment. In this connection, it is profitable to quote the observation of this Tribunal made in O.A. 434/09 disposed of on 4.9.2009 in interpreting the instruction dated 5.5.2003 and thereby giving direction to the concerned Respondents to consider the case of the applicant therein for appointment on compassionate ground. The relevant portion of the observation reads as follows:

“.....ends of justice would be met if direction is issued to the respondents to take a view and pass a reasoned order on the said representations at Annexure-A/2 series keeping in mind the DOP&T instruction governing the field on the subject within a period of 60 days.....”

Hence, the inevitable conclusion is that this stand of the Respondents is not in accordance with the above decision.

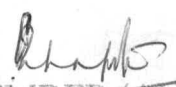
6. It is trite law that “when a statutory functionary makes an order based on certain grounds, its validity must

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be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated in additional grounds (**Mohinder Singh Gill v. Chief Election Commissioner**, AIR 1978 SC 851). Since the grounds set-forth in the order of rejection are not sustainable, issuing notice to the Respondents, in my opinion, will only cause more delay.

7. In this view of the matter, I am of the considered view that as the reason of rejection stated in the impugned order under Annexure-A/3 does not appeal sound to the judicial conscience and needs interference, I thought it just and proper to quash the order of rejection and remit the matter back to the Respondents for giving fresh consideration to the case of the applicant three times as per DOP&T instruction dated 5.5.2003 and communicating the result thereof to the applicant as early as possible. Ordered accordingly.

8. Accordingly, the O.A. is disposed of. No costs.

  
MEMBER (A)