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O.A.No. 50 of 2010

Raj Kumar Das Applicant
Versus
Union of India & Others Respondents
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Order dated: ~~the 06th April~~ 2010

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THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)

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Fact not in dispute is that on 17.11.2000, the father of the applicant died prematurely while working as an Assistant Mistry in GWS Department bearing T.No.807 under India Government, Mint, Alipore, Kolkata-53.

2. To over come the financial distress caused due to the death of the father, applicant applied for appointment on compassionate ground in relaxation of the normal Rules of recruitment. Respondents rejected the claim and intimated such rejection to the applicant in letter dated 25.7.2007. Applicant challenged the said order of rejection in OA No.359 of 2008. This Tribunal after considering various aspects of the matter finally in order dated 17th July, 2009 disposed of the matter. Relevant portion of the order of this Tribunal dated 17th July, 2009 is reproduced below:

“8. Having regard to the above, I am of the view that the Respondent- Department, by misinterpreting the instructions of the DOP&T (supra) have rejected the case of the applicant. In the circumstances, the impugned order of rejection at Annexure-A/5, dated 25.7.2005 is quashed with direction to the Respondents to reconsider the case of the applicant No.2 for compassionate appointment in the light of the instruction contained in OM dated 05.05.2003 of DOP&T. It is, however, made clear that the Respondents shall, at first, examine the penurious condition of the applicants to conclude whether the applicant No.2 deserves compassionate appointment, where after, subject to the other conditions being fulfilled his case shall be reconsidered. This exercise shall be completed as early as possible, at any rate within 60 days of the receipt of the copy of this order.”

3. In compliance of the aforesaid order of this Tribunal, Respondents considered but regretted to extend the benefit of appointment on

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compassionate ground under Annexure-A/2 dated 02.01.2010 on the following reasons:

"Please refer to the order dated 17.07.2009 passed by the Hon'ble CAT, Cuttack Bench in the above matter.

In this regard this is stated that after death in harness of Shri Khetrabasi Das an Ex-Industrial employee of this Mint on 17.11.2000, his wife Smt. Shantilata Das applied for employment assistance to her son Shri Raj Kumar Das on compassionate ground vide her representation dated 12.02.2001 vide hits office letter No.104-72(Sub)/2022 dated 25.7.2007 Shri Raj Kumar Das, the son of the deceased employee Shri Khetrabasi Das was duly communicated regretting therein the inability to accede to the aforesaid request being itself a time barred case in terms of relevant Government Rules.

However, on being aggrieved with the contents of the aforesaid letter dated 25.7.2007 Smt. Shantilata Das moved the Hon'ble CAT, Calcutta Bench (sic) by filing OA being No.359 of 2008.

On hearing the submission of both sides on 17.07.2009, the Hon'ble Tribunal was pleased to dispose of the matter with direction to the Respondents to reconsider the case of the applicant No.2 for compassionate appointment in the light of instructions contained in OM dated 05.05.2003 of D.O.P.T.

In compliance with the directions issued by the Hon'ble Tribunal vide order dated 17.7.2009 for reconsideration of the instant case of compassionate appointment in the light of instructions/guidelines contained in the OM dated 05.05.2003 issued by DOP&T after examining the penurious conditions of the applicant, it was referred to the Screening Committee constituted for this purpose.

On receipt of the detailed information from the applicant regarding the pecuniary condition of the family, the Screening Committee reviewed the case as per OM dated 05.05.2003 taking into consideration of the representation dated 12.02.2001 of Smt. Shantilata Das, the mother of the Applicant.

During the course of several meetings, the Screening Committee considered the aforesaid case for consecutive three years, i.e. 2000, 2001 and 2002.

The vacancies earmarked for compassionate appointment worked out year wise on the basis of the prescribed percentage i.e. 5% of the direct recruitment quota are as under:

(i)	2000	-	3
(ii)	2001	-	3
(iii)	2002	-	3

The Nos. of applications received for compassionate appointment during the corresponding years are as under:

Nos.of application	Nos.of application	Total
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During the year			carried over	
(i)	2000	15	00	15
(ii)	2001	09	15	24
(iii)	2002	08	24	32

The screening Committee evaluated the application as per guidelines contained in Ministry of Defence ID No.19(4)824-99/1998 D.Lab dated 19/3/2001 and allotted points under different parameters such as income from earning members, earning from other sources and family pension, dependant surviving family members, movable and immovable property, left over service etc.

Based on ranking of the applicants year wise given by the Screening Committee, the ranking of Shri Raj Kr. Das the instant applicant is as below:

- (1) Since the instant applicant Shri Raj Kumar Das was allotted the rank at Sl.No.5 he did not come under the zone of consideration against the available vacancy 3(three) during the year 2000;
- (2) Since Shri Raj Kumar Das was allotted the rank at Sl.No.11 against the available earmarked vacancies for compassionate appointment i.e. 3 during the year 2001, he could not come under the zone of consideration;
- (3) Since the number of available vacancies during the year 2002 was 3 and Shri Raj Kr. Das was ranked at Sl.No.17 he could not come under the zone of consideration.

In view of the above circumstances, the representation dated 12.02.2001 submitted by Smt. Shantilata Das wife of Late Khetrabasi Das for compassionate appointment to son Shri Raj Kumar Das is disposed of as per directive of order of CAT dated 17.07.2009."

4. The above order communicating the reason of rejection for providing appointment on compassionate ground has again been challenged by the Applicant in this Original Application on various grounds one among them is that there has been gross injustice caused in the decision making process of considering and rejecting the case of the Applicant inasmuch as the Respondents ought not to have given consideration theoretically prospectively to reject the case of the Applicant and that, consideration ought to have been made in free and fair manner prospectively three times after the order of this Tribunal and not in the manner the Respondents have given consideration. Further stand of the Applicant is that not only the above, the consideration
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given is no consideration as by the said consideration the Respondents allowed the injustice caused to him to perpetuate because the Respondents ought not to have assessed the case of the applicant for the vacancy 2000 by applying the principles laid down in Ministry of Defence ID No.19 (4)824/1998 dated 19.03.2001. Another ground taken by the applicant in support of his challenge is that finding the case of the applicant deserving one and keeping him at Sl.No.5 against the available vacancy of three in 2000 without giving him appointment in the next available vacancy arisen in 2001 they should not have considered the case of the applicant along with others whose grievance arose much prior to the applicant against the vacancies of 2001 & 2002. By virtue of making the unequal equal, the serial number of the applicant has been pushed down to Sl.No.11 against 2001 and 17 against 2002 vacancies. Accordingly, Learned Counsel for the Applicant has prayed for the relief claimed in this OA.

5. Despite ~~of~~ specific direction of this Tribunal dated 15.02.2010 to Mr.S.Barik, Learned ASC (who has taken notice and appeared for the Respondents in this case) to obtain instruction and file reply, no reply has been filed by the Respondents till 31.3.2010 when this matter was taken up for hearing. However, by filing copies of the order of rejection and the instructions dated 24th March,2003 and dated 20.05.2003 providing no waiting list should be maintained, it was submitted by Learned ASC appearing for the Respondents that after the order of this Tribunal the Respondents considered the case of the applicant three times but rejected the case of the applicant in a well reasoned order on the ground of non-availability of vacancies so as to be provided with employment on compassionate ground in comparison to others. In regard to the stand of the Applicant waiting list prepared against the vacancy of 2000 should have been kept alive and he should have been given

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appointment against the next available vacancy arisen in 2001 instead of giving fresh consideration in 2001 and 2002 vacancies along with fresh applications received by the Respondents subsequently, it was submitted by Mr. Barik that such action was taken by the Respondents in view of the instructions dated 24th March, 2003 and dated 20.05.2003 prohibiting maintenance of any waiting list for appointment on compassionate ground and consideration for such appointment only against the available vacancies within the 5% quota meant for compassionate appointment. Accordingly, Learned ASC prayed for dismissal of this OA.

6. Having heard the arguments advanced by learned counsel for both sides, perused the materials placed on record. At the out it is recorded that it is the consistent view of the Tribunal that although appointment on compassionate ground is a benevolent legislation the Administrative Tribunal cannot confer benediction impelled by sympathetic considerations in disregard to Rules/various instructions issued on the subject. The appointment on compassionate ground is not another source of recruitment but merely an exception taking into consideration the fact of the death of employee while in service leaving his family without any means of livelihood. Employment to the dependant of a government servant dying in harness in preference to anybody else is to mitigate hardship caused to the family of the deceased on account of his unexpected death while in service. Similarly it is trite law that that the Tribunal being not the appellate authority cannot sit over the decision reached by competent authority in other words the Courts/Tribunal cannot interfere in the decision taken in exercise of the powers conferred upon the competent authority but certainly can interfere in the manner such decision is taken. It is noticed that the Respondents considered the case of the applicant for appointment on compassionate ground pursuant to the order of this

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Tribunal dated 17th July, 2009 directing to reconsider the case of the applicant No.2 for compassionate appointment in the light of the instruction contained in OM dated 05.05.2003 of DOP&T if penurious condition still exists. It is the specific case of the applicant that the family of the applicant is still indigent. Accordingly, as revealed from the impugned order under Annexure-A/2 dated 02.01.2010, the Respondents finding the case of the applicant to be indigent kept his name at Sl.No.5 against the vacancies of 2000 but instead of providing him appointment in the next vacancies admittedly arisen in 2001, they considered the case of the applicant once again in the vacancies arisen in 2001 and 2002 along with the others. But recommended the cases who were found more deserving than the Applicant. In that process the name of the applicant was pushed down to Sl.No.11 and 17 against the vacancies of 2001 and 2002 respectively. According to the Respondents, the above procedure was adopted by following the instructions dated 24th March, 2003 and dated 20.05.2003. But law provides that unless and otherwise it expressly provides, all executive instructions have the prospective effect. As such, the plea of the Respondents that they did not maintain the waiting list in view of the aforesaid instructions does not pass the test of the well settled principles enunciated by the Hon'ble Apex Court in the cases of **Y.V.Rangaiah and others v J.Sreenivasa Rao and others**, AIR 1983 SC 852 and **P.Mahendran and others v State of Karnataka and others**, AIR 1990 SC 405 holding that instructions cannot be made applicable to the vacancies available prior to the same came into force. In view of the above, I have no hesitation to hold that there has been injustice in the decision making process of the matter of considering the case of the applicant along with others in the 2001 vacancies afresh though his case was found deserving and his name was accordingly kept in the waiting list at Sl.No.5 in 2000 vacancies by application of the

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instructions dated 24th March, 2003 and dated 20.05.2003 which have not even seen the light of the day as on that date. Accordingly, the order of rejection under Annexure-A/2 is hereby quashed. The matter is remitted back to the Respondents for giving due consideration in the light of the discussions made above to the case of the applicant within a period of 60(sixty) days from the date of receipt of this order.

7. In the result this OA stands allowed to the extent stated above.

No costs.


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