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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

Original Application No.260/00178 of 2015
Cuttack, this the 28th day of June, 2016

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

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Sri Chandra Sekhar Behera, aged about 36 years, S/O Late Gopinath Behera (Ex-Senior Accountant) At- Upper Police Colony, P.O.- Tulasipur, P.S.-Bidanasi, Dist.- Cuttack-753008, Odisha.

.....Applicant

By the Advocate(s)-M/s. U.C. Mohanty.

-Versus-

Union of India, represented through

1. Secretary to Govt. Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training, North Block, New Delhi-110001.
2. The Comptroller & Auditor General of India, Pocket-9, Deen Dayal Upadhyay Marg, New Delhi-110124.
3. The Principal Accountant General (A&E), Odisha, Bhubaneswar-751001, Dist-Khurda, Odisha.
4. The Deputy Accountant General (Admn.), O/o the Principal Accountant General(A&E), Odisha, Bhubaneswar-751001, Dist:-Khurda, Odisha.
5. The Sr. Accounts Officer(Admn.), O/o the Principal Accountant General(A&E), Odisha, Bhubaneswar-751001, Dist-Khurda, Odisha.

.....Respondents

By the Advocate(s)- S.K. Patra

ORDER

R.C. MISRA, MEMBER (A):

The applicant in the present Original Application is the son of late Gopinath Behera who was serving as Senior Accountant in the Office of Principal Accountant General (A&E), Odisha, Bhubaneswar. He has approached this Tribunal by making the following prayer:-

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- i) This Hon'ble Tribunal be pleased to hold that the order of rejection for compassionate appointment issued by the Respondent No. 3 dated 13.11.2014 under Annexure-A/15 is purely illegal, arbitrary, unreasonable, discriminatory & untenable and contrary to the object and purpose of providing appointment on compassionate ground and rejecting the same at belated stage is equally untenable, as such quash the same;



- ii) This Hon'ble Tribunal be further pleased to issue appropriate direction to the respondents to reconsider the case of the applicant for appointment under compassionate ground treating the date of application as the basis for extending the aforesaid appointment at par with similarly placed persons who were given appointment being the dependant of the deceased Government Servant who died in harness much latter, and keeping in view the application submitted on 28.12.1999 under Annexure-A/4.
- iii) And pass such order/orders, direction/directions as would deem fit and proper in favour of the applicant."

2. The facts of the case are that the applicant's father while working as Senior Accountant in the Office of Principal Accountant General (A&E), Odisha, Bhubaneswar met with a road accident on 18.10.1999 and thereafter expired on 31.10.1999 while under treatment. He left behind his widow i.e., the applicant's mother, two sons and two daughters. The applicant happens to be the eldest son. The Sr. Accounts Officer(Admn.), in the Office of the Accountant General (A&E), Odisha, Bhubaneswar sent a letter dated 14.03.2000 to the applicant to furnish the legal heir certificate, death certificate, income certificate and other documents for consideration of the case of the applicant for appointment on compassionate ground. The applicant's mother submitted her representation dated 05.06.2000 to the Comptroller & Auditor General of India, New Delhi (Respondent No.2) with a prayer for appointment of her son under the provisions of appointment under Rehabilitation Assistance Scheme of the Department. This representation was followed by another representation on 13.04.2002. However, no action was taken by the Respondents to consider the prayer of the applicant under the said scheme. Thereafter, the Accounts Officer(Admn.-I), O/o the Principal Accountant General(A&E), Odisha, Bhubaneswar issued a letter dated 29.10.2012 to the applicant asking for submission of declaration as per proforma for taking further action regarding appointment under the aforesaid scheme.

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The applicant thereafter submitted the application for compassionate appointment on 24.11.2012 along with declaration in the prescribed proforma. Thereafter the applicant ^{he} ~~who~~ was struck ^{with} another tragedy ⁱⁿ with his family since his mother passed away on 15.01.2014. Thereafter, further financial distress was caused to the family. In the meantime, since no action was taken by the Respondents for appointment under rehabilitation assistance scheme, another representation was made by the applicant on 22.02.2014. Instead of considering the repeated representations of the applicant, another letter dated 05.03.2014 was issued by the Respondents asking the applicant for submitting further information. In response to the said letter dated 05.03.2014 of the Respondents-Department, on 12.03.2014 the applicant furnished the up to date information for consideration of his appointment on compassionate ground. Thereafter, another letter was also issued by the Respondents on 19.05.2014 asking for more information and the applicant submitted the same on 28.05.2014. Thus the process of consideration was prolonged by asking for more and more information from the applicant. The applicant's grievance is that in cases where Government servants died in the year 2012, their legal heirs were given appointment in the year 2013 wherein the applicant's father had expired long time back in the year 1999 and even though the applicant had submitted applications and other information in time his case was not considered under the Scheme. According to the information supplied under RTI Act, 2005 by the CPIO, Bhubaneswar, it is admitted that, 73 employees in the Department have died prematurely during the period from 1997 to 2014 and 15 persons have been appointed on compassionate ground on the recommendation of the Departmental Screening Committee. However, no information was supplied as to why the case of the applicant was not considered.

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Thereafter, the applicant was constrained to approach this Tribunal by filing O.A. No.600/14 which was disposed of by this Tribunal with a direction to the Respondents to consider the representation with a well reasoned order within a period of three months from the date of receipt of the said order. Respondents in compliance of the orders of the Tribunal passed an order dated 13.11.2014 (Annexure-A/15) which reads as under:-

“ As per information furnished by him, he is married and has become ineligible for compassionate appointment in terms of DoP&T's O.M, No.14014//02/2012-Estt. Dated 30th May, 2013. The fact of his ineligibility had been intimated to him vide this office letter No.Admin.1-Comp.Appot (167)/620 dated 12-08-2014 (Copy enclosed) which was received back in this office undelivered with postal remarks “I/A R/S”.

This order dated 13.11.2014 is impugned and under challenge in this O.A. It is the case of the applicant that his application for compassionate appointment was submitted to the Respondents on 28.12.1999. According to the scheme for appointment on compassionate ground, the request for compassionate appointment has to be decided with reference to the date of death. The Respondents have gone on asking for more and more information, the last one of which was issued on 19.05.2014. Applicant has contended that when the date of death as well as submission of application pertains to the year 1999, submission for further information in the year 2014 cannot be taken as cause of action for declaring the applicant ineligible because of being married as per DoP&T's O.M. No.14014/02/2012-Estt. dated 30.05.2003. The Respondents have also considered cases where the government servants ^{have} ~~were~~ died between 2010 -2013. It is therefore a matter of injustice that the applicant's representation for compassionate appointment submitted on 28.12.1999 was not taken up for consideration in time. The guidelines of DoP&T clearly provides that eligibility has to be considered on the basis of date of submission of application. The

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clarification of DoP&T issued on 30.05.2013 at Sl. No.26 is that if compassionate appointment cannot be given in a year, the same can be considered and therefore there is no time limit for compassionate appointment and the same can be carried forward to the subsequent year. The status of being married does not therefore, adversely affect the applicant nor does it make him ineligible for compassionate appointment. It is further urged by the applicant that the clarification of DoP&T has also been modified subsequently by ^{TAO} 25.02.2015. The other grounds which have been mentioned are that the case of the applicant was pending for 14 years and therefore, it cannot be rejected by taking the plea of marriage in the year 2014. The vacancies were existing during the period of 1998, 2000, 2006, 2010, 2011 & 2013 and the model evaluation system was only introduced in the year 2012 and the guideline dated 30.05.2013 can only have prospective effect and will not have any application to the case of the applicant when his case is pending for consideration for the last 14 years.

3. In the counter affidavit filed by the Respondents, it is submitted that the applicant's father expired on 30.10.1999 and application for compassionate appointment was submitted on 30.12.1999. As per DoPT O.M. No.14014/6/94-Estt.(D) dated 09.10.1998, compassionate appointments are made up to maximum of 5% of the vacancies to be filled up under Direct Recruitment Quota during a panel year in any Group-C Posts. Because of this ceiling, adequate number of vacancies were not available for consideration of compassionate appointments and no compassionate appointment was made during the years from 2001 to 2009, except in one case in the year 2006 in compliance to the orders of Hon'ble Supreme Court of India. Further, in terms DoP&T O.M. No.14014/19/2002-Estt.(D) dated 05.05.2003, the maximum time a person's name can be kept under consideration for offering compassionate appointment would be three

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years, and after completion of three years, the case was to be treated as closed. Subsequently, however, the instruction regarding three years time limit was withdrawn vide DoP&T O.M. No.14014/3/201-Estt.(D) dated 26.07.2012, after which the case of the applicant was taken up for consideration and he was asked to furnish some information required for considering appointment under compassionate ground. The applicant's case along with other similar cases was placed before the Departmental Screening Committee (DSC) for the panel year 2013. The DSC evaluated all the pending cases on the basis of parameters of model evaluation system and recommended cases of nine deserving applicants against nine numbers of available vacancies. However, the name of the applicant for the purpose of compassionate appointment was not recommended by the DSC. Thus the consideration of the case of the applicant was done in a regular manner in keeping with various instructions on that ground. The Respondents have denied the allegation made by the applicant that he was discriminated against. It is the further case made out in the counter affidavit that in compliance with the orders of the Tribunal dated 08.08.2014 passed in O.A. No.600/14 the representation of the applicant was disposed of vide order dated 13.11.2014 in which it was communicated that on account of the fact that the applicant was married, in terms of the DOP&T O.M. dated 30.05.2013 he was declared ineligible for compassionate appointment. It is submitted that the communication which was sent to the applicant was received back in the office undelivered. It is admitted by the Respondents that as per the subsequent provision contained in DoP&T O.M. No.14014/02/2012-Estt. dated 25.02.2015, a married son becomes eligible for consideration of compassionate appointment. But the said O.M. stipulates that the modified provision will be effective from 25.02.2015 and it was emphasized not to reopen the cases already settled with reference to the FAQs(Sl.

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No.13) dated 30.05.2013. Therefore, the disposal of the case by the Respondents has been in keeping with the guidelines issued by the DoP&T which is the Nodal Department for issuing instructions regarding compassionate appointment.

4. Having perused the documents in this O.A. I have heard the Ld. Counsels for both the sides. I have also gone through the written notes of submissions.

5. The issue for resolution in this case is whether the applicant having married would be eligible for consideration of compassionate appointment or not. In the FAQs issued by the DoP&T on 30.05.2013, it has been mentioned at Sl. No.13 that a married son is not considered dependent on a government servant. Subsequently, the FAQs issued by the DoP&T on 25.02.2015, it has been further clarified that the a married son can be considered for compassionate appointment if he otherwise fulfills all the other requirements of the Scheme. This clarification would be effective from the date of issue of the FAQs viz. 25.02.2015 and the cases of compassionate appointment already settled with reference to the FAQs dated 30.05.2013 may not be reopened. On the basis of this clarification the Respondents have submitted that by the time the clarification dated 25.02.2015 was issued by the DOP&T, applicant's case had already been disposed of vide order dated 13.11.2014, by which date the FAQs issued on 30.05.2013 was in force. Therefore, the applicant was not eligible for the purpose of consideration of compassionate appointment on the date when his case was considered in accordance with the clarification of DoP&T. It is further pleaded that subsequent modification dated 25.02.2015 will not help the applicant. With regard to the facts of this case, the Respondents have admitted that the application for compassionate appointment was submitted way back in the year 1999. However, the application could not be considered because of lack of vacancies



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and also the instructions of the DoP&T that the application can ~~only~~ be considered only three times after which it shall be considered as closed. Subsequently, DoP&T clarified that there is no such time limit of three years for consideration of application for compassionate appointment. This clarification was issued on 26.12.12 and thereafter again the case of the applicant was taken into account in the year 2013. By that time it was already clarified that the married son is not eligible for compassionate appointment. Taking into account the submissions it becomes clear that the order regarding non eligibility of married son ~~was~~ comes into being only between the two dates i.e., 30.03.2013 and 25.02.2015. However, the more important point in this case is ~~that~~ when the cause of action for compassionate appointment arose. Very clearly it can be said that the death of the Government servant/applicant's father being in the year 1999, the cause of action arose only when application for compassionate appointment was submitted on 28.12.1999 and it is quite clear that the clarification issued by the DoP&T on 30.05.2013 was not in operation then. Therefore, the applicant can not be said to be ineligible as on the date of submission of the application which gave rise to the cause of action in this case. The Ld. Counsel for the applicant in his detailed notes of arguments has inter-alia submitted that the Respondents have to apply the instructions prevailing at the time of cause of action while considering the prayer for compassionate appointment. They can not apply the rules and instructions prevailing on the date when actually the consideration takes place. In this matter, the cause of action arose in the year 1999 and the consideration by the Committee was in the year 2013. Therefore, the case of the applicant cannot be rejected by applying the instructions dated 30.05.2013. The further submissions made by the Ld. Counsel for the applicant is that this issue was considered by the Tribunal in O.A. No.122/15 and vide its order dated

29.04.2016, the Tribunal has held that the rules and instructions prevailing at the time when the cause of action took place shall be the guiding factor in considering the prayer for compassionate appointment. I also find that in the O.A. No.122/15 this matter has been discussed in great detail and the issue has been answered. The relevant part of the said order is quoted below:-

“14. The issue of significance that has now to be decided is whether the case of the applicant should have been decided as per the weightage point system of 2007 introduced by the BSNL, as has been done by the High Power Committee. The accompanying question is whether the case should have been considered in the light of DOP&T guidelines of 1998 which were adopted by the BSNL when the applicant's father died, and the application for compassionate appointment was submitted by the applicant. The relevant question of law that automatically crops up for resolution is whether the guidelines existing at the time of consideration would be retrospectively applicable, or the guidelines that were in force at the time of occurrence of cause of action, i.e., submission of application would be attracted.

18. The argument placed by the learned counsel for respondents is that the Hon'ble Apex Court Judgment in C.A.No.250 of 2008 (MD, Canara Bank & Ors. vs.M.Mahesh Kumar, cited by the applicant stands distinguished from the present case in terms of the facts. The issue was about compassionate appointment as per the 1993 scheme as against the new scheme of ex-gratia payment of 2005. However, as already elucidated, in the MGB Gramin Bank case also, the facts were similar. Clause 14 of the new scheme effective from 2006 provided that all applications pending on the date of commencement of scheme shall be considered for appointment of ex-gratia instead of compassionate appointment. The Hon'ble Apex Court directed that the case should be considered strictly according to Clause 14 of the new scheme. Therefore, facts of the case in MGB Gramin Bank case, and Canara Bank case decided on 7th August, 2013 and May, 15, 2015, are similar. In the first case, the Hon'ble Apex Court held the view that scheme as on the date of consideration should be made applicable, and in the second case the decision was that the scheme that was effective at the time when cause of action arose would be applicable. The judgment dated May, 15, 2015 in the Canara Bank case has come later, and in my view, would take precedence over the earlier case.

19. The facts involved in both the decisions of the Hon'ble Apex Court are similar. In the present O.A., of course, the issue is whether scheme of 2007 or the scheme that was effective on the date of submission of application for compassionate appointment would be applicable. Similar matter in O.A.No.946 of 2013 was

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disposed of on 15.6.2015. In that order, the Tribunal did not find anything wrong or irregular with the fact that 2007 guidelines were applied while considering the case of the applicant for compassionate appointment. Accordingly, the case was dismissed. However, this decision was arrived at basing upon the ratio of the MGB Gramin Bank case decided by the Hon'ble Apex Court. The decision of the Canara Bank case rendered by the Hon'ble Apex Court on a later date, was not within the knowledge of the Tribunal, and was not brought to its notice. In the present case, however, the learned counsel for applicant has placed that decision before the Tribunal, urging that this being the latest decision should be binding.

20. The learned counsel for respondents has urged that precedents cannot be relied upon in a mechanical manner, and that a little difference in facts can also make a material difference. He cited the decisions in Commissioner Income Tax vs. Sun Engineering Works, AIR 1993 SC 43, Bhawnagar University vs. Palitana Sugar Mill, AIR 2003 SC 511 and Union of India vs. Chajju Ram, AIR 2003 SC, 2339 in this regard. He has also pleaded that the Hon'ble Supreme Court's judgment in the CANARA Bank case stands distinguished, and the ratio of judgment of that case should not apply to present O.A. because of a different set of facts. There is no doubt a small difference, because the scheme of ex-gratia payment as against the scheme of compassionate appointment is not the issue in this case. The issue is regarding the scheme of compassionate appointment at the time of cause of action and the scheme of compassionate appointment of 2007 in which BSNL adopted the weightage point system. But the facts in the MGB Bank case decided in 2013 and those in the Canara Bank case decided by the Hon'ble Apex Court in 2015 are similar. I have to come to the ratio of decision of the Hon'ble Apex Court in the later case which is that the case of an applicant for compassionate appointment has to be considered under the scheme which was prevalent at the time of submission of the application for compassionate appointment, and not under the scheme that was existing at the time of consideration. The ratio decided in the Canara Bank case by the Hon'ble Apex Court is that the relevant scheme to be applicable is the one that was effective at the time of the cause of action. If there is a change in the scheme, or there is a different scheme at a later point of time, when actual consideration of the applicant is made, such consideration has to be made as per the scheme that was effective when cause of action arose. The decision of the Hon'ble Apex Court in May, 15, 2015 in the case of Canara Bank vs. Mahesh Kumar having been brought to the notice of the Tribunal now, the same cannot be ignored, and would now be taken as binding upon the Tribunal, despite the fact that in O.A.No.946 of 2013, involving similar facts a different view was taken based upon the ratio of decision of the Hon'ble Apex Court in MGB Gramin Bank case.



21. In view of the discussions made above, I am of the opinion that there is merit in the prayer of the applicant that his case should be considered as per the scheme of compassionate appointment that was existing at the time of the cause of action in the year 2002 when the applicant submitted the application for compassionate appointment. The respondents are accordingly directed to reconsider the case of the applicant as per the scheme prevailing earlier in 2002 and communicate their decision with a reasoned and speaking order to the applicant within a period of 120 days from the date of receipt of this order. The impugned order dated 19.11.2012 is quashed and the case is remanded."

6. Based upon the above view already held by the Tribunal in similar matter, I find no justifiable reason to deviate from that position. When the date of submission of representation of the applicant is 28.12.1999, it shall be reasonable to hold that the rules and instructions regarding compassionate appointment prevailing on that date should be the guiding factors for consideration of the application. The Respondents should not have considered the applicant ineligible for compassionate appointment as per the clarification of the DoP&T dated 30.05.2013. In any case, this clarification has also ^{been} further modified by issuing clarification dated 25.02.2015 in which it is mentioned that the married son can be considered for compassionate appointment if he otherwise fulfils the other requirements of the scheme. I am of the opinion that it was wholly unfair and unreasonable to declare the applicant ineligible based upon a clarification dated 30.05.2013, when the applicant's father had died on 31.10.1999 and the application for compassionate appointment was submitted on 28.12.1999. It is further to be stated that as repeatedly made out in the judgments of the Hon'ble Apex Court, compassionate appointment is not a matter of right and it is not to be considered as a source of recruitment. However, the applications² for compassionate appointment has to be considered in keeping with provisions of the scheme as followed by the Government in this regard. While reiterating the



above position already spelt out by the Hon'ble Apex Court, in various judgments, I quash the order dated 13.11.2014 being unreasonable and unfair and direct the Respondents to reconsider the matter of compassionate appointment in favour of the applicant and communicate a decision in this regard to him within a period of 120 days from the date of receipt of copy of this order.

7. With the above observation and direction this O.A. is disposed of. No costs.


(R.C. MISRA)
MEMBER(A)

K.B.