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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No.249 of 2012
Cuttack, this the 2nd day of February, 2015

Sri Pabitra Kumar Nayak.....

Applicant

-Versus-

Union of India & Others

Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? *yes*
2. Whether it be referred to PB for circulation? *yes*


(R.C. MISRA)
MEMBER (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No.249 of 2012
Cuttack, this the 2nd day of February, 2015

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

Sri Pabitra Kumar Nayak,
aged about 34 years,
Son of Late Khetramohan Nayak,
Vill. Banakhandi,
PO-Junei, PS-Konark,
Dist-Puri.

...Applicant

(Advocate: M/s. S. Pattnaik, B.R. Kar)

VERSUS

Union of India Represented through

1. Special Secretary-cum-Director,
Aviation Research Center,
Head Quarter, East Block
No.V, R.K. Puram,
New Delhi-110066.
2. Deputy Director (Administration),
Aviation Research Center,
At/PO-Charbatia, Dist-Cuttack.

... Respondents

(Advocate: Mr. B.K. Mohapatra)

ORDER

R.C. MISRA, MEMBER (A)

The applicant has filed this O.A. in the Tribunal seeking a direction to be issued to the Respondents to consider his prayer for providing appointment against any Group 'D' post as per the Compassionate Appointment Scheme of the Government of India notified in OM dated 09.10.1998 and OM dated 05.05.2003.

2. The brief facts of the case are that the applicant's father was serving as MT Cleaner under the Respondent No.2, i.e., Deputy Director (Administration) Aviation Research Centre, at Charbatia in the State of Odisha. He died in harness




on 08.05.1995 leaving behind his widow, the applicant and other two sons and two daughters, and the only source of income for the family was the family pension of the widow. Having thus plunged into financial distress, the mother of the applicant submitted an application for compassionate appointment for her son, and followed it up by an application dated 28.06.1996 filed before Respondent No.1. The applicant subsequently was asked to appear in a selection test for the post of Chowkidar to be held on 11.10.1996. Therefore, ^{after} pursuant to a letter dated 07.11.1996, applicant submitted Attestation Form and SSQ duly filled up before the Respondent No.2 on 02.12.1996. But contrary to his expectation, applicant did not receive any appointment letter.

3. In the meantime, the mother of the applicant submitted a few more representations regarding the consideration for compassionate appointment. But she received communications to the effect that applicant could not qualify for appointment to the post of Chowkidar in the selection. It was, however, clear that consideration was never given to the case under the scheme of compassionate appointment. Such non-consideration gave rise to the grievance of the applicant in this OA who has relied upon two OM's issued by the Government of India with regard to his claim. One is the Clause 16(e) Government OM dated 09.10.1998 which provides as follows:-

“Request for compassionate appointment consequent on death or retirement on medical grounds of Group-D staff may be considered with greater sympathy by applying relaxed standards depending on the fact and circumstances of the case”.

The second is OM No.14014/19/2002-Estt (D) dated 05.05.2003 which stipulates that cases for compassionate appointment can be considered for three times by the Compassionate Appointment Committee subject to availability



of vacancy within the prescribed 5% of the Direct Recruitment quota, in deserving cases.

4. The grievance of the applicant is that these instructions have not been followed by Respondents, and his compassionate appointment case has not been considered even once.

5. The Respondents in their counter reply have submitted that in the Direct Recruitment test for the post of Chowkidar held on 11.10.1996 the applicant could not qualify because of not meeting the required criteria for selection. The Department also kept processing the application for compassionate appointment and hectic correspondence was made between ARC Office, Charbatia and ARC Head Quarters, Delhi. The case was considered in the Compassionate Appointment Committee along with other cases on 04.02.2000. After thorough analysis and comparative study of the candidates, the applicant's case was not recommended by the Compassionate Appointment Committee. It is the case of the Respondents that applicant's case for compassionate appointment was considered in accordance with provisions of the Scheme.

6. I have heard Ld. Counsels for both sides and perused the records. In course of hearing, on 21.11.2014 in order to verify the details of the consideration of the case of the applicant in the Compassionate Appointment Committee on 04.02.2000 as claimed by the Ld. Counsel for the Respondents, directions was issued to obtain the records pertaining to such consideration. The Ld. ACGSC produced the minutes of the meeting of Compassionate Appointment Committee held on 03.02.2000 perusal of which reveals that consideration of compassionate appointment cases was taken up on 24.01.2000 and 03.02.2000. At para 3 of the minutes it is mentioned that the Committee held extensive discussion on each of



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the pending cases for compassionate appointment. However, contrary to such a claim, I did not find any such discussion. No comparative analysis of eligible cases has been made. On the other hand, Committee found two cases worthy of compassionate appointment and recommended the same. The detailed reasons for such recommendation are conspicuous by their absence. Some other cases were kept as standby, and their names were recommended to be forwarded to other Ministries for compassionate appointment. For none of these recommendations detailed reasons have been assigned, and this short coming militates against fair and transparent consideration. In the minutes some more cases based upon the orders of the Tribunal have been mentioned, but the consideration is not based upon any specific parameters. I did not find any consideration given to the applicant's case in the proceedings of Compassionate Appointment Committee. Therefore, the evident conclusion is that the applicant's grievance that his case was never considered in the Compassionate Appointment Committee is genuine. On the other hand, the assertion made by Respondents in the counter reply that they have considered the case in the Compassionate Appointment Committee is not supported by records. I have reason to believe that the Respondents have failed to do justice to the case of the applicant by refusing to give it a fair consideration as per the Compassionate Appointment Scheme.

7. I have also gone through the written notes of submission filed by learned counsels. The Ld. Counsel for the applicant submits that apart from the fact that the Compassionate Appointment Committee did not consider his case properly and recommended cases arbitrarily in a pick and choose manner, he was also never informed about result of consideration of his case in the Compassionate Appointment Committee. On the other hand, Ld. Counsel for Respondents pleads that the case of the applicant was considered in Compassionate Appointment

Committee but not recommended, because his case was found less indigent than other cases which were recommended. He further pleads that the applicant has no right to claim compassionate appointment.

8. I have, however, found no evidence on the basis of records that there was a fair consideration in the Compassionate Appointment Committee. To reach a conclusion about indigent condition, the Respondents should have found objective criteria for analysis of cases in a comparative manner. By subjective impressions, no rational conclusion can be reached. The findings^B need to be recorded in a detailed and speaking manner; so that it would be easily verifiable that the consideration of cases is objective.

9. The death of the late employee happened in the year 1995, and the application for compassionate appointment was made in 1996. Therefore, the question arises as to why consideration of the case for compassionate appointment was not promptly done. Matters of compassionate appointment require expeditious consideration, in view of the avowed objective of the scheme to come to immediate rescue of the family which is in distress because of the untimely passing away of the breadwinner of the family. In the present case even if the case of the applicant was considered and not recommended in the meeting of CAC in the year 2000, this fact should have been intimated to the applicant, and further consideration should have been given to the case as per the relevant guidelines of the Government.

10. In this regard, it is pertinent to mention that the Hon'ble Apex Court in the case of Smt. Sushama Gosain & Ors. Vrs. Union of India & Ors 1998 (4) SCC 468, has observed that in all claims of appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing



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appointment on compassionate ground is to mitigate the hardship due to death of the bread-winner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress.

11. It, therefore, goes without saying that the Respondent-Department should put in place suitable arrangements for expeditious consideration of applications for compassionate appointment in the Compassionate Appointment Committee, so that the objectives of the scheme are realized.

12. In the light of above discussion, having reached a finding that the applicant's case for compassionate appointment has not received a fair consideration, I direct the Respondents to consider the case in accordance with provisions of the Scheme in the Compassionate Appointment Committee within a period of 90 days from the date of receipt of this order, and communicate the result of consideration to the applicant.

13. With the above observation and direction, the O.A. is disposed of. No costs.


(R.C. MISRA)
MEMBER (A)

K.B.