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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O. A. NO. 494 OF 2012

Cuttack this the 11th day of April, 2014

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

Purna Chandra Karuan,
aged about 30 years,
S/o. Late Bhimasen Karuan,
At-Binekela, P.O. Kashrupada,
Via-Kesinga, Dist-Kalahandi.

...Applicant

(Advocates: M/s. J. Sengupta, S. Behera)

VERSUS

Union of India Represented through

1. Secretary,
Ministry of Finance, Department of Revenue,
North Block, New Delhi-110001.
2. Chief Commissioner of Income Tax,
Aayakar Bhawan, Rajaswa Vihar,
Bhubaneswar, Dist-Khurda.
3. Deputy Commissioner of Income Tax (Hqrs),
(Administration) Office of the Chief
Commissioner of Income Tax , Rajaswa Vihar,
Aayakar Bhawan, Vani Vihar,
Bhubaneswar-751001.
4. Income Tax Officer, Bhawanipatna Ward,
At/P.O. Bhawanipatna,
Dist-Kalahandi-766001.

... Respondents

(Advocate: Mr. S. B. Jena)



ORDER (ORAL)

R.C. MISRA, MEMBER (A)

The applicant has approached this Tribunal with a prayer for quashing the order of rejection dated 15.06.2010 (Annexure-A/9) and to direct the Respondents to reconsider the case of the applicant for compassionate appointment.

2. Short facts of the case are that father of the applicant was working as Tax Assistant in the office of the Respondent No.3 and was subsequently promoted as Senior Tax Assistant. He expired on 12.03.2004 while in service leaving behind his widow and three children including the applicant who is the 2nd son of his family. Subsequently, mother of the applicant submitted an application before the authorities praying for compassionate appointment in favour of the applicant and to that effect, an affidavit was submitted by the mother of the applicant along with two other brothers of the applicant stating that they have no objection if the applicant will be appointed under the compassionate appointment scheme. While the representation was being processed, mother of the applicant expired on 25.08.2009 leaving behind the applicant and two brothers. While the matter stood thus, Respondent No.3 vide letter dated 15.06.2010 rejected the case of the applicant on the ground that CRC did not recommend the case of the applicant for compassionate appointment, which is the subject matter of challenge in this O.A.

3. It is the case of the applicant that ~~under~~ ^{although} DOP&T circular dated 05.05.2003, ~~which~~ stipulates that in each year the case of the incumbent has to be considered for appointment under compassionate ground, ~~but~~ in the instant case, the authorities have rejected the matter by mentioning that the compassionate appointment committee which met on 19.11.2007 did not recommend the case of



the applicant for compassionate appointment for the years 2004-05, 2005-06 and 2006-07. This point has been elaborately submitted by the Ld. Counsel for the applicant in course of hearing by stating that the authorities are not empowered to consider the vacancies of the years 2004-05, 2005-06 and 2006-07 at one go on 19.11.2007. Therefore, the consideration by the committee is contrary to the guidelines circulated by the DOP&T. Further, in order dated 15.06.2010 no reason has been mentioned as to why the representation for compassionate appointment was rejected. There is only statement that the committee did not recommend the applicant's case as it found that there were more deserving cases for appointment on compassionate grounds. According to applicant, it has not been clarified in the rejection order as to which were those more deserving cases along with the details thereof. The applicant made another representation against the order of rejection on 27.05.2011 to the Chief Commissioner of Income Tax, Aayakar Bhawan Rajaswa Vihar, Bhubaneswar, Dist-Khurda and as per submission of the applicant, the concerned authorities have not reconsidered the matter nor have they furnished any reply. The applicant has further submitted that in the face of the extant circular and guidelines, the consideration made by the Respondents against the vacancies of three years in one meeting shows their malafide intention which is not sustainable in law.

4. In the counter affidavit filed by the Respondents, it has been submitted that Compassionate Appointment Committee could not be constituted till the year 2007 due to non-availability of clearance from the CBDT. This Committee was constituted on 19.11.2007 to consider all the pending cases. The case of the applicant was considered for compassionate appointment for three consecutive Recruitment years i.e., for the Recruitment Years 2004-05, 2005-06

and 2006-07. But taking into account the requisite norms and eligibility criteria of the scheme and the financial status of the family of the deceased employee, the Committee did not recommend the case of the applicant for appointment on compassionate ground. The counter affidavit further mentions that the Committee recommended the names of four other persons who were considered as more deserving for compassionate appointment and this was intimated to the applicant. Further, the applicant has filed this O.A. after lapse of a long years of 08 years from the date of the death of his father which clearly shows that the bereaved family is ~~in~~ ^{not} in indigent condition and therefore, does not fall within the requirements of compassionate appointment. The Hon'ble Apex Court therefore, has observed that the very object of appointment on compassionate ground to a dependent of the deceased employee, who dies in harness is to mitigate unexpected immediate financial hardships and distress caused to family by the sudden demise of the breadwinner and the same cannot be claimed after the crisis is over (Umesh Kumar Nagpal Vs. State of Haryana & Ors). Appointment on compassionate ground is not a vested right and only on meeting the laid down criteria of the scheme an applicant can be consider for appointment. It is further stated in the counter affidavit that the representation dated 27.05.2011 has not been received by the Respondent No.2 and therefore, the question of reconsidering the matter does not arise. On these grounds the Respondents have pleaded for rejection of the O.A.

5. The Ld. Counsel for the applicant has also filed a rejoinder to the counter affidavit reiterating the grounds for reconsideration of the case of the applicant for compassionate appointment.



6. I have heard Ld. Counsels for the applicant and also the Respondents and perused the records. With regard to the submission of the applicant that the vacancies for three years were considered on one date, the Respondents have submitted that the compassionate appointment committee could not be constituted since the clearance from the CBDT had not been received. After clearance was received, the said committee met on 19.11.2007 and considered all the past cases. The Ld. Counsel for the applicant has raised a further point that letter dated 15.06.2010 does not reveal the details of the candidates who were found more deserving than the applicant for compassionate appointment by the Compassionate Appointment Committee. Moreover, the Minutes of the Committee have not been enclosed to the letter dated 15.06.2010 and therefore, the applicant is not in a position to know the reasons as to why his case was rejected. It is seen that letter dated 15.06.2010 actually does not reveal any such detail. The cases for compassionate appointment are considered under certain objective criteria and unless these objective criteria are revealed, it is not possible to decide whether fair consideration has been given to the case of the applicant. If some cases are found to be more deserving than other cases, that should be considered as per the objective criteria to be laid down by the Committee in pursuance of the O.M. issued by the DOP&T. One cannot get a clear picture regarding the consideration of the case of the applicant unless the details are available. Since in the present case no such details have been mentioned in the impugned rejection order dated 15.06.2010 nor are the Minutes of the Committee enclosed thereto, it is not possible to hold that a fair treatment has been made to the applicant. Administrative orders of the concerned authorities should be accompanied with reasons in order to ensure fairness and objectivity in the consideration of the various cases.

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The Respondents in the counter affidavit have said that the applicant's father passed away in the year 2004 and therefore, after a long lapse of time, the case for compassionate appointment could not be considered, because, this is actually meant to help the family to tide over the immediate financial crisis. There is absolutely no dispute about the fact that the scheme for compassionate appointment has been formulated to mitigate the immediate financial hardships of the distressed family. But in this case, the Respondents have themselves admitted that after getting clearance from the CBDT, they constituted the committee only on 19.11.2007. Therefore, the onus of delay for consideration lies more on the Respondents. A further important point which has come to my notice is that while the application for compassionate appointment is pending for consideration, the mother of the applicant also died on 25.08.09. Therefore, the reason assigned by the Respondents in support of their contentions has no force.

7. Having regard to the discussions held above, I hold that order dated 15.06.2010 does not convey a sense that the case of the applicant was considered with fairness and objectivity vis-à-vis the cases of other such applicants and also the vacancies those were available for the recruitment years which are relevant in this case. As a result, therefore, I quash the order dated 15.06.2010 issued by the Dy. Commissioner, Bhubaneswar and remand the matter back to the authorities for reconsideration of the case of the applicant for compassionate appointment under the guidelines as laid down by the DOP&T. With the above observation and direction, this O.A. is disposed of. No costs.


(R.C.MISRA)
MEMBER (Admn.)