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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O. A. No. 522 OF 2013
Cuttack, this the 31st day of October, 2014

CORAM
HON'BLE MR. A.K. PATNAIK, MEMBER (Judl.)

.....

Amiya Kumar Naik,
Aged about 41 years,
Son of Alekh Charan Nayak,
At – Darada, P.O./Via- Borikina,
Dist.- Jagatsinghpur.

.....Applicant

Advocate(s)... M/s. D.P.Dhalsamant, N.M.Rout

VERSUS

Union of India represented through

1. Chief Commissioner of Income Tax,
Aayakar Bhawan, Rajaswa Vihar,
Bhubaneswar, Dist- Khurda, 751007.
2. Assistant Commissioner of Income Tax,
Headquarters (Administration),
Aayakar Bhawan, Rajaswa Vihar,
Bhubaneswar, Dist- Khurda, 751007.
3. Commissioner of Income Tax (Appeals),
Cuttack, Stoney Road, PO- Chandnichowk,
Dist- Cuttack-753002.
4. Income Tax Officer (Headquarters, Administration),
Bhubaneswar, Aayakar Bhawan, Rajaswa Vihar,
Bhubaneswar, Dist- Khurda, 751007.

..... Respondents

Advocate(s)..... Mr. P.R.J.Dash.

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ORDER

A.K.PATNAIK, MEMBER (JUDL.):

This is the fourth round of litigation in which prayer of the applicant is to quash the order dated 03.06.2013 (Annexure-A/6) in which his prayer to provide appointment on compassionate ground has been turned down with further prayer to direct the Respondents to provide him appointment on compassionate ground in any Group-C or Group-D or MTS

Patnaik

post within a stipulated period. The background of the matter is that his father while working as LDC under Respondent No. 4 took voluntary retirement on medical ground under Rule 38 of the CCS (Pension) Rules 1972 w.e.f. 31.03.1999. Consequently, appointment on compassionate ground was sought in favour of the applicant. Alleging non-consideration of such request the applicant moved this Tribunal in O.A. No. 390/2007, which was disposed of on 23.10.2007 with direction to Respondents therein to give due consideration to the pending grievance for providing an employment on compassionate ground and take a decision thereon within a specific time. In compliance with the above direction, Respondents, vide order dated 17/18th March, 2008 rejected the claim of the applicant as under:

“This letter is in response to your application for extension of benefits of compassionate appointment to you after your father’s voluntary retirement in the year 1998. I am directed to request you to note that as per para-2A(C) of the scheme of compassionate appointment 1998, circulated vide DO&T’s OM No. 14014/6/94-Estt(D) dt. 09.10.1998, for eligibility of a dependent family members under compassionate appointment, the concerned Govt. servant should have retired under Rule-38 of CCS (Pension) Rules, 1972 before attaining the age of 55 years. I am also directed to convey that your father Shri Alekh Chandra Nayak was retired on medical invalidation under rule 38 of CCS (Pension) Rules, 1972 on 31.03.1999, as per the order dated 31.03.1999 of CIT (A), Cuttack after attaining the age of 55 years. In view of this, the compassionate appointment constituted by the CCIT in the year 2002 found your case ineligible for consideration and accordingly did not consider your case for appointment under the compassionate appointment. Therefore, your application for consideration of your case for appointment under compassionate ground may be treated as disposed”.



2. Aggrieved with the above rejection order, applicant again approached this Tribunal by filing O.A.No. 395/2008. This Tribunal vide order dated 16.12.2009 disposed of the said O.A. with the following observation:

“.....We also notice that the authority rejected the grievance of the applicant straightaway without considering the fact that it was not within the domain of his father to retire unless he is relieved by his authority pursuant to the order under Annexure-A/4 and, as such this is a case which needs exercise of discretionary power for providing employment on compassionate ground. For the aforesaid reason, we feel ends of justice would be met if we quash the order under Annexure-A/12 and remit the matter back to the Respondents for giving a fresh look to the grievance of the applicant by taking into consideration the situation narrated above....”

3. The Respondents moved the Hon'ble High Court of Orissa in W.P.(C) No. 4728/10 challenging the order of this Tribunal in OA No. 395 of 2008. The Hon'ble High Court, vide judgment and order dated 23.8.2010 disposed of the said Writ Petition with the following observations:

In view of the above this Court is not inclined to interfere with the impugned order. However, this Court directs the petitioners to dispose of the matter within sixty days from today by passing a reasoned order after giving personal hearing to the opposite party. To the above extent, this Court modifies the order of the Tribunal.

4. In implementation of the order of this Tribunal in O.A.No. 395/2008 read with the judgment of the Hon'ble High Court of Orissa passed in W.P.(C) No. 4728/10, the Compassionate Appointment Committee which met on 5.8.2011 reconsidered the case of the applicant, but did not



find him suitable for appointment under the scheme for compassionate appointment by recording the following reasons:

- i) Vacancies in the grade of Tax Assistant only are available for filling up under the scheme of compassionate appointment for the Recruitment year 2009-10. As per the Recruitment Rules for the post of Tax Assistant, the basic educational qualification is degree from a recognized University. As per your application dated 23.3.2011, it is seen that you have passed H.S.C. Examination only. Thus, you do not possess the minimum educational qualification for the post earmarked for compassionate appointment.
- ii) Also your case has not been found to be one where the family of the deceased/taken voluntary retirement on medical ground is in penury and without means of livelihood leading to final destitution."

5. The applicant challenged the aforesaid order again in O.A.No. 666/11. This Tribunal after hearing Ld. Counsel for both the sides disposed of the matter on 26.02.2013, relevant portion of which is quoted herein below:

"8. Confronted with the 1st ground for rejection of the claim as quoted above, it is reduced in writing that admittedly, the applicant does not possess the qualification prescribed for the post of Tax Assistant. To this extent, the Respondents cannot be said to be at fault in not considering the applicant for the post of Tax Assistant for appointment on compassionate grounds. In this context, it is not worthy to mention that while disposing of the O.A.No. 395/2008, this Tribunal had never indicated that the applicant should be considered for compassionate appointment against any particular post. Therefore, the consideration of the applicant's candidature against a post to which he was not at all eligible for not having the prescribed qualification and the inevitable conclusion drawn up thereby by the Compassionate Appointment Committee, in my considered opinion, is a futile effort and as such the said so called consideration is construed to be "NO CONSIDERATION".



9. In regard to second part of the grounds as indicated above, the Respondents have made an attempt to justify their stand that it was ascertained, in consequence of an independent and confidential inquiry that the applicant's family is not impecunious. Confidential inquiry in such matters, as has been stated in the counter, depicts the conduct and approach as to how the authorities have acted in a bona fide manner. However, Respondents have not been able to substantiate their stand point regarding penurious condition of the family by adducing any irrefutable proof. This apart, in the earlier round of litigation in O.A.No. 395/2008, apparently, no such grounds had ever been urged by the Respondents and therefore, the grounds as urged, has been so urged in a camou flage manner in order to frustrate the claim of the applicant. Viewed from the above, the second ground as urged by the Respondents has no leg to stand.

10. In or under the circumstances, it is held that the Respondents, while considering the case of the applicant for compassionate appointment, have not considered the same with due application of mind to the order of the Tribunal passed in O.A.No. 395/2008 read with the judgment and order of the Hon'ble High Court of Orissa passed in W.P.(C) No. 4728/10. In the circumstances, the order dated 5.8.2011 (Annexure-20) is hereby quashed and the matter is remitted back to the Respondents, particularly, Respondent No.1 with direction to reconsider the case of the applicant strictly in line with what had been directed in O.A. No. 395/2008 and communicate the decision thereon to the applicant within a period of three months from the date of receipt of this order."

6. In compliance of the order, as above, Respondents intimated the applicant in letter dated 03.06.2013 as under:

"....your case for compassionate appointment has been carefully re-considered by the Compassionate Appointment Committee which met on 27.05.2013. The Committee did not recommend your case for compassionate appointment as it found that your case is financially not so indigent as to put you in economic penury. Moreover, the Committee found more deserving cases for compassionate appointment."



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7. Hence, he has filed this O.A. with the aforesaid prayer.

8. Respondents filed their counter in which it has been stated that they are required to consider the representation of the applicant for compassionate appointment according to the prescribed rules and procedures of Govt. of India issued from time to time. There was no malafide exercise of power in the rejection of the representation for compassionate appointment. The competent authority as well as Compassionate Appointment Committee have considered the representation of the applicant on the basis of the report, the financial status and other materials on record as per the rules keeping in mind the orders of this Tribunal in O.A. Nos. 395/2008 and 666/2011. As per the order of this Tribunal the Compassionate Appointment Committee was constituted by the Chief Commissioner of Income Tax, Bhubaneswar. The Committee met on 27.05.2013 and considered 10 cases taking into consideration records/inquiry report produced by the Chief Commissioner of Income Tax, Bhubaneswar for appointment against one post of MTS earmarked under the quota. The eligibility criteria for compassionate appointment are that the family should be indigent, deserving immediate assistance for relief from financial destitution and the candidate must be eligible/suitable for the post as per the rules. After careful consideration of the cases of the 10 candidates, the Committee recommended the name of Smt. Chandrabati Naik as she was found to be the most deserving candidate for compassionate appointment against the said MTS. The members of the Committee and appointing authority have exercised their discretionary power for selection of the most deserving candidate for appointment on compassionate ground on the basis



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of the comparative financial status and other relevant considerations in respect of all the candidates. The provision enshrined under Article 14 and 16 of the Constitution of India guarantee right to equality and right to equality in matters of public employment to every citizen of India. The case of the applicant has been considered along with other applications for appointment on compassionate ground in a fair and impartial manner as such the claim of the applicant deserves no consideration. The Respondents have also furnished in a tabular form the names of the 10 candidates who were considered against one post of MTS under the quota. Accordingly, it has been stated by the Respondents that as there being no injustice caused in the decision making process of the matter, this O.A. deserves to be dismissed.

9. Despite service of counter no rejoinder has been filed by the applicant. Hence the matter was listed for hearing. I have heard Mr. D.P.Dhalsamant, Ld. Counsel for the applicant, and Mr. P.R.J.Dash, Ld. Addl. Central Govt. Standing Counsel appearing for the Respondents-department, and perused the record.

10. By referring to the earlier orders of this Tribunal vis-a-vis the orders of rejection passed earlier, Mr. Dhalsamant submitted that the Respondents have intentionally and deliberately rejected the claim of the applicant with a view to deprive the applicant for appointment on compassionate ground as he has taken shelter of this Tribunal time and again. He has also submitted that the motive of the Respondents is intentional and deliberate without giving any emphasis to the orders of the Court as on each occasion they have rejected the claim of the applicant on different ground. Hence, Mr. Dhalsamant while praying for quashing the



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impugned order of rejection dated 03.06.2013 has sincerely prayed for a positive direction to provide the applicant appointment on compassionate ground, if necessary by creating the supernumerary post. In this regard, Mr. Dhalsamant has placed reliance on the orders of this Tribunal dated 23.07.2002 passed in O.A. No. 193/2002, which was upheld by the Hon'ble High Court of Orissa vide order dated 31.03.2010 in W.P.(C) No. 108/2003. Full text of the order of Hon'ble High Court of Orissa dated 31.03.2010 passed in W.P.(C) No. 108/2003 reads as under :

“The opposite party was the applicant before the Tribunal. The case of the opposite party before the Tribunal was that his father was working as a Group-D staff under Bardol Sub Post Office and died on 12.1.1991 while he was in service leaving behind his widow and the present opposite party. The date of birth of the opposite party is 22.5.1979 and he was a minor at the time of his father's death and attained majority only on 22.5.1997. He having passed Matriculation in the year 1996, after attaining majority submitted an application on 6.6.1997 for providing him an appointment under the Scheme for compassionate appointment in order to remove the distress condition of the family. On the basis of such application, he was called upon to produce certain documents, such as, Income Certificate and HSC Certificate and all these documents were produced. However, his prayer was turned down solely on the ground that he had not approached for employment immediately after the death of his father and such application had been filed almost eight years after the death of his father. Challenging the said order, opposite party approached the Tribunal.

The application of the opposite party was contested by the present petitioners on the ground that there was delay of eight years in approaching the authorities for appointment on compassionate ground and therefore such application could not be entertained.

The Tribunal in the impugned order found that the opposite party having attained majority only in May, 1997 had immediately submitted an



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application on 6.6.1997 for consideration of his case for appointment on compassionate ground. The Tribunal also found that the annual income of the family was Rs. 18,600/- and therefore it could not be said that the family of the opposite party was not in a distress condition. With the above finding, the Tribunal allowed the original application and directed the petitioner to appoint the opposite party under the Scheme for compassionate appointment.

Mr. S.D.Das, learned Asst. Solicitor General, assailing the impugned order submitted that there was delay in submitting the application for appointment on compassionate ground and by the time the case of the opposite party was considered, the family was not in distress condition. In view of the above, the Tribunal could not have directed the petitioners to appoint the opposite party under the Scheme for compassionate appointment.

Having heard learned Asst. Solicitor General appearing for the petitioners and learned counsel appearing for the opposite party, we find that the deceased employee died on 12.1.1991 and on the date of his death, the opposite party was a minor and therefore could not have submitted an application for appointment under the Scheme for compassionate appointment. After attaining majority, the age of 18 years, he submitted the application. By the time the applicant was submitted, six years had passed and there was no reasons for the Department to entertain the said application if it was to be rejected on the ground of delay. The Department not only entertained the application but also called upon the opposite party to produce all the necessary documents which was complied with by the opposite party. Only after consideration of the documents produced by the opposite party, the Department rejected the claim on the ground of delay and also on the ground that the family of the opposite party was not in a distress condition. Having entertained the application and called upon the opposite party to produce the documents in the year 1997, the Department in our opinion could not have rejected the petition for compassionate appointment in the year 1998 on the ground of delay.

So far as the indigent condition of the family of the opposite party is concerned, we find that the certificate issued by the local Tahasildar indicates



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that the annual income of the family of the opposite party was Rs. 18,600/- and we are in agreement with the Tribunal that such income is not sufficient to hold that the family was not in a distress condition.

We accordingly find no justification to interfere with the impugned order. The writ petition being devoid of merit and is accordingly dismissed."

11. On the other hand, Mr. P.R.J.Dash, Ld. ACGSC appearing for the Respondents, submitted that no one can claim any appointment on compassionate ground as a matter of right and such appointment is subject to availability of vacancy earmarked under the compassionate appointment quota of 5% meant for compassionate appointment subject to fulfillment of the criteria fixed for providing employment assistance on compassionate ground. In compliance of the order of this Hon'ble Tribunal, Respondents duly considered the case of the applicant along with the applications of the other candidates. The Committee set up for consideration of compassionate appointment found super slim factor over and above the case of the others to recommend the case of the applicant and on the basis of the recommendation the person concerned was provided appointment under compassionate appointment quota. The claim of the applicant that the case of the applicant was intentionally and deliberately rejected is far from truth. The applicant being frustrated has unnecessarily raised such frivolous allegation in order to draw sympathy of this Tribunal. Mr. Dash has also taken the present age of the applicant as one of the grounds in support of his prayer for dismissal of this O.A. Accordingly, Mr. Dash has prayed that there being no injustice caused to the applicant in the decision making process of the matter, this O.A. is liable to be dismissed.



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12. I have considered the rival contention of the parties with reference to the pleadings and materials placed in support therein. I find that in compliance of the order of this Tribunal dated 23.10.2007 in O.A. No. 390/2007 Respondents considered the case of the applicant and rejected the same on the ground that "as per para-2A(C) of the scheme of compassionate appointment 1998, circulated vide DOP&T's OM No. 14014/6/94-Estt(D) dt. 09.10.1998, for eligibility of a dependent family members under compassionate appointment, the concerned Govt. servant should have retired under Rule-38 of CCS (Pension) Rules, 1972 before attaining the age of 55 years. I am also directed to convey that your father Shri Alekh Chandra Nayak was retired on medical invalidation under rule 38 of CCS (Pension) Rules, 1972 on 31.03.1999, as per the order dated 31.03.1999 of CIT (A), Cuttack after attaining the age of 55 years. In view of this, the compassionate appointment constituted by the CCIT in the year 2002 found your case ineligible for consideration and accordingly did not consider your case for appointment under the compassionate appointment. Therefore, your application for consideration of your case for appointment under compassionate ground may be treated as disposed."

13. The applicant challenged the said order in O.A. No. 395/2008 in which the order of rejection was quashed and the matter was remanded back to the Respondents for reconsideration. Aforesaid order of this Tribunal was challenged before the Hon'ble High Court of Orissa, which was dismissed. In compliance of the above, Respondents considered the case of the applicant but rejected on the ground that the applicant did not possess the requisite qualification, i.e. Degree from the Recognized University for



Appointment as Tax Assistant. Again, the applicant challenged the said order in O.A. No. 666/11 in which this Tribunal directed reconsideration on the ground that there was no direction in the earlier order that the case of the applicant for compassionate appointment should be considered against the post of Tax Assistant for which he does not have the qualification and that the Respondents did not adduce any irrefutable proof that the financial condition of the family is not penurious deserving appointment on compassionate ground. In compliance of the order of this Tribunal dated 26.02.2013 in OA No. 666/11, the Respondents considered the case of the applicant against MTS vacancy of the recruitment year 2010-11 but nothing has been stated with regard to vacancy in MTS for the year 2009-10 and 2008-09 respectively. This shows that the Respondents considered the case of the applicant without application of mind and without complying with the earlier orders of this Tribunal in letter and spirit. Though I am conscious that appointment on compassionate ground is not a matter of right yet a right is accrued on the applicant to claim consideration that too in a proper and fair manner to the discussion made above what conclusively proved that there is no fairness in the entire action of the Respondents rather it prima facie shows that the Respondents are adamant not to give appointment to the applicant whatever may be the direction of the Tribunal.


14. In the above consideration, I am constrained to hold that consideration given to the case of the applicant and the rejection is beyond

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the scope and ambit of the order of this Tribunal passed earlier which was also upheld by the Hon'ble High Court of Orissa. Hence, the order of rejection dated 03.06.2013 is hereby quashed. In the above circumstances direction for appointment is warranted but keeping in mind the decisions of the Hon'ble Apex Court that there can be no direction for straightaway appointment, while deprecating the inconsistent^{ly} stand taken at various times to reject the case of the applicant, I direct the Respondents to reconsider the case of the applicant, in the light of the observation made above and communicate the decision to the applicant in a well-reasoned order within a period of 90(ninety) days from the date of receipt of copy of this order.

15. In the result, this OA stands allowed to the extent stated above. There shall be no order as to costs.


(A.K.Patnaik)
Member (Judicial)

RK/CM