

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

O.A.No.592 of 2013

Cuttack this **12th** day of August, 2014

**CORAM:
HON'BLE SHRI R.C.MISRA, MEMBER(A)**

1. Smt.Pravati Mohanty
Aged about 48 years
W/o. late Jiban Ballav Mohanty
At/PO-Kusumati
PS-Jatni
Dist-Khurda
Odisha
2. Sri Janmenjaya Mohanty
Aged about 27 years
S/o. late Jiban Ballav Mohanty, At/PO-Kusumati
PS-Jatni
Dist-Khurda
Odisha

...Applicant

By the Advocate(s)-M/s.K.C.Kanungo
Ms.C.Padhi

-VERSUS-

Union of India represented through

1. The Secretary to Govt. of India
Ministry of Finance
North Block
New Delhi-1
2. Chief Commissioner of Income Tax
Ayakar Bhawan
Rajaswa Vihar
Bhubaneswar-751 007
Dist-Khurda
Odisha

...Respondents

By the Advocate(s)-Mr.D.K.Behera



ORDER**R.C.MISRA, MEMBER(A):**

Applicant No.1 is the wife of the deceased employee and mother of applicant No.2. They have approached this Tribunal with a prayer of compassionate appointment in favour of applicant No.2 and also quashment of the order of respondents dated 15.7.2013 (Annexure-A/6 to the O.A.), in which such a prayer has been turned down by the authorities.

2. Facts of the case as adumbrated in this O.A. are that the husband of applicant No.1, who is the father of the applicant No.2, while working as a Coupon Clerk in the Departmental Canteen in the office of the Chief Commissioner of Income Tax, Odisha (Res.No.2) passed away on 19.11.2007, when he had completed 22 years and 11 months of service. In the backdrop of this sudden financial distress, applicant No.1 made a prayer for compassionate appointment of her second son. In letter dated 22/23.11.2011, the Assistant Commissioner of Income Tax in the office of Respondent No.2 informed applicant No.1 that the Compassionate Appointment Committee considered the prayer and rejected the case of the second son of the applicant for compassionate appointment, since he did not possess the minimum education qualification for the post earmarked for compassionate appointment. There is a mention in the letter about prayer for compassionate appointment of the elder son for which application was made on 6.9.2011. With regard to that, it was



communicated that the case was required to be considered in terms of the relevant DoP&T OM No.040/4/19/2002-Estt. dated 5.5.2003 for the recruitment years 2007-08, 2008-09 and 2009-10. The period for consideration being over, the prayer for elder son's appointment on grounds of compassion was refused to be considered by the authorities.

3. When the prayer for compassionate appointment for both sons was rejected, the applicant came to the Tribunal and filed O.A.No.550 of 2012, which was disposed of by order dated 25.07.2012 in which the Tribunal was pleased to direct the consideration of pending representation dated 15.11.2011 in terms of DOP&T OM dated 5.5.2003 against vacancies available for two more recruitment years, and communicate the result of such consideration to the applicant. The Respondents filed an M.A.No.393 of 2013 in which their prayer was to dismiss the O.A. on the ground that by the time the O.A. was disposed of on 25.7.2012, the representation dated 15.11.2011 was already disposed of, and result communicated to applicant on 22/23.11.2011. The Tribunal did not find the prayer legally sustainable, and in fact deprecated the action of Respondents in filing such an M.A. after about one year of disposal of the O.A. Thereafter, the Respondents passed an order dated 15.07.2013^R rejecting the prayer, which is challenged in the present O.A.

4. The Respondents in their counter affidavit have averred that applicant No.1 applied for consideration of the case of her second son for compassionate appointment on 22.8.2008, and this application was

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considered for recruitment years 2007-08, 2008-09 and 2009-10 as per the DOP&T Circular dated 5.5.2003. The consideration resulted in rejection because the second son did not possess the required educational qualification. Since the chances for consideration were exhausted, it was not possible for Respondents to consider the case of the elder son. The representation dated 15.11.2011 was already considered and decision communicated to applicant on 22/23.11.2011.

Thereafter, only the orders of the Tribunal in O.A.No.550/2012 dated 25.7.2012 were received. Giving the context of the MA that they had filed, the facts of which have already been enumerated in this order, the Respondents have submitted that after the dismissal of the M.A. as not maintainable, they have communicated to applicant vide letter dated 15.7.2013 (Annexure-A/6 of O.A) that it was not possible for them to consider the case of her elder son again for compassionate appointment.

5. The Respondents in their counter reply have gone on to explain that under the scheme of compassionate appointment 5% of the vacancies for direct recruitment is earmarked for such appointment and applications for the same are considered only after vacancies for the purpose are identified and earmarked. The deceased employee was an employee of the Departmental Canteen, which is distinct from the general cadre of the Income Tax Department. Therefore, compassionate appointment prayed for in the present case could be considered only against vacancies of Departmental Canteen Employees, and that is at present no such vacancy. Further, the Compassionate Appointment

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Committee had earlier considered the case against general vacancy, under a mistaken impression. Another point advanced is that no application in the prescribed form was received from the elder son of the applicant No.1, which is why his case was not considered. The Tribunal had directed for consideration of the representation, and there was no direction on merit. There is no illegality or arbitrariness in the letter dated 15.7.2013, since it is issued after due consideration by Compassionate Appointment Scheme based upon the financial condition of applicants and other relevant factors.

6. The applicant has ~~filed~~ ^{filed} a rejoinder to the counter reply, in which a few issues relevant to the matter have been agitated. First of all, Respondents communicated the order of rejection four years after the submission of application. There is no evidence of the fact that the case of the younger son was considered for three consecutive years, when he was found ineligible due to absence of requisite educational qualification in respect of the first year of recruitment. The Respondents never considered nor took into account the indigent condition of the applicant. The applicant could have been considered even ^{for} ~~for~~ a Group D appointment in 2007 and 2008.

7. Having heard the learned counsel for both the sides, I have also perused the records. In the O.A.No.550 of 2012, the Tribunal directed for disposal of pending representations and consideration of the case ~~two~~ ^{two} against ~~to~~ more recruitment year vacancies. In the impugned order dated 15.7.2013 it is communicated that since the time limit of





consideration had expired, it was not possible to consider the prayer of the elder son for compassionate appointment. There was also no question of further consideration of the representation dated 15.11.2011, and no other representation was pending. This order of the authorities is clearly and visibly against the spirit of the orders of the Tribunal for consideration of the case for two more recruitment years. It is also observed that no consideration has been made about the financial condition of the applicant, which is an important yardstick for consideration of cases of compassionate appointment.

8. An order in which authorities convey their decision to the applicant should have based upon genuine consideration and not on technical compliance. It is, no doubt the settled position of law as revealed in the pronouncements of the Hon'ble Apex Court that appointment on compassionate grounds can be considered within the confines of the scheme. It is not a matter of right, but an exception to the normal process of recruitment in accordance with Articles, 14 and 16 with regard to public employment. Compassionate appointment is certainly not an alternate source of employment. *In the case of Union of India & another vs. Shashank Goswami & anr. Reported in 2013(2) SLR 429 (SC)*, the Hon'ble Apex Court has laid down the following guideline.

"Appointments on compassionate ground have to be made in accordance with the rules, regulations and administrative instructions, taking into consideration the financial condition of the family of the deceased".



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9. However, every applicant for compassionate appointment has a right to fair consideration. As Lord Parker has said, "***Good administration and an honest or bona fide decision must, it seems to me, require not merely impartiality, not merely bringing one's mind bear R to bias on the problem, but acting fairly***". Redressal of grievances within the parameters of rules and procedures has to receive expeditious disposal at the hands of the authorities. This aspect of administration has been highlighted by the Hon'ble Apex Court in the case of *S.S.Rathore vs. State of Madhya Pradesh reported in 1990(SCC(L&S)50*. The Hon'ble Apex Court has observed ***that time-bound redressal will discipline the system and keep the public servant away from a protracted period of litigation.***

10. In the present matter under consideration, there is no doubt that applicant changed for nomination in favour of elder son, when the younger son was found to be lacking in required educational qualification. But in the earlier round of litigation, the Tribunal had directed for consideration of the case for two more years. This direction was not complied with in true spirit. The impugned order dated 15.07.2013 does not deal with the merit of the case, the indigent condition of the family, the eligibility of applicant, and availability of vacancy, and other relevant factors of consideration. The case is rejected on the ground that the chances of consideration were over. The minutes and discussions of the Compassionate Appointment Committee are not presented in order to convince the Tribunal that a judicious

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consideration was given to the prayer of the applicant. The order of rejection which is impugned in the case does not give evidence of a fair consideration on merits. This gives rise to the conclusion that the applicant deserve a fair and detailed consideration at the hands of the authorities.

11. The Tribunal is aware of the observations of the Hon'ble Apex Court in the case of the *Chief Commissioner, central excise and Customs, Lucknow & Ors. vs. Prabhat Singh in C.A.No.8635 of 2012* decided on 30.11.2012, and would not impose any consideration of sympathy on the Respondents. The Hon'ble Apex Court observed, "**Courts and Tribunals should not fall prey to any sympathy syndrome so as to issue directions for compassionate appointment, without reference to prescribed norms. Courts are not supposed to carry Santa Claus's big bag on Christmas eve, to disburse the compassionate appointments to all those who seek a Court's intervention**". The Respondents have to consider the case on the basis of the provisions of scheme, and extant rules and instructions relating to compassionate appointment under the Government.

12. Based upon the aforesaid discussions, I find that order dated 15.07.2013 (Annexure-A/6 to the O.A.) of the Respondents is not in accordance with the directions issued by this Tribunal on 25.07.2012 in O.A.No.550/2012, and does not meet the requirements of a proper consideration of the prayer of applicants. I, therefore, quash that order and remit the case back with a direction to the Respondents to

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reconsider the prayer in compliance of the earlier orders of the Tribunal, the provisions of the scheme for compassionate appointment, and the extant rules and regulation. They shall communicate the result of such reconsideration to the applicants in a reasoned and speaking order within a period of three months from the date of receipt of this order.

The O.A. is accordingly disposed of, with no order as to costs.

R.C.MISRA
(R.C.MISRA)
MEMBER(A)

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