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**CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK**

**Original Application No.260/00471 of 2014**  
**Cuttack, this the 15<sup>th</sup> day of October, 2015**


J. Tarai & Another .....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.260/00471 of 2014**  
**Cuttack, this the 15<sup>th</sup> day of October, 2015**

CORAM

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

1. Smt. Jyotirmayee Tarai,  
aged about 46 years,  
wife of late Upendra Tarai,  
permanent resident of Vill. Sana  
Purusottampur, P.O./PS.Remuna,  
Dist.Balasore.
2. Miss Swagasmita Tarai,  
aged about 21 years,  
Daughter of late Upendra Tarai,  
permanent resident of Vill. Sana  
Purusottampur, P.O./PS.Remuna,  
Dist.Balasore.

...Applicants

(Advocate: M/s. S.K. Ojha, S.K. Nayak)

**VERSUS**

Union of India Represented through

1. Secretary to Government of India,  
Ministry of Defence,  
Sena Bhawan,  
New Delhi-110011.
2. Director General & Scientific Advisor  
to Rakhya Mantri,  
Research & Development Organization,  
Ministry of Defence, Sena Bhawan,  
New Delhi-110011.
3. The Director,  
Interim Test Range,  
At/P.O.-Chandipur,  
Dist.Balasore-756025.

... Respondents

(Advocate: Mr. S. Behera)



ORDER

R.C. MISRA, MEMBER (A)

Applicants in the present O.A. are the wife and the daughter respectively of late Upendra Tarai who was working as a Technical Officer under the control of Director, Interim Test Range at Chandipur (Respondent No.3) in this O.A. While working as such, Sri Tarai expired on 11.07.2011. Upon his death, applicants made an application dated 28.11.2011 to the Respondents-Authorities making a prayer to grant compassionate appointment in favour of applicant No.2, who is the daughter of the deceased employee. All the required documents were also submitted along with the application. Since the application was not disposed of, applicants had earlier approached this Tribunal by filing O.A. No.03/2014 and this Tribunal vide its order dated 24.03.2014 disposed of the O.A. at the stage of admission directing the Respondents to consider the application and communicate the decision to the applicants within a specified time line. In compliance of the orders of this Tribunal, the Respondents disposed of the representation of the applicant and communicated a decision by letter dated 25.05.2014, which is placed at Annexure-A/4 of this O.A. This communication contains the rejection of the representation by the competent authority. Being aggrieved by this communication the applicants have approached this Tribunal by filing of this O.A. by making the following prayer:-

“ (i) To admit the Original Application;

(ii) To quash the communications made vide letter dated 25.05.2014 and 10.03.2014 (Annexure-A/4 series);

(iii) To direct the Respondents more particularly the Resp. No.2 to extend the benefit of compassionate appointment to the Applicant No.2 within a stipulated period to save the distress family.

(iv) To pass any other order/orders as deemed fit and proper in the circumstances of the case and for ends of justice;”

2. Applicants in this O.A. have submitted that by a letter dated 10.03.2014, Office of the Director General Research & Development in the Ministry of Defence, i.e., DRDO communicated to the Director PXE, Balasore that the case of compassionate appointment for the applicant No.2 was considered by the Compassionate Appointment Committee held on 10.05.2013 and was deferred for re-consideration in the subsequent meetings also. After reconsideration for more than two times by the CAC the applicant No.2 has scored 57 points where as those cases scoring 62 points were recommended for appointment on the basis of inter-se-merit vis-à-vis the vacancies that are available. It is also communicated in the same letter that it is highly unlikely to recommend her case for appointment on compassionate grounds since it has not found any merit despite repeated considerations/re-considerations. Based upon this letter, Office of Director, PXE sent a letter dated 29.05.2014 to the applicant No.1 conveying the fact of rejection of the representation. The case of the applicants is that the Respondent No.3 in his letter dated 29.05.2014 has issued certain clarifications which are not there in the letter dated 10.03.2014. Therefore, the order issued by Respondent No.2 is a non-speaking order and the Respondent No.3 in his communication has clarified many things which are without jurisdiction. The applicants further state that according to the guidelines issued by the DOP&T, the applicant No.2 should be awarded scoring in eight categories. A calculation has already been indicated in the O.A. pointing out that based upon such consideration the applicant No.2 deserves to secure 69 points which are higher than the cut off point of 62. The case made out by the applicants is that proper and judicious consideration has not been given by the


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CAC; instead they have awarded 57 points which should have been 69 points thereby making the case of applicant No.2 eligible for consideration.

3. A counter affidavit has been filed in this case and on perusal of the same, it is found that Respondents have considered the claim of the applicant No.2 more than seven times in the CAC. After all such considerations, applicant No.2 scored only 57 points which was less than the minimum cut off mark and therefore she could not be reconsidered. It is further submitted that compassionate appointment is not a matter of right and it is considered only to provide immediate succor to the bereaved family in case the parameters laid down in the case are met by the applicants. It is further submitted that compassionate appointment cases are decided on comparative merit and not on individual merit and such cases are considered against limited number of vacancies i.e., 5% of the direct recruitment vacancies. Such appointment is conferred on cases of acute distress taking into account the financial condition of the bereaved family having regard to specific parameters laid down by the Department of Personnel and Training. In the present case applicants family has also received all the death-cum- terminal benefits and substantial benefits from GPF, Group Insurance and leave encashment. The family might be trying for upliftment but cannot be described as indigent in order to deserve compassionate appointment. It is also pleaded by the Respondents in the counter affidavit that in the instant case, the applicants have tried to mislead the Tribunal by producing the guidelines of Postal Authority which are not applicable for DRDO. The DRDO has prepared a 100 points scale based on eight factors for which specific weightage points have been allotted. The case of the applicants has been considered based upon these guidelines in the CAC seven times but their case is not considered indigent enough in

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comparison to other cases and therefore could not be recommended to the competent authority. It is reported that the applicant No.2 was given 57 marks as a result of all such considerations and could not reach the minimum cut off marks prescribed by the authorities. Since the case has been considered adequate number of times, no scope exists for reconsideration of this matter.

4. In the rejoinder filed by the Ld. Counsel for the applicants, it is submitted that the case of applicant No.2 was considered for the first time after the orders of the Tribunal in O.A. No.03 of 2014. If the case of the applicant was considered on 10.05.2013 for the first time, it is not understood why the outcome was not communicated to the applicant. The applicants contest the claim of the Respondents that the case received consideration for 7 times and therefore, this submission is false and illogical. A further submission has been made that no case can be considered for more than three times as per the guidelines and therefore, it is beyond comprehension how the case was considered for seven times in the CAC. It is again submitted in the rejoinder that according to the law laid down by the Hon'ble Apex Court in the case of M.S. Gill -Vrs- Chief Election Commission & Ors (reported in AIR 1978 SC 851) and in the case of Pancham Chand -Vrs- State of Himachal Pradesh & Ors (reported in AIR SC 1888), to the effect that when the statutory authority makes an order based on certain grounds, its validity must be judged by the reasons so mentioned. Nothing can be supplemented by way of fresh reasons in the shape of affidavit when the order is challenged in the court of law. It is alleged that in the present case in order dated 29.05.2014 communicated to the applicants many clarification have been furnished which are not there in the original order of rejection. It is reiterated





that as per the parameters for consideration applicant No.2 should have received 67 points and not 57 points as claimed by the respondents.

5. I have heard the Ld. Counsel for the applicants as well as the Mr. S. Behera, Ld. SCGPC representing the Respondents at length. On 06.02.2015, this Bench directed the Ld. ACGSC appearing for the Respondents to produce the minutes of the CAC in substantiation of the claims of the Respondents that the case was considered seven times by the CAC. For production of such records, Respondents have taken a long time and finally, on 21.08.2015, the Ld. SCGPC has submitted ~~that~~ the copies of the documents regarding consideration of applicants' case in the meetings of CAC. The Ld. Counsel for both sides have also filed their written notes of submissions and I have also gone through the same.

6. It appears from the perusal of the documents that the first consideration was made on 10.05.2013 by the CAC in which the applicant No.2's case was considered and 57 points were awarded. Subsequently, the case was considered in the CAC on 02.08.2013, 24.09.2013, 30.10.2013, 06.03.2014, 11.07.2014 and 11.09.2014. The minutes of such meetings have also been produced and on perusal of the same, it is found that the Committee has described the various considerations as 1<sup>st</sup> look, 2<sup>nd</sup> look, 3<sup>rd</sup> look, 4<sup>th</sup> look, 5<sup>th</sup> look, 6<sup>th</sup> look and 7<sup>th</sup> look. Further, the minutes of the meeting on 10/13.11.2014 reveals that the case of the applicant No.2 was given the 7<sup>th</sup> look on 11.09.2014 and the total score is 57 pints as awarded to the applicant. Therefore, the case of the Respondents that after seven considerations also the score of applicant No.2 continues to be ~~the~~ less than the cut off mark, ~~therefore~~ <sup>and</sup> the case of the applicant could not be <sup>taken up</sup> ~~considered~~ for the reconsideration.

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7. In the written note submitted by the Ld. SCGPC it is <sup>submitted</sup> ~~complied~~ that such cases including that of the applicant were decided on the basis of comparative merit and not on individual merit and the number of vacancies ~~are~~ being limited the cases were prioritized and only higher deserving cases were accommodated.
8. The Ld. Counsel for the applicants in his written notes of submission has submitted that proper guidelines were not followed by the Respondents in considering the case of the applicants. If the plea of the Respondents is correct that the case was considered seven times, it is not known why the decision was not communicated to them. The stand of the Respondents is also not consistent since in the speaking order, it is mentioned that the case of the applicants was considered more than four times whereas in the counter, it is indicated to be more than seven times. It is also not clear as to how the applicant <sup>case</sup> ~~case~~ was considered seven times within a short span of one year.
9. Since the Respondents have submitted the minutes of the meeting of the CAC, there is no doubt that they have given consideration to the case of the applicants a number of times and on this score their action cannot be faulted. Therefore, the point raised by the Ld. Counsel for the applicants that the Respondents have made a false statement that the case was reconsidered is not acceptable. However, the points <sup>l</sup> ~~points~~ raised by the Ld. Counsel for the applicant ~~are~~ <sup>l</sup> that all these considerations were done within a short span of one year has some force. It is quite clear that all these considerations have been made between the period from 10.05.2013 to 11.09.2014. This is a period of little more than one year. The issue arises as to why so many considerations were given to the case within the short period when the vacancies to be filled up are only 5% of direct
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recruitment quota and therefore, highly limited. Within a particular year the vacancies cannot be so many that such a large number of considerations can be made to an individual case. In this regard, it has come to my notice that the Department of Personnel and Training had issued an Office Memorandum dated 05.05.2003 on the subject of time limit for making compassionate appointment.

Paragraph 2 & 3 of the circular mentions as follows:-

"2. It has, therefore, been decided that if compassionate appointment to genuine and deserving cases, as per the guidelines contained in the above OMs is not possible in the first year, due to non-availability of require vacancy, the prescribed Committee may review such cases to evaluate the financial conditions of the family to arrive at a decision as to whether a particular case warrants extension by one more year, for consideration for compassionate appointment by the Committee, subject to availability of a clear vacancy within the prescribed 5% quota. If on scrutiny by the Committee, a case is considered to be deserving, the name of such a person can be continued for consideration for one more year.

3. The maximum time a person's name can be kept under consideration for offering Compassionate Appointment will be three years, subject to the condition that the prescribed Committee has reviewed and certified the penurious condition of the applicant at the end of the first and the second year. After three years, if compassionate appointment is not possible to be offered to the Applicant, his case will be finally closed, and will not be considered again."

As it is evident from the above quoted circular, the maximum time a person's name can be kept will be three years and after three years if the compassionate appointment will not be possible to be offered to the applicant, his case will be finally closed. The sprit of the O.M. is that it may not be possible to recommend the case for compassionate appointment in a genuine and a deserving case due to none<sup>R</sup> availability of vacancy and therefore, in a deserving case, in the subsequent years, the matter can be reconsidered as against the available vacancy. This however, does not mean that in course of a little more than one year the case



should be considered seven times because in that scenario the reconsideration becomes a mere formality.

10. Hon'ble Apex Court in a large number of cases has held that compassionate appointment cannot be claimed as a matter of right. It is not another mode of recruitment and all public service appointments must be through open advertisements in strict conformity with Article 14 and 16 of the Constitution of India. It is significant to note that in the matter of **UOI & anr. V. Shashank Goswami & another reported in 2013 (2) SLR 429 (SC) Supreme Court of India CT No.6224 of 2008 decided on 23.05.2012 as held under:-**

“ There can be no quarrel to the settled legal proposition that the claim for appointment on compassionate ground is based on the premises that the applicant was dependent on the deceased employees, strictly, such a claim cannot be upheld on the touchstone of Article 14 or 16 of the Constitution of India. However, such claim is considered as reasonable and permissible on the basis of sudden crisis occurring in the family of such employee who has served the state and dies while in services. Appointment on compassionate ground cannot be claimed as a matter of right. As a rule public service appointment should be made strictly on the basis of open invitation of applications and merit, the appointment on compassionate ground is not another source of recruitment but merely an <sup>exception</sup> ~~expectation~~ to the aforesaid requirement, taking into consideration the fact of the death of the employee while in service leaving his family without any means of livelihood”

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“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.”

11. One important ratio of <sup>the R</sup> judgment is that the appointments on compassionate ground have to be made in accordance with the Rules, regulations and administrative instructions and there cannot be any consideration beyond



the same. In the circumstances, I have to examine the present case in the touch stone of the law laid down by the Hon'ble Apex Court. It has been already mentioned that the argument of Ld. Counsel for the applicant is that the Respondents-Authorities have actually not given any consideration to the matter falls flat because the Ld. SCGPC has produced the Minutes of the Compassionate Appointment Committee as evidence of such consideration. In fact the reconsiderations have been too many in number between the dates 10.05.2013 and 11.09.2014. The only defect I have noticed in such consideration is that over a period of only one year and four months, seven considerations have been given to this case. Considering the fact that compassionate appointment can only be made in respect of 5 % of vacancies of direct recruits it is not understood how in such a short period of time, it was required to reconsider this case so many times. Therefore, considerations given are not in conformity with the guidelines issued by the Department of Personnel & Training dated 05.05.2003 which has been quoted supra. In my opinion, to meet the ends of justice, it is required to issue a direction to the Respondents to consider the case of the applicant for compassionate appointment in conformity with Rules and instructions one more time in the Compassionate Appointment Committee. After such consideration, the result of the same be intimated in a speaking order to the applicants of this O.A. This process shall be completed within a period of four months from the date of receipt of the copy of this order. The O.A. is accordingly disposed of with the above observations and directions with no costs to the parties.

  
(R.C. MISRA)  
MEMBER(A)