

V
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 260/00515 of 2014
Cuttack, this the 2nd day of February, 2015

J. Mangaya Applicant
Union of India & Ors. Respondents
Versus

FOR INSTRUCTIONS

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


(R.C.MISRA)
Member (Admn.)

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

Original Application No. 260/00515 of 2014
Cuttack, this the 2nd day of February, 2015

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

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J. Mangaya,
aged about 37 years,
S/o. Late J.Malaya,
Permanent resident of Srikakulam, Andhra Pradesh,
Presently residing at/PO- Charbatia, P.S. Choudwar,
Dist. Cuttack.

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

VERSUS

Union of India Represented through

1. Secretary to Govt. of India,
Department of Cabinet Affairs,
Cabinet Secretariat, New Delhi-110001.
2. Director,
Aviation Research Centre, Block-V (East),
R.K.Puram, New Delhi-110066.
3. Asst. Director,
Aviation Research Centre, Block-V (East),
R.K.Puram, New Delhi-110066.
4. Deputy Director,
Aviation Research Centre,
At/PO-Charbatia,
Dist- Cuttack-754028.

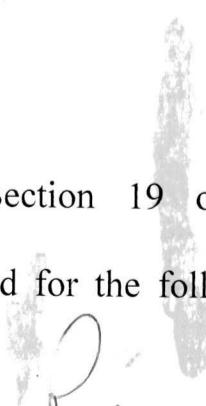
...Respondents
(Advocate: Mr. B.K.Mohapatra)

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O R D E R

SHRI R.C.MISRA, MEMBER (ADMN.) :

In this Original Application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for the following reliefs:



“(i) To admit the Original Application and call for the records; after hearing the respective parties quash the office Memorandum dtd. 01.08.2013 (Annx. A/4) and office Memorandum dtd. 12.05.2014 (Annx. A/5)

(ii) To direct the Respondents to consider the case of the applicant in proper way and extend the benefit of Compassionate Appointment to the applicant in any Gr. C or Gr. D post.

(iii) To direct the Respondents to extend the benefit without any further delay;

(iv) To pass any other order.....”

2. Facts of the case in nutshell are that the father of the applicant, while working as Safailwala in the ARC Charbatia, Cuttack, died prematurely on 05.10.1999 leaving behind the applicant and other legal heirs. According to the applicant, he applied for compassionate appointment on 01.05.2002 and, consequently, he was provided with the casual engagement with effect from 02.07.2003, which continued from time to time. However, as no regular appointment was given to the applicant, he approached this Tribunal in O.A.No. 68/2011, which was disposed of on 26.07.2012 giving liberty to the applicant to make a fresh application supported by all documents required for the purpose within 15 days and the Respondents were directed to consider the same within a further period of 90 days. Accordingly, the Respondents intimated to the applicant vide letter dated 23.04.2013 that his case was put up before Compassionate Appointment Committee meeting held on 15.03.2013 for consideration along with 17 others for six vacancies against compassionate quota. The Committee scrutinized the details of all the candidates including the applicant having regard to their assets, liabilities, number of dependent family members, income of other family members and educational qualifications and recommended the names of six most deserving candidates for appointment. The Committee compared the per



(dependent) person family income including family pension, income of other members, retirement benefits received by the family, liabilities, total numbers of dependent members to find the most deserving candidates and observed that per (dependent) person income of Sh. J. Mangaya was more than 15 other candidates and, accordingly, his name was not recommended by the Committee. Challenging the aforesaid decision, the applicant filed another O.A. No. 447/2013 before this Tribunal praying to extend the benefit of compassionate appointment in his favour in any Group C or D post. The Tribunal after hearing Ld. Counsels for both the sides and after going through the records, disposed of the matter vide order dated 15.07.2013 in the following terms:

“We are convinced that had the Respondents furnished the comparative assessments between the applicant and others in whose favour recommendation was made for appointment on compassionate ground the applicant would not have raised his doubt that there was no proper consideration of his case vis-à-vis others. Having not been furnished the details, we hold that the order is cryptic and as per the law order issued by authority without details is not sustainable in the eyes of law. Hence, the order dated 23.04.2013 at Annexure-A/2 is hereby quashed and the Respondents are directed communicate the reasoned order showing the comparative statements of the applicant vis-à-vis others within a period of thirty days from the date of receipt of copy of this order.

6. We also find that the case of the applicant was rejected once. Therefore, the case of the applicant needs further consideration twice more in terms of the DOP&T instruction dated 05.05.2003. Hence, we find no justification to keep this matter pending inviting counter from the other side. As such, without expressing any opinion on the merit of the matter this OA is disposed of at this admission stage with direction to the Respondents to consider the case of the applicant twice more against the actual vacancy in the next CRC whenever convened and communicate the result of such consideration in a reasoned order to the applicant.

Consequent to the above order, the Respondents issued Office Memorandum dated 01.08.2013 (Annexure-A/4) enclosing a copy of the CAC



minutes dated 15.03.2013 showing comparative statement of per person family income of the candidates considered for compassionate appointment. Aggrieved with this, the applicant again filed O.A. No. 602/13. However, the Tribunal did not interfere with the decision of the Respondents as one more chance was there for consideration of applicant's case. Finally, vide Office Memorandum dated 12.05.2014 (Annexure-A/5), Respondents again considered the case of the applicant and intimated that his case was not recommended due to the following reasons:

- a) In the instant case the Govt. servant expired on 05 Oct 1999 i.e. almost 15 years back therefore, the objective of providing immediate succor to the family through compassionate appointment no longer holds valid.
- b) Employment has been sought not for the eldest son, but for the fourth son. This obviously indicates that the elder three do not need compassionate appointment. As the applicant is only 6th class pass, lack of educational qualification of his elder brother cannot be advanced as reason for their not applying for compassionate appointment and implicitly means that the family's subsistence is not dependent/linked to the applicant getting compassionate appointment.
- c) With the limited availability of vacancies, those recommended by the committee in this priority grouping have more merit than the requirement of Sh. J. Mangaya.

Aforesaid Office Memorandum dtd. 01.08.2013 (Annex. A/4) and office Memorandum dtd. 12.05.2014 (Annex. A/5) are the subject matter of challenge in this O.A.

3. The applicant has submitted that order under Annexure-A/5 is a cryptic order with untenable reasons as no comparative chart has been supplied to the applicant. So far as grounds for rejection are concerned, it has been submitted that being satisfied with the indigent condition of the family, the applicant had been provided with casual employment and after having served in that capacity for



12 years he has been disengaged. It is the case of the applicant that initially, the claim was made for the eldest son, which was turned down due to lack of educational qualification and, thereafter, the applicant was offered with casual employment.

4. Opposing the prayer made in the O.A., Respondents have filed their counter. It has been stated therein that Compassionate Appointment Committee after going through the relevant records and basing upon the guidelines and availability of vacancies, recommended the names of suitable candidates which were found the most deserving and the applicant was conveyed the reasons leading to his non-selection vide O.M. dated 12.05.2014 (Annexure-A/5). Respondents have also filed copy of the minutes of the meeting of the CAC held on 24/28.04.2014 vide Annexure-R/1. It has been submitted that the Respondents have complied with the directions of this Tribunal in letter and spirit. So far as casual engagement of the applicant is concerned, Respondents have submitted that there is no nexus between the casual engagement of the applicant and compassionate appointment as there are different requirement, rules and instructions for such appointments. Respondents have submitted that no dispute was ever raised so far as indigency of the family is concerned, but the cases for compassionate appointments are to be considered within certain prescribed parameters and in comparison to the other claimants. As per the direction of this Tribunal dated 15.07.2013 (Annexure-A/3), the applicant's case was considered twice by the CAC as per the prescribed norms and criteria firstly on 15.03.2013, as per the schedule, and secondly on 24/28.04.2014. However, the same was not recommended by the CAC and the detailed reason for non-selection was communicated to the applicant vide OM dated 01.08.2013 (Annexure-A/4) dated

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12.05.2014 (Annexure-A/5). On the above score, Respondents have prayed for dismissal of this O.A.

5. Applicant has filed a rejoinder reiterating the stand as taken in the O.A. Applicant has also relied on the judgment of the Hon'ble Apex Court in Mahendra Singh Gill Vs Chief Election Commissioner reported in AIR 1978 SC 851 and has submitted that the Respondents are estopped to justify their action/order under Annexure-A/5 to the O.A. on the basis of further explanation or clarification when the matter is subjudice before the Court of law. Referring to Annexure-R/1, applicant has submitted that the Committee has gone beyond its jurisdiction to reject his claim on the ground of belated one, apart from the ground that 3rd son of the deceased employee is not entitled to get the benefit of compassionate appointment. It has further been submitted that while considering his case for compassionate appointment, the Committee did not consider the fact that the applicant was given casual employment for a long period of 12 years.

6. Applicant in his written note of submission has reiterated the facts and the stand taken in the O.A. as well as in the rejoinder. Respondents have also filed their written note of submission reiterating their grounds taken in their counter.

7. I have heard the Ld. Counsels of both sides and perused the records. The applicant's prayer is for conferment of compassionate appointment consequent upon the death of the father of the applicant on 05.10.1999. Application for compassionate appointment was submitted on 01.05.2002. Because of non-consideration of his application, the applicant filed O.A. No. 68/2012 seeking a direction to the respondents in this regard. This O.A. was disposed of by an order dated 26.07.2012 in which liberty was given to applicant to make a fresh application in this regard to the competent authority. The Respondents were on the

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other hand directed to consider the application and convey the decision in a well reasoned order to applicant within a period of ninety days. Thereafter, respondents communicated decision by O.M. dated 23.04.2013 to the applicant. This communication reveals that the applicant's case was considered in the meeting of Compassionate Appointment Committee on 15.03.2013. The Committee on a comparative analysis of cases considered in the meeting observed that the per dependent person's income of the applicant is more than that of 15 other candidates. On this ground the applicant's case was rejected not being deserving. This order of the Respondents was challenged again in the Tribunal by filing O.A.No. 447 of 2013 which was disposed of by an order dated 15.07.2013. The Tribunal observed in this order that the order of rejection by the Respondents was cryptic, and that the case of the applicant was considered only once. In view of the same, the matter was remitted to Respondents to be considered twice more in terms of the Deptt. Of Personnel and Training O.M. dated 05.05.2003. In compliance of this order of the Tribunal Respondents issued O.M. dt. 01.08.2013 which mentioned that the case of the applicant was considered in the CAC meeting held on 15.03.2013, but was not found to be deserving in comparison to other cases considered. It was also mentioned that "as per Court's orders, the case of Sri J.Mangaya will be considered two more times by the CAC". In the comparative statement in the minutes of the meeting at 15.03.2013, against the name of the applicant, per person monthly family income, an amount of Rs. 11044/- was mentioned. Challenging this order the applicant filed O.A. No. 602/2013, which however was not entertained because the Respondents were to consider the case of the applicant once more. Lastly, the Respondents after further consideration



conveyed a rejection order dated 12.05.2014 to the applicant which is the subject matter of challenge in this O.A.

8. Above elucidation reveals that a number of times the Tribunal has directed the Respondents to consider the case of the applicant. In compliance of such orders, Respondents have considered the matter in the Compassionate Appointment Committee and rejected the same, mainly on the ground ^{that} ~~on~~ the parameter of indigence, applicant did not qualify in comparison to other cases, his family income being higher. The order dated 12.05.2014 is a speaking order which mentions that death of Govt. servant occurred fifteen years back, meaning thereby that the objective of providing immediate succor to the family through compassionate appointment no longer holds good. The other grounds advanced are that the applicant is the fourth son, having educational qualification of 6th pass only, and for the limited vacancies available for compassionate appointment, there were more deserving cases for consideration.

9. The applicant has taken a new contention in the present OA that Respondents considering his suitability kept him in casual employment for about twelve years, but finally found him unsuitable for compassionate appointment. The Ld. Counsel for applicant forcefully argued that this casual employment was given looking into the distressed condition of the family, and that Respondents cannot now take a contrary view that applicant does not deserve compassionate appointment. He also submitted that Respondents have taken additional grounds in the counter reply. In view of the decision of the Apex Court in the case of M.S.Gill Vs Chief Election Commissioner (AIR 1978 SC 851), reasons given in the impugned order cannot be supplemented in the counter. However, the Ld. Counsel for the Respondents has replied that there is no relevance of the engagement of



applicant as daily wager with his prayer for compassionate appointment. The rules and procedures applicable to these spheres are different, and these matters are considered on different parameters. The prayer for compassionate appointment was considered in the CAC according to prescribed guidelines, and more over, this is a comparative consideration in relation to merit of the other applications considered. Compassionate appointment is not a matter of right, and a prayer for the same has to be considered within the guidelines of the scheme for compassionate appointment as laid down by the Government. The objective of the scheme is to help the family of the deceased Govt. servant overcome the immediate financial distress of the family which was dependent upon the late Govt. servant. Compassionate appointment Scheme is not a regular source of recruitment, and it is in fact an exception to the regular method of recruitment. As per the law laid down by the Apex Court, Courts and Tribunals cannot direct the departmental authorities for giving compassionate appointment. All that the Tribunal can do is to direct the authorities to consider the application according to established procedure.

10. In the case of State of Gujrat & Ors. Vs Arvind Kumar T.Tiwari & Ors, reported in 2013(1) SLR 1(SC), the Hon'ble Apex Court observed as follows:

“It is a settled legal proposition that compassionate appointment cannot be claimed as a matter of right. It is not simply another method of recruitment. A claim to be appointed on such a ground has to be considered in accordance with the rules, regulations or administrative instructions governing the subject, taking into consideration the financial condition of the family of the deceased. Such a category of employment itself, is an exception to the constitutional provisions contained in Article 14 and 16, which provide that there can be no discrimination in public employment. The object of compassionate employment is to enable the family of the deceased to overcome the sudden financial crisis it finds itself facing, and not to confer any status upon it.”



11. In the present case, the Govt. employee has passed away in the year 1999. A long time has passed since then. The Tribunal has passed directions a number of times, in compliance with which the Respondents have considered and reconsidered the matter, and finally rejected the prayer. It is certainly the duty of the Respondents to consider the prayer in accordance with the provisions of the Scheme and come to a finding. The Tribunal could remit the matter for reconsideration, only if a deficiency is detected in the manner of consideration.

12. In this O.A., which is fourth round of litigation in a matter of compassionate appointment, the applicant's counsel has strenuously argued that the fact that applicant was given casual employment on daily wage should be the ground for giving compassionate appointment since it is an open acceptance of the Respondents about the distressed condition of applicant. No documents have been filed in this regard and the circumstances of giving casual employment are not in the pleadings. Respondents do not deny the fact that casual employment was given, but at the same time contend that yardsticks for consideration of compassionate appointment are different. The matter of compassionate appointment has been considered and reconsidered by the Respondents by the CAC as per the relevant rules, in obedience of the directions of the Tribunal.

13. I have carefully considered the above issue. The direction of the Tribunal in the earlier OAs has been for consideration of the prayer for compassionate appointment. The casual employment of the applicant was never the matter of discussion. It is, therefore, inappropriate to link both the subjects for consideration. The direction was for consideration of prayer for compassionate appointment in accordance with the instructions with regard to the relevant scheme. That direction was complied with and the applicant was not selected by



the Compassionate Appointment Committee. The Respondents have conveyed the decision by a reasoned order to the applicant. The applicant might have had reasonable expectation of being appointed on compassionate ground because he was earlier in casual employment on daily wage basis. But that does not constitute a valid ground for remitting the matter back to the Respondents. A prayer is to be considered in accordance with rules, procedures and standards of the relevant Scheme keeping in mind the earlier directions of the Tribunal, and their compliance. I do not find any reasonable ground in the prayer of the applicant. The O.A. is, therefore, dismissed being devoid of merit. No costs.


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

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