

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/00860 of 2014
Date of Order : 7 th of April, 2017

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

Abdul Kadir Ali aged about 34 years S/o Late Sh. S.K.Mominwala, Azimabad, At Khaparapada, PO/Dist. Balasore.Applicant

By the Advocate:Mr. S.K.Zafarulla

-V E R S U S-

- 1- Union of India represented through the Ministry of Shipping, Road Transport and Highways, Government of India, A-13, Deep Bhawan, Sector - 24, Noida - 201301.
- 2- Director General of Light House and Light Ships, No. 7 Estt. (29), 84, Noida, Uttar Pradesh.
- 3- Director (R), Directorate of Light Houses and Light Ship, D-372/2, Taratela Road, Kolkata - 700 088..Respondents

By the Advocate-Mr.S.K.Patra

ORDER

R.C.MISRA, MEMBER(A):

The applicant had approached this Tribunal praying for a relief that respondents be directed to appoint him to any post according to his qualification under compassionate ground quota.

2. The facts of this matter are that applicant's father Sh. S.K.Mominwala, was working as a Technician (Mate) in the Directorate of Light Houses and Light Ship, Kolkata under the Ministry of Shipping, Road Transport and Highways on regular basis. While working as such, he expired on 13.2.2010 leaving behind the family members consisting of his wife, two sons and a married daughter. The applicant is younger son of deceased Government employee. After the death of the Government employee, the applicant's mother has been receiving family pension on a regular basis. The applicant had applied for appointment on compassionate ground by submitting an application on 14.7.2011 which was submitted to the respondent No. 3 i.e. the Director (R), Department of Light Houses and Light Ships. He had enclosed the documents with regard to his educational qualifications etc. to his application. His application was forwarded by respondent No. 3 to respondent No. 2 i.e. Director General of Light Houses and Light Ships, Noida by letter dated 15.7.2011. Thereafter, no further action was taken by the respondent-authority

and it is submitted that on 26.8.2014, mother of the applicant made a representation to respondent No. 2 praying that application for compassionate appointment submitted by her younger son may be considered and such appointment may be conferred on him. The elder brother of the applicant also filed an affidavit declaring that he has no objection to any appointment to be given to applicant, who is his younger brother under the rehabilitation assistance scheme. This affidavit was submitted before the respondent No. 3. He has stated also that the only sister of the applicant has already been married in the year 2002. Thereafter, it appears from the record that respondents have not given any consideration to such request for compassionate appointment and, therefore, applicant has filed this O.A. before the Tribunal.

3. The respondent-authorities filed a counter-affidavit in which they have averred that as per the Department of Personnel and Training Guidelines issued from time to time, applications received from the dependents of the employees who died in harness are to be considered against 5% of direct recruitment quota for making compassionate appointment. As per the guidelines, the Directorate has received 30 applications and the Directorate has constituted a committee which was empowered to make recommendations to the respondent No. 2 regarding appointment on compassionate grounds. The Committee carried out a comprehensive evaluation of the applications based on 100 point based evaluation sheet. While making this evaluation, the committee found that applicant was unfit for assessment as he was major and over aged at the time of making application. The date of application being 14.7.2011. Therefore, the committee did not find the case suitable to be considered for the evaluation. It is further stated that date of birth of applicant was 10.6.1980. The respondents in the counter affidavit have further stated that the Hon'ble Apex Court has held in the case of **LIC of India Vs. Mrs. A. R. Ambedkar and Ors.** reported in JT 1994 (2) SC 183 that the Courts and the Tribunals cannot give direction for appointment of a person on compassionate ground but can merely direct consideration of the claim for such appointment. No further issue is reflected in the counter affidavit.

4. The applicant filed a rejoinder in which it has been stated that at the time of making application, the applicant was only 34 years of age and law is well settled that for compassionate appointment over age is not a bar as it is not considered on the basis of a regular appointment through advertisement. It is further submitted by the applicant in the rejoinder that some of the applicants were considered for

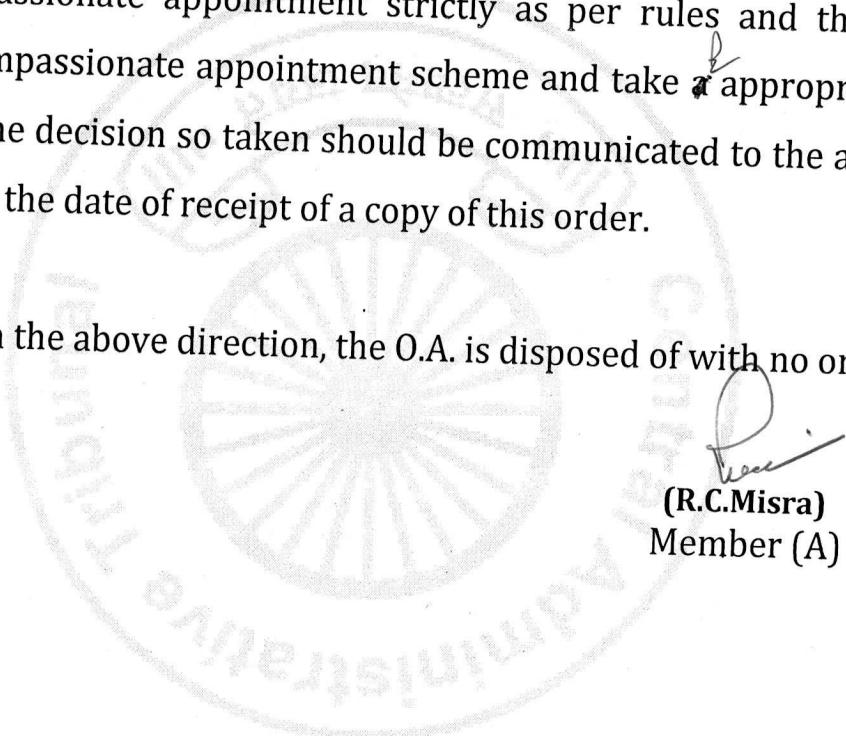
compassionate appointment even though they attained majority on the date of application. He, therefore, alleges that this is a clear case of discrimination against him.

5. Having perused the records, I have heard learned counsel for both sides. The delay in filing of this O.A. is condoned. The applicant has filed written note of submissions in which he has mainly submitted that respondents have committed serious discrimination and illegality while he has been denied compassionate appointment without any valid and plausible reason. The applicant made his application on 14.7.2011 and although the respondents rejected his application on 30.3.2012, till date he was not communicated anything about the decision of the respondents. On perusal of the records, I also find that no order has been issued by the respondents with regard to applicant's prayer nor was any communication made to him and clearly, failure to communicate an order is highly inappropriate on the part of the respondents. In the counter affidavit, respondents have submitted that applicant was unfit for appointment and therefore, his case was not even considered by the committee. We have to then consider what are the reasons given by the committee rejecting claim of the applicant and, I find that the only reason of rejection of his candidature was that 'applicant was major and over aged at the time of making application'. I failed to understand how applicant was found unsuitable for assessment because he was a major. With regard to the comment that he was over aged, the respondents should have pointed out provisions of the scheme and under which rule, such conclusion was arrived at by them and why they even did not think it appropriate to place the matter before the committee. The Hon'ble Apex Court in various decisions has already laid down that consideration for compassionate appointments is to be made strictly according to the scheme formulated for compassionate appointments. In view of this position, the decision of the respondent authorities appears to be arbitrary. Further, respondents have cited the decision of the Hon'ble Apex Court in which it has been laid down that the Courts and the Tribunals cannot give directions for appointment of a person on compassionate ground and can merely direct consideration of the claim of such incumbents. This decision of the Hon'ble Apex Court is known to the Tribunal and the Tribunal would have in any case directed the respondents to consider such matters, that too under 5% compassionate appointment quota. The respondents have utterly failed in furnishing an acceptable reason as to why they did not even consider the claim of the applicant with reference to the rules. Whether the appointment would actually be given or not will depend upon the

consideration of several parameters as prescribed under the compassionate appointment scheme. But, if, a committee formed for this purpose, refused to consider an application at the thresh-hold itself without assigning any reason that is legally supported, it certainly reflects adversely upon the attitude of the respondent authorities in the present case. The respondents did not pass any specific order of rejection and did not communicate such order to the applicant as per rules and ^{make it} ~~made~~ available to the Tribunal. Even the reason given in the counter affidavit for finding the applicant as unsuitable, is wholly un-acceptable to the Tribunal.

6. In view of the detailed discussion made above, I dispose of this O.A. by giving a direction to the respondents No. 2 and 3 to reconsider the case of the applicant for compassionate appointment strictly as per rules and the provisions made under compassionate appointment scheme and take an appropriate decision in the matter. The decision so taken should be communicated to the applicant within 90 days from the date of receipt of a copy of this order.

7. With the above direction, the O.A. is disposed of with no order as to costs.


(R.C.Misra)
Member (A)

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