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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

Original Application No.260/01044 of 2014
Cuttack, this the 12th day of July, 2016

P.C. KaruanApplicant

-Versus-

Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? No
2. Whether it be referred to PB for circulation? No



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

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

Original Application No.260/01044 of 2014
Cuttack, this the 12th day of June, 2016

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

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Purna Chandra Karuan, aged about 32 years, S/O Late Bhimasen Karuan, At-Binekela, P.O., Kashrupada, Via-Kesinga, Dist-Kalahandi.

.....Applicant

By the Advocate(s)-Mr. S. Behera

-Versus-

Union of India, represented through

1. Secretary, Ministry of Finance, Department of Revenue, North Block, New Delhi-110001.
2. Principal Chief Commissioner of Income Tax, Ayakar Bhawan, Rajaswa Vihar, Bhubaneswar, Dist-Khurda-751007.
3. Deputy Commissioner of Income Tax (Hqrs) (Administration) Office of the Chief Commissioner of Income Tax, Ayakar Bhawan, Rajaswa Vihar, Vani Vihar, Bhubaneswar, Dist-Khurda-751007.
4. Income Tax Officer, Bhawanipatna Ward, At/PO-Bhawanipatna, Dist-Kalahandi-766001.

.....Respondents

By the Advocate(s)-Mr. S. Behera

ORDER

R.C. MISRA, MEMBER (A):

The applicant in the present Original Application is the son of late Bhimasen Karuan who was serving as Senior Tax Assistant in the office of Respondent No.4 i.e., Income Tax Officer, Bhawanipatana Ward, Kalahandi and had died in harness on 12.03.2004. The applicant has approached this Tribunal with a prayer that the letter dated 26.11.2014 passed by the Respondent No.2 (Annexure-A/11) may be quashed and the Respondents may be directed to reconsider the case of the applicant for appointment on compassionate ground in view of the DOP&T Circular dated 26.07.2012.



2. This is the second round of litigation by the applicant before this Tribunal on the same subject matter. He had earlier approached the Tribunal in O.A. No.494/2012. That O.A. was disposed of by the Tribunal vide an order dated 11.04.2014. A perusal of this order reveals that the father of the applicant was working as Tax Assistant in the office of the Respondent No.3 and was subsequently promoted as Sr. Tax Assistant. While in service, he expired on 12.03.2004 leaving behind his widow and three children including the applicant. After the death of the Govt. servant his widow submitted an application before the authorities praying for compassionate appointment in favour of the applicant and to that effect, an affidavit was submitted by the mother of the applicant along with two other brothers stating that they have no objection if the applicant will be appointed under the compassionate appointment scheme. While the representation was being processed by the Department, mother of the applicant expired on 25.08.2009 leaving behind the applicant and two brothers. In the meantime, Respondent No.3 i.e., Deputy Commissioner of Income Tax (Hqrs) (Administration) Office of the Chief Commissioner of Income Tax, AyakarBhawan, RajaswaVihar, Bhubaneswar, vide letter dated 15.06.2010 rejected the case of the applicant on the ground that the CRC did not recommend the case of the applicant for compassionate appointment.

3. In the OA No. 494/2012 the applicant had contended that although the DOP&T Circular dated 05.05.2003 stipulates that in each year, the case of the applicant has to be considered for appointment on compassionate ground, in the instant case, the authorities have rejected the matter by mentioning that the compassionate appointment committee which met on 19.11.2007 did not recommend the case of the applicant for compassionate appointment for the years

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2004-2005, 2005-2006 and 2006-2007 respectively. This means that the vacancies of these years were considered at one go on 19.11.2007. It was, therefore, pleaded by the learned counsel for the applicant ~~that~~ in that O.A. ^{that} the consideration by the Committee was in contravention of the guidelines circulated by the DOP&T. In the order dated 15.06.2010, the respondents stated that the committee did not recommend the applicant's case as it found that there were more deserving cases for appointment on compassionate ground. This ground was not further elaborated by the committee and no details were provided by the respondents. Therefore, in protest of the order of rejection the applicant made further representation on 27.05.2011 to the Chief Commissioner of Income Tax, Bhubaneswar and that representation was still pending consideration by the concerned authorities. On the other hand, the respondents in that O.A. had pleaded that compassionate appointment committee could not be constituted during the year 2007 due to non-availability of clearance from the CBDT, Therefore, the committee was constituted only on 19.11.2007, to consider all the pending cases. The committee recommended four names of other persons who were considered as more deserving for compassionate appointment and this was intimated to the applicant. This Tribunal had considered the submissions of the learned counsel of both sides and observed that since the details of the consideration were not incorporated in the impugned rejection order dated 15.06.2010 nor were ~~in~~ the minutes of the committee enclosed, ^{it} it was not possible to decide whether a fair treatment was given to the applicant. It was further observed that the delay for consideration of the case was due to constitution of the committee on 19.11.2007 and therefore, the onus of delay for consideration lies on the respondents. Finally, the Tribunal came to the conclusion that the order dated

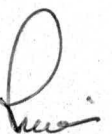
15.06.2010 did not convey a sense that the case of the applicant was considered with fairness and objectivity vis-à-vis the cases of other^e such applicants. As a result, the order dated 15.06.2010 was quashed and the matter was remitted to the authorities for reconsideration of the case of the applicant for compassionate appointment under the guidelines as laid down by the DOP&T.

4. In obedience to the directions of this Tribunal the Principal Chief Commissioner of Income Tax, Bhubaneswar (respondent 2) reconsidered the matter and passed a reasoned and speaking order dated 26.11.2014 which is under challenge in the present O.A. The learned counsel for the applicant has challenged the said order on the ground that respondent No. 2 opined that since the family could survive for ten years' after the death of the deceased government servant, the financial condition of the family could not be considered indigent. Further, even though the order dated ^{DOPT 2 9/10/1998} ~~26.07.2012~~ postulates that the decision of the appointment under compassionate quota is to be taken at the level of the Ministry in case any such request is made belatedly, ^{But} in the present case, without reference of the matter to the Ministry, it has been rejected at the level of the Principal Chief Commissioner. The learned counsel for the applicant has further mentioned that the order dated 26.11.2014 reveals non-application of mind by the departmental authorities.

5. The respondents by filing a counter affidavit have pleaded that as per the scheme of compassionate appointment, only 5% of the vacancies falling under the Direct Recruitment quota are ear-marked for compassionate appointment. Therefore, the vacancies for filling-up under the compassionate appointment quota, is limited and the compassionate appointment committee has to ^{objectively} ~~positively~~ accept assess the economic conditions of all the candidates on the basis of inquiry report ^e

received from different offices under the administrative control of the Principal Chief Commissioner of Income Tax, Bhubaneswar. Shri Behera, learned Senior Central Government Panel Counsel for the respondents has submitted that the consideration of the applicant's case vis-à-vis the other candidates has been done in an objective manner. But, it has not been possible on the part of the department to provide appointment under compassionate quota considering the limited number of vacancies.

6. The applicant has also filed a rejoinder to the counter affidavit and after hearing of this matter, the learned counsels for both sides have submitted their respective written notes of arguments. Having perused the records in respect of this matter, I have heard the learned counsel for both the sides in detail and given my anxious consideration to the various issues that have been raised. In order to understand the consideration given by the respondents authorities in obedience to the orders of this Tribunal in earlier O.A., I have perused the orders dated 26.11.2014 which is the impugned order. I have noted that respondent No. 2 has examined the various details and made a specific mention that the financial condition of the applicant is not so indigent and further, more deserving cases were there for recommendation. On these grounds, the respondent No. 2 has concluded that he did not find any infirmity in the decision of the committee which did not recommend the name of the applicant for compassionate appointment. However, the respondent No. 2 has further mentioned in the same order that the applicant's case will be placed before the next compassionate appointment committee for consideration. Therefore, the respondent No. 2 has given detailed consideration and has further mentioned that the matter will be again taken-up in the next compassionate appointment committee. Taking into account, this part, of the order



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passed by the respondent No. 2, the Tribunal on 15.01.2016 directed the learned SCGPC to obtain further instructions as to whether the applicant's case was again placed before the compassionate appointment committee. The learned SCGPC has placed a letter issued by the Assistant Commissioner of Income Tax Hqrs.(Admin & Vig.), Bhubaneswar dated 10.02.2016 in obedience to the directions of this Tribunal. This letter contains information that the applicant's case was again considered by the compassionate appointment committee on 23.09.2014 and 30.09.2014 in pursuance of the directions of this Tribunal dated 11.04.2014 in OA No. 494/2012. This fact has been mentioned by the respondent No. 2 in his speaking order dated 26.11.2014. No further information is available in this letter. Further perusal of the impugned order dated 26.11.2014 reveals that in paragraph - 2, it is mentioned that a Compassionate Appointment Committee which met on 23.09.2014 and 30.09.2014 to consider the case of the applicant for the recruitment years 2011-12, 2012-13 and 2013-14 respectively, did not recommend his case. This consideration was prior to the date of passing of the impugned order i.e. 26.11.2014. But, in paragraph-3, the respondent No. 2 has again mentioned that Shri Karuan's case will be placed in the next compassionate Appointment Committee for consideration. About this part of the order, the instruction dated 10.02.2016 does not reveal anything and, therefore, it is to be accepted that the applicant's case was not placed before any Compassionate Appointment Committee after 26.11.2014 i.e., the date of ^{impugned order} ~~recommendation~~. It is quite evident that the departmental authorities have not taken any steps in pursuance of the order of the respondent No. 2 at para No. 3 of the impugned order.

7. It is a settled legal principle that the Tribunal can only direct consideration of cases of compassionate appointment in accordance with the relevant guidelines

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and circulars. Compassionate appointment does not confer any right of employment on the applicant. Each case of compassionate appointment is strictly considered as per the departmental guidelines. In the present case, the respondent No. 2 has disposed of the matter in a detailed speaking order dated 26.11.2014 in obedience to the directions of this Tribunal. The compassionate appointment committees which have so far met to consider the case of applicant has^{re} not recommended the case for compassionate appointment. However, as per their own decision, as communicated by the respondent No. 2, they are to consider the case in the next Compassionate Appointment Committee which they have not done so far. Therefore, I dispose of this OA with a direction to the respondent No. 2 to implement his own decision of placing this case before the next meeting of the Compassionate Appointment Committee and take appropriate decision on the recommendation of this committee in accordance with the guidelines of compassionate appointment scheme.

8. With the above observations and directions, the OA stands disposed of with no order as to costs.


(R.C. MISRA)
MEMBER(A)