

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.515/2011
with
Misc. Application No.197/2011

Date of decision: 30-10-2012

Reserved on 11.10.2012

HON'BLE Mr. B.K.SINHA, ADMINISTRATIVE MEMBER.

Gautam Samariya S/o Late Mohan Lal Samariya, aged about 34 years, R/o Gali No.11, Kalal Colony, Jodhpur, his late Father was employed on the post of Notice Server in Income Tax Office at Jodhpur.

: Applicant

Mr. J.K.Mishra, counsel for applicant.

Versus

1. Union of India through Secretary, Central Board of Direct Taxes, Ministry of Finance, Government of India, North Block, New Delhi.
2. Chief Commissioner of Income Tax (CCA), CR Building, Statute Circle, B.D. Road, Jaipur.

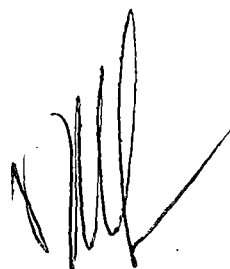
.....Respondents

Mr. Varun Gupta, Counsel for respondents.

ORDER

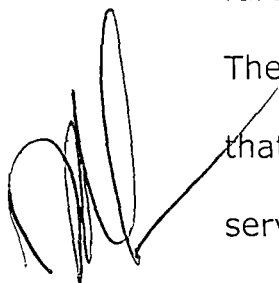
Per Hon'ble Mr. BK Sinha, Administrative Member

The applicant, Gautam Samariya, is the eldest son of the deceased employee, late Mohan Lal Samariya, who died in harness on 09.03.2001. The deceased employee was survived by his widow, five sons and three daughters, all sons being unmarried and unemployed. However all the daughters were married during the life time of the deceased government employee. The deceased employee were paid Rs.3, 55,041/-



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towards terminal benefits and a family pension of Rs.1937/- has been sanctioned to the mother of the applicant. It has been claimed that the family did not have any source of income and were residing in a rented house. The applicant submitted his claim for compassionate appointment on 12.04.2001, which was considered and rejected vide the communication/letter dated 16.02.2009 on the ground that he could not be given appointment for want of vacancies. The applicant submitted another representation/application dated 03.03.2009 pointing it out that the family members of the government servants who had expired subsequent to the deceased employee had been given compassionate appointment. The same was turned down vide letter dated 19.03.2009 stating that other persons were more indigent conditions than the applicant and the matter was more than three years old, as such his file was being closed. The applicant has pleaded that the two grounds stated in the communication dated 16th February, 2009 [A-1] are mutually contradictory. While the first ground states that the applicant had been called for interview on 21.03.2007 but he could not be given appointment on compassionate grounds as the application as the same could only be given within a period of three years but since the deceased employee has demised on 09.03.2001, his file has been closed and he could not be considered further. The applicant further submitted that the bar of three years no longer applicable. The applicant also alleges the hostile discrimination on the ground that the dependent members of the family of the Government servants who expired later than the father of the applicant had



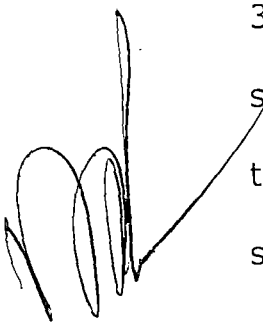
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been given appointment and has quoted the name of Mohd. Subrati, who expired on 12.04.2002, Mangi Lal who expired on 07.11.2002 and Mahendra Singh Bhati who expired on 10.11.2005. The dependent of Jagdish Choudhary has also given appointment subsequent to the expiry of his father [A-5]. The applicant further contents that many of these persons were less indigent than the family of the applicant, however, marks/points obtained by the applicant and the less indigent employees have not been disclosed to him. It has been simply indicated that he has awarded 6.5 marks at Serial No.5 and his case has been rejected that his younger brother is working and the applicant lives with joint family, therefore, the need of compassionate appointment so dire. The applicant has challenged this and stated that while the number of dependents of his family are 9, and the others whose number of dependents are less, has yet given the compassionate appointment.

2. The applicant has also filed a Misc. Application No.197/2011 for condonation of delay in filing of the OA. After considering perusing the records available and the reasons assigned therein, the MA No.197/2011 is allowed and the delay in filing of this OA is condoned.

Stand of the respondents

3. The respondents have vehemently resisted the OA and have stated that the case of the applicant has been duly considered by the competent committee and the applicant has not been found sufficiently indigent so as to merit and appointment. The father of



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the applicant expired in the year 2001 and thereafter the case of the applicant has been considered subsequently for the year 2002-2003, 2003-2004 and 2004-2005. As per the existing rules, the case could have been considered for three years and no more. As such it has been correctly stated in the impugned order dated 16.02.2009 that the case cannot be considered further and the file has been closed and that there is no contradiction in this. The learned Counsel for the respondents was of the opinion that appointment on compassionate ground is not a matter of right but a special dispensation. The Courts are only concerned whether the process of consideration does not involve mala fide or disregard of rules and are not concerned with the final issue. As such, the learned Counsel for the respondents submitted that the OA is fit to be dismissed as being devoid of merit.

Facts-in-issue

- (i) Whether the case to be considered only for a period of three years or beyond?***
- (ii) Whether the recordings in the proceedings of the Meeting of the Compassionate Appointment Committee indicate sufficient consideration?***
- (iii) Whether not disclosing the point scores constitutes an infirmity sufficient to merit a re-consideration?***
- (iv) What relief, if any, could be granted to the applicant?***

Whether the case to be considered only for a period of three years or beyond?

4. In so far as the first issue is concerned, provision 8 of the Scheme for Compassionate Appointments communicated vide letter Mp/14014/6/94-Estt (D) dated 09.10.1998 states as under:

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"8. BELATED REQUEST FOR COMPASSIONATE APPOINTMENT

- (a) Ministries/Departments can consider requests for compassionate appointment even where the death or retirement on medical grounds of a Government servant took place long back, say five years or so.**
- (b) While considering such belated requests it should, however, be kept in view that the concept of compassionate appointment is largely related to the need for immediate assistance to the family of the Government servant in order to relieve it from economic distress. The very fact that the family has been able to manage somehow all these years should normally be taken as adequate proof that the family had some dependable means of subsistence. Therefore, examination of such cases would call for a great deal of circumspection. The decision to make appointment on compassionate grounds in such cases may, therefore, be taken only at the level of the Secretary of the Department/Ministry concerned, (b) Whether a request for compassionate appointment is belated or not may be decided with reference to the date of death or retirement on medical ground of a Government servant and not the age of the applicant at the time of consideration."**

5. In other words, it clearly emerges from the above that the period of three years is no more a hard and fast rule and cases can be considered even beyond. In this regard the circular/office memorandum No.14014/19/2002-Estt (D) dated 05th May, 2003 states that where compassionate appointment to genuine and deserving cases were not possible as per the guidelines in the first year, due to non-availability of regular vacancy, the prescribed Committee may review such cases to evaluate the financial conditions of the family to arrive at a decision 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. In such cases, the consideration can be carried forward by one more year. The OM further states that **"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. However, it is to be qualified that three years imply appointment years i.e. years in which there are vacancies and where appointments have been made, in such years there were no vacancy are not to be considered as appointment years. The Hon'ble Supreme Court in the case of **Local Administration Department and Another vs. M. Selvanayagam alias Kumaravelu**, reported in (2012) 1 Supreme Court Cases (L&S) 717; (2011) 13 SCC42, has held as under:

"4. Failing to get a favourable response to his application, the respondent filed a writ petition before the High Court seeking appropriate directions to the authorities concerned. That writ petition was disposed of by a Single Judge of the High Court with a direction to the authorities to consider his claim for appointment on compassionate grounds afresh and pass an order on his application within four months from the date of receipt of that order. This order (first in the series) passed by the High Court was followed by a contempt proceeding initiated against the authorities at the instance of the respondent but that is not relevant for the present and we need not go into that any further. Suffice to note that eventually, the Municipality rejected the respondent's claim for compassionate appointment vide order dated 19-4-2000.

5. The respondent once again went to the High Court. A Single Judge of the High Court, this time, rejected the writ petition. Against the order passed by the Single Judge, he filed an intra-court appeal which was allowed by judgment and order dated 30-4-2004, and the Municipality was given the direction to appoint the respondent within three months from the date of the order.

12. Ideally, the appointment on compassionate basis should be made without any loss of time but having regard to the delays in the administrative pending claims under the scheme and availability of vacancies, etc. normally the appointment may come after several months or even after two to three years. It is not our intent, nor it is possible to lay down a rigid time-limit within which appointment on compassionate grounds must be made but what needs to be emphasized is that such an appointment must have some bearing on the object of the scheme.

13. In this case the respondent was only 11 years old at the time of the death of his father. The first application for his appointment was made on 2-7-1993, even while he was a minor.

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Another application was made on his behalf on attaining majority after 7 years and 6 months of his father's death. In such a case, the appointment cannot be said to subserve the basic object and purpose of the scheme. It would rather appear that on attaining majority he staked his claim on the basis that his father was an employee of the Municipality and he had died while in service.

14. In the facts of the case, the municipal authorities were clearly right in holding that with whatever difficulty, the family of Meenakshisundaram had been able to tide over the first impact of his death. That being the position, the case of the respondent did not come under the scheme of compassionate appointments."

6. The flip side of the coin has also to be considered in the sense that there must be reasonable restriction as to how many times a case has to be considered otherwise the process will degenerate into a ceaseless merry-go-round. This will sound the death knell of the programme. Hence, the position can be shut off by holding that the compassionate appointments should normally be considered for three appointment years, but it can be considered beyond this period depending upon the circumstances of the case. However, it should not be too far removed from the death of the Government employee.

Whether the recordings in the proceedings of the Meeting of the Compassionate Appointment Committee indicate sufficient consideration?

7. As regards this issue, it is well acknowledged that all the departments have now devised point system wherein the cases are assessed as per the degree of indigence. In this scheme there is scoring methodology for assessing on a matrix of 10 points which includes factors like number of dependents, number of minors, number of unmarried daughters, the terminal benefits receipts etc. Here an aggregate mark of 65 has been indicated. The applicant has challenged the marks allotted and those allotted to cited

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example stating that their conditions of indigent was less and yet they have given appointment, thereby hostile discrimination. The respondents have disclosed that 6.5 points have been scored by the applicant but they have neither given a detailed break up of how these points have been scored nor what have the others secured. By not disclosing these facts the respondents are adding to the opaqueness of the decision making process which would eventually weigh against them.

Whether not disclosing the point scores constitutes an infirmity sufficient to merit a re-consideration?

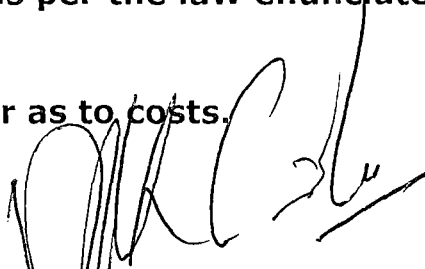
8. In regard to this issue, it has to be transparency has been deemed as essence of all Government transactions. All bring in more legislation that like Right to Information Act, 2005 and others the Government sought to install transparency in public dealing and in decision making process, as such one feels that the applicant has the right to know how he has been scores. He should not be left to the RTI machinery alone to prompt this transparency but its part of an indelible process of all Government process. Therefore, not disclosing the components vitiates the transactions. However, this would also give rise to the question that whether the instrumentality of the RTI should be used or that the Tribunal should also act as the body for disclosing information. It is well accepted that the applicant should come to this Tribunal armed with all facts and since there is a specialized enactment for the same Administrative Tribunal Act, 1985 should not be made a surrogate for the same.



What relief, if any, could be granted to the applicant?

9. In consideration of the facts discussed above this Tribunal is faced with a dilemma- whether insufficiency of information would vitiate the process. It may be argued that while the duty is cast upon the applicant to provide the backup documents the same duty is also cast upon the respondents to provide a reasoned order. Appointment on compassionate grounds does not constitute a right but by going into micro-details it is being converted into a right something that cannot be permitted. The conflict between the duty to come to the Tribunal with full facts and to disclose sufficient information is resolved by stating that both are true in their own places but the information disclosed should not be so insufficient that it gives makes the needle of suspicion point towards them. In the instant case the insufficiency of information outweighs the former. In respect to this issue, one comes to the conclusion that the applicant has succeeded in proving a case for reconsideration. It is, therefore, directed that:

- (i) the impugned orders dated 16.02.2009 [A-1] and 19.03.2009 [A-2] are hereby quashed.**
- (ii) the respondents are directed to reconsider the case of the applicant as per the law enunciated in this order.**
- (iii) There shall be no order as to costs.**



**[B.K.Sinha]
Administrative Member**