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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.516/2011

Date of decision: 30-10-2012

Reserved on 11.10.2012

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

Smt. Bhanwari Devi W/o Late Tara Nath, aged about 37 years, resident of C/o Income Tax Office, Nagaur, her husband was last employed on the post of Group D in the office of Income Tax at Nagaur.

: 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.

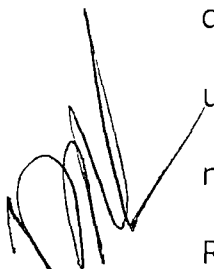
.....Respondents

Mr. Varun Gupta, Counsel for respondents.

ORDER

Per Hon'ble Mr. BK Sinha, Administrative Member

This is a case of compassionate appointment. The applicant is one Bhanwari Devi, widow of Tara Nath, who was employed against Group 'D' post in the office of Income Tax Office at Nagaur. The deceased employee had rendered 8 years of service when he expired on 25.04.2000 leaving behind his widow, three minor daughters, aged 8, 6 and 2 years, and aged parents dependent upon the deceased employee and residing with him. The family received an amount of Rs.47,028/- as DCRG, Rs.24,001/- as GPF, Rs.16,780/- as CGE Insurance, and Rs.5356/- was Leave



Encashment, a total of Rs.94,585/- by way of terminal benefits. The family of the deceased employee has been further receiving Rs.1420/- as family pension. The applicant applied for appointment on compassionate grounds on 08.01.2007 and was called for test vide letter dated 08.03.2007 [A-5]. In the meantime she had been employed as a daily wages Mazdoor vide the order dated 17.05.2000. The case of the applicant has been rejected vide the communication dated 27.07.2011 intimating that the applicant had not been considered eligible for appointment. It has been further intimated that the Group 'D' posts have been abolished and MTS (Group 'C') being introduced for which the minimum qualification is 10th pass and working knowledge of computer. The applicant does not fulfill both these condition, therefore, she cannot be given appointment as per rules. The applicant aggrieved by this order, has moved this Tribunal praying for the following reliefs:-

"(i) That impugned order dated 27.07.2011 (Annexure-A/1) may be declared illegal and the same may be quashed. The respondents may be directed to reconsider the candidature of the applicant for compassionate appointment as per her merit position, as per rules in force and allow all consequential benefits.

(ii) That the respondents may be directed to produce the original proceedings in full, of all the screening committees who considered the candidature of candidates along with applicant for appointment on compassionate grounds.

(iii) That any other direction, or orders may be passed in favour of the applicant which may be deemed just and proper under the facts and circumstances of this case in the interest of justice."

2. The applicant has submitted that the Scheme for Compassionate Appointment provides that it is not necessary for a widow to be literate. Relaxation could be provided for a period of two years during which she could update her qualification. The

learned Counsel for the applicant has further referred to a case of Bombay Bench of the CAT, vide OA No.320/2006 decided on 19.12.2011 and to the publication in Swamy's news in September, 2011 in support of his contention in support of his arguments.

Stand of the respondents

3. Learned Counsel appearing for the respondents vehemently opposed the OA on the ground that the post of Group 'D' employee has been abolished in the organization and has been replaced by Multi Tasking Staff (MTS), Group 'C'. The applicant does not fulfill the qualification for the same as she is only 8th pass and whereas the minimum qualification required is of 10th pass with working computer knowledge. Since the applicant does not fulfill the eligibility for appointment, no appointment can be given to her. The respondents have not denied the fact that the applicant has been disengaged following the institution of this OA.

Facts-in-issue

4. Having gone through the pleadings of the parties and listened through the arguments of the respective parties, the only fact-in-issue that emerges is that whether some relaxation could be given to the applicant. Admittedly, the applicant does not fulfill the requisite qualification for appointment, however, the Scheme for Compassionate Appointment does provide for a relaxation vide section (b) as follows:-

"B. RELAXATIONS

(a) Upper age limit could be relaxed wherever found to be necessary. The lower age limit should, however, in no case be relaxed below 18 years of age.

Note I : Age eligibility shall be determined with reference to the date of application and not the date of appointment;

Note II : Authority competent to take a final decision for making compassionate appointment in a case shall be competent to grant relaxation of upper age limit also for making such appointment.

(b) Secretary in the Ministry/Department concerned is competent to relax temporarily educational qualifications as prescribed in the relevant recruitment rules in the case of appointment at the lowest level e.g. Group 'D' or Lower Division Clerk post, in exceptional circumstances where the condition of the family is very hard provided there is no vacancy meant for compassionate appointment in a post for which the dependent family member in question is educationally qualified. Such relaxation will be permitted upto a period of two years beyond which no relaxation of educational qualifications will be admissible and the services of the person concerned, if still unqualified, are liable to be terminated.

Note :In the case of an attached subordinate office, the Secretary in the concerned administrative Ministry/Department shall be the competent authority for this purpose.

(c) In the matter of exemption from the requirement of passing the typing test those appointed on compassionate grounds to the post of Lower Division Clerk will be governed by the general orders issued in this regard:-

(i) by the CS Division of the Department of Personnel and Training if the post is included in the Central Secretariat Clerical Service; or

(ii) by the Establishment Division of the Department of personnel and Training if the post is not included in the Central Secretariat Clerical Service.

(d) Where a widow is appointed on compassionate ground to a Group 'D' post, she will be exempted from the requirement of possessing the educational qualifications prescribed in the relevant rules provided the duties of the post can be satisfactorily performed by her without possessing such educational qualifications."

5. It becomes apparent from above that the architect of this Scheme have thought through the possibility of such exigencies arising and have incorporated under Section B (b)(d) which are to be read in consonance. The applicant has submitted a certificate and it appears from perusal of which that she has cleared the 8th Board Examination in first division. The attenuating circumstances of the case appear to be rather harsh. The deceased employee rendered only 8 years of service and the applicant has become a widow at a comparatively young age. She also has a responsibility

of three minor children and aged parents. These are the factors which cannot be overlooked. The Learned Counsel for the applicant has informed that during the pendency of this case, the applicant has also been deprived of the casual employment as a daily wages Mazdoor. One strongly feels that the provision of relaxation that has been given is not mere emplacements of the rules of the statutes but is meant to be used. In this regard a similar matter had been taken up for consideration in the case of **S.N. Kamble vs. UOI & Ors.**, in OA No.320/2006, which reads as under:

"32. Yet another aspect to be seen in the case is whether the applicants' services could be regularized in Group D when in view of the Sixth Pay Commission Recommendation, the minimum educational qualification for any post has been recommended to be matriculation. In a recent case of Ernakulam Bench of Tribunal in OA No.284 of 2010 and connected matters decided on 22.11.2011 (in which one of us was a member) K. Sulaiman v. Union of India and others and connected cases, an identical situation arose in that a number of casual workers with qualifications less than matriculation were held to be entitled for regularization and when the above requirement of matriculation as the minimum qualification was considered, the Tribunal has dealt with the situation as under:

"The respondents are not averse in regularizing the services of the applicants. What is coming in the way of regularization is the new Recruitment Rules which provide for certain qualifications, which the applicants do not possess. True, at the time when the applicants had been engaged as a casual labour or for that matter granted temporary Status, the qualifications for Group D had been such that most of the temporary status holders would be in a position to fulfill the requisite qualifications. However, after the amendment to the Recruitment Rules, the situation has drastically changed. The Group D post has been converted into Group C post; the limited functional responsibility enlarged into what is called the multi skilled work; the educational qualifications have been enhanced to Matriculation or ITI. Temporary status employees in any department, say Animal Husbandry may not be engaging themselves in a job which may warrant matriculation qualifications. Labourers hitherto engaged in collection of cow dung or mixing the fodder may not require higher qualifications for performing the said duties. Their experience alone counts there. Such jobs may be plenty in departments such as Animal Husbandry etc.. Even if they are to be trained in multi skilled jobs, they could be imparted necessary practical training. Disqualifying them as not possessing the qualifications of Matriculation, or compelling them to acquire Matriculation where after only their services could be regularized would all cause hardship to the applicants and similarly situated persons. The rule that two third of the vacancies should be filled up by way of regularization even as per the latest Recruitment Rules would be rendered otiose if consideration be not given for relaxation of the rules. For, in places like Lakshadweep Islands, perhaps for filling up the post by direct recruitment under the failing which clause may also not be possible as the islanders may not have that much education. Even if there be available persons with such qualifications, in so far as the applicants and similarly situated individuals are concerned, who have put in nearly three decades of

casual service of which two third period is with temporary status, their legitimate expectation should not be frustrated. Here exactly is the place of power to relax as conferred by the Recruitment rules, which could be considered. The Apex Court has, in the case of J.C. Yadav v. State of Haryana, (1990) 2 SCC 189 has occasion to consider the rule 'power to relax' which is in pari materia with the same term in the Recruitment Rules, vide Rule 5 thereof, which reads as under:-

"5. Power to relax: Where the Administrator, Union Territory of Lakshadweep is of the opinion that it is necessary or expedient so to do, he may, by order, for reasons to be recorded in writing, relax any of the provisions of these rules, with respect to any class or category of persons except Rule 4 of these Rules."

The Apex Court in the said case of J.C. Yadav has stated as under:-

22. Power to relax xxx xxx xxx
Where Government is satisfied that the operation of any of these rules causes undue hardship to any particular case, it may by order dispense with or relax the requirements of that rule to such extent, and subject to such conditions, as it may consider necessary for dealing with the case in a just and equitable manner.

6. The rule confers power on the Government to dispense with or to relax the requirement of any of the rules to the extent and with such conditions as it may consider necessary for dealing with the case in a just and equitable manner. The object and purpose of conferring this power on the Government is to mitigate undue hardship in any particular case, and to deal with a case in a just and equitable manner. If the rules cause undue hardship or rules operate in an inequitable manner in that even the State Government has power to dispense with or to relax the requirement of rules. The rule does not restrict the exercise of power to individual cases. The Government may in certain circumstances relax the requirement of rules to meet a particular situation. Rule 22 postulates relaxation of rules to meet a particular event or situation, if the operation of the rules causes hardship. The relaxation of the rules may be to the extent the State Government may consider necessary for dealing with a particular situation in a just and equitable manner. The scope of rule is wide enough to confer power on the State Government to relax the requirement of rules in respect of an individual or class of individuals to the extent it may consider necessary for dealing with the case in a just and equitable manner. The power of relaxation is generally contained in the Rules with a view to mitigate undue hardship or to meet a particular situation. Many a time strict application of service rules create a situation where a particular individual or a set of individuals may suffer undue hardship and further there may be a situation where requisite qualified persons may not be available for appointment to the service. In such a situation the Government has power to relax requirement of rules. The State Government may in exercise of its powers issue a general order relaxing any particular rules with a view to avail the services of requisite officers. The relaxation even if granted in a general manner would ensure to the benefit of individual officers."

In a subsequent decision in the case of, Ashok Kumar Uppal v. State of J&K, (1998) 4 SCC 179, the Apex Court has held as under:

"26. Power to relax the Recruitment Rules or any other Rule made by the State Government, under Article 309 of the Constitution of which the corresponding provision is contained in Section 124 of the Constitution of Jammu and Kashmir, is conferred upon the Government to meet any emergent situation where injustice might have been caused or is likely to be caused to any individual employee or class of employees or where the working of the Rule might have become impossible. Under service jurisprudence as also the Administrative Law, such a power has necessarily to be conceded to the employer particularly the State Government or the Central Government who have to deal with hundreds of employees working

under them in different departments including the Central or the State Secretariat."

The Tribunal is not oblivious to the law laid down by the Apex Court in the case of State of M.P. v. Dharam Bir, (1998) 6 SCC 165 wherein the Apex Court had held:

Power to relax the Rule vests exclusively in the Governor as provided by Rule 21. This power cannot be usurped by the Court of the Tribunal.

But the Tribunal does not enjoy the power to point out various decisions the Apex Court wherein it has been held that power to relax should be invoked in deserving cases so that the same would be kept in view by the Administrator while considering the matter. While the Tribunal cannot direct that the power to relax should be invoked, power to issue direction to consider the same is well within the jurisdiction of the Tribunal.

If the spirit behind various judgments of the Apex Court is considered, it would be evident that the balance tilts in favour of the employees. In fact, in the case of, the Apex Court has held that such a power to relax could be exercised even retrospectively vide M. Venkateswarly v. Govt. of A.P., (1996) 5 SCC 167 wherein the Apex Court has held:

"8. Thus it could be seen that the Government is empowered to relax the rigour of the General Rules in such manner as may appear to him to be just and equitable in the interest of justice and equity. Justice can be done only by exercising the power retrospectively."

Reference to another identical case was made by the Apex Court in the case of exercised Santosh Kumar v. State of A.P., (2003) 5 SCC 511 wherein the Apex Court has stated as under:

"14. Yet, another decision of this Court in P.V.T. Phillip v. P. Narasimha Reddy supports the case of the respondent to the effect that power to relax under rule 47 can be exercised retrospective effect wherever required in the interest of justice and equity."

6. In view of the above it is clearly established that there is a provision and scope for considering relaxation in qualification as per the scheme which has not been exercised in favour of the applicant. Once such provisions get incorporated into schemes they are not to be taken as mere embellishments but are meant to be used. One cannot think of circumstances better for its applicant than in the instant case. Moreover, though the restitution of the applicant does not directly constitute a part of the relief sought it is a part of the inherent powers and duties of this Tribunal, and for that matter of any court to ensure that the applicants do not get

punished for approaching the same for justice. It is covered by clause (iii) of the relief. Therefore, following directives are given:

- (i) the impugned order dated 27.07.2011 (Annexure-A/1) is hereby quashed.
- (ii) The competent authority is directed to reconsider the case of the applicant in view of the guidelines provided and as per the Scheme having provided relaxation in qualification for appointment on compassionate grounds.
- (iii) when her case is considered, the applicant should not be disengaged from the casual employment as has been given as Daily wages Mazdoor.
- (iv) There shall be no order as to costs.



[B.K. Sinha]
Administrative Member

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