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CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

O.A. No. 63/2012 with MA 47/2012

Jodhpur this the 15th January, 2013

CORAM

Hon'ble Mr. Justice Kailash Chandra Joshi, Member (J) and

Pradeep Charan S/o late Shri B.D. Barath
Plot No. 32, Mahaveer Nager, Mahamandir
Jodhpur

.....Applicant

(Through Advocate Mr Manoj Bohra)

Versus

1. Union of India through the Secretary, Ministry of Finance,
Department of Revenue, New Delhi
2. The Commissioner, Central Excise, New Central Revenue Building, Statue
Circle, 'C' Scheme, Jaipur-I (Raj)
3. The Additional Commissioner (P&V), Central Excise, New Central Revenue
Building, Statue Circle, 'C' Scheme, Jaipur-I

.....Respondents

(Through Advocate Mr. M.S. Godara)

ORDER

(Oral)

Per Hon'ble Mr Justice K.C. Joshi, Member (J)

This application has been filed against the orders dated 13.7.2009 and 3.4.2007
whereby the request of the applicant for compassionate appointment has been rejected.

The applicant has prayed for the following relief (s):

- (i) *By an appropriate writ, order or direction, the impugned orders dated 3.4.2007 (Annexure.A1) and 13.7.2009 (Annexure.A2) may kindly be quashed and set aside.*
 - (ii) *By an appropriate writ, order or direction, the respondents may be directed to consider the case of the applicant for appointment on any post under compassionate appointment in accordance with his qualification.*
 - (iii) *Any other appropriate order or direction, which may be considered just and proper in the light of above, may kindly be issued in favour of the applicant.*
 - (iv) *Costs of the application may kindly be awarded in favour of the applicant.*
- 2

2. The applicant has filed an MA for condoning the delay in filing the OA stating that he was waiting hopefully about three years for consideration of his case. Hence there is a delay in filing the OA, which may be condoned and OA received on file.

3. Since the delay has been explained, in order to do substantial justice, the MA is allowed and delay is condoned.

4. The applicant's father B.D.Barath while working as Superintendent, Central Excise died on 8.1.2004 leaving behind widow, two daughters and three sons including the applicant. The applicant submitted Annexure.A4 application for compassionate appointment. Since no reply received, another letter was sent on 14.2.2004 [A5]. Another representation for immediate relief by compassionate appointment was sent on 18.1.2006 [A6]. After lapse of three years, on 3.4.2007 the respondents passed an order rejecting the request of the applicant on the ground that no vacancies available in the cadre for compassionate appointment quota. [A1]. The respondents again passed an order dated 13.7.2009 rejecting the request of the applicant stating that the case of applicant has been closed after completion of maximum prescribed period of three years from the date of death of his father due to non-availability of vacancy. [A2]. Applicant referred to OA No.94/2007 filed by Pramila Devi whose case has been rejected along with the applicant in which by order dated 15.1.2009 the Tribunal directed the respondents to consider the case of Pramila Devi for compassionate appointment on three effective occasions subject to the conditions mentioned in letter dated 5.5.2009 of DoPT.

5. Respondents filed their reply opposing the application and stated that the Screening Committee held on 2.2.2004, 16.12.2004 and 5.4.2006 considered the case of applicant and for want of vacancy under compassionate appointment quota, the appointment could not be given to him. The applicant was duly informed of the rejection of his case along with 5 others. They have stated that they have preferred an appeal before the Hon'ble Rajasthan High Court at Jodhpur.

6 I have heard the learned counsels for the applicant and the respondents. Counsel for the applicant submitted that by Annexure.A1 5 persons were denied compassionate appointment, list of five persons annexed as Annexure.I at page 18. Out of these five persons Pramila Devi filed Original Application before this Tribunal bearing No.94/2007 and this Tribunal vide order dated 15.1.2009 allowed the same on the ground that the application for compassionate appointment is required to be considered on three occasions subject to conditions mentioned in DoPT OM dated 5.5.2003. The Hon'ble Tribunal while deciding the above application relied upon a judgment of the Ahmedabad Bench in OA 386/2007 Navaz Mogal Vs.Union of India and others. The counsel for the applicant further contended that respondents in para 4.9 admitted this fact that Pramila Devi preferred OA before this Tribunal and vide order dated 15.1.2009 this Tribunal directed the department to consider her case for compassionate appointment on three effective occasions subject to the conditions mentioned in OM dated 5.5.2003.

7. An important question that arises in the present O.A. is, as to what is the true meaning of three occasions in DOP&T O.M. dated 5.5.2003. Does it mean effective consideration on three occasions or only three years even if no vacancies were available. The applicant, in O.A. No. 386/07 Navaz Mogal Vs. UOI and Ors., before the Ahmedabad Bench, was aggrieved by the decision of respondents to drop his name from persons to be considered for compassionate appointment as three years had elapsed. The respondents had placed reliance on letter No. A-12012/67/2004- Adm. IIIB dated 15.07.2004 of the Department of Revenue, issued in the background of Department of Personnel & Training O.M. of 05.05.2003. The Tribunal while considering the above letter held :-

"6. A perusal of this letter shows that the intent was to extend the time limit so that genuine cases are not deprived of compassionate appointment on the ground that vacancies were not available. The object is clearly to provide consideration on three occasions subject to conditions prescribed therein. The Ministry of Finance clarification dated 15.07.04 is not on record.

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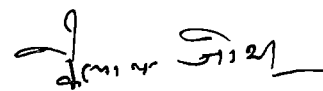
8. A Division Bench of this Tribunal in OA 135/2006, Mrs. N.M. Makwana vs. Union of India, was considering the case of an employee of this very department. The department had taken the same stand. The Tribunal held :

“7. The proper construction of the aforesaid OM of DoPT is that the applicant has to be considered on three occasions subject to the condition that the applicant has to be indigent on the first occasion. The DoPT is a nodal department in the matter of Personnel policy and each department is expected to follow that policy unless they have obtained for themselves a different dispensation from the competent authority in accordance with the Transaction business rules for the matter. Nothing indicated in this connection.”

9. I have not been persuaded to take a different view.

10. The decision of coterminous Bench is binding on me.

11. I am accordingly of the view that the case of the applicant is required to be considered on three occasions subject to conditions mentioned in DoPT O.M. dated 05.05.2003. I, accordingly quash the rejection contained in Annexure.A/1 & Annexure.A2 qua the applicant and direct the respondents to consider his case for compassionate appointment on three effective occasions subject to the conditions mentioned in letter dated 05.05.2003. The first consideration should be made within three months of availability of vacancies or receipt of this order, whichever is earlier. The O.A. is disposed of accordingly with no order as to costs.



(Justice K.C. Joshi)
Judicial Member

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