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CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH LUCKNOW

Original Application No. 347 of 2012

This, the 28th day of May, 2014

HON'BLE MR. NAVNEET KUMAR MEMBER (J)

1. Smt. Chandra Kalan, wife of late Sita Ram.
2. Arvind Kumar, son of late Sita Ram, age 30. Both resident of 6, Payagpur House, 5, Meera Bai Marg, Lucknow.

Applicant

By Advocate Sri R. K. Upadhaya.

Versus

1. Union of India through the Secretary, Ministry of Mines, Government of India, New Delhi.
2. Director (Personnel), Geological Survey of India, 27, Jawahar Lal Nehru Road, Kolkata.
3. Secretary, Ministry of Department of Personnel & Training, Central Secretariat, New Delhi.
4. Regional Director, Geological Survey of India, Sector-E, Aliganj, Lucknow.

Respondents

By Advocate Sri Deepak Shukla for Shri R. Mishra.


ORDER (ORAL)

By Hon'ble Mr. Navneet Kumar, Member (J)

The present Original Application is preferred by the applicant under Section 19 of the AT Act, 1985 with the following reliefs:-

“(i) To issue an order or direction to the respondents to provisionally consider the Applicant No. 2 for compassionate appointment on a Group –D post ignoring the impugned orders dated 24.6. 2011, 1.12.2011 and 5.5.2003

(ii) To issue such other order or direction, as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.”

2. The brief facts of the case are that the applicant No. 1 is the wife of Late Sita Ram and applicant No. 2 is the son, who was working with the respondents organization on the post of Messenger and died in harness on 17.8.1998. After the death of the ex-employee, the elder brother of the applicant No. 2 namely Shri Birendra Kumar applied for compassionate appointment and the committee dealing with the compassionate appointment also considered the name of the applicant and also found fit for grant of compassionate appointment. But before
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the appointment order could have been issued, he expired and thereafter, the applicant No. 2 applied for compassionate appointment. The case of the applicant was kept pending and quite some time and thereafter vide order dated 20/24/6/2011, the same was rejected taking into account the circular dated 5.5.2003. The learned counsel for the applicant pointed out that the said circular dated 5.5.2003 was considered by the Hon'ble High Court in the case of Hari Ram Vs. Food Corporation of India reported in 2009 (3) UPLBEC 2212, and quashed the circular, as such, the respondents cannot take shelter of the said circular and also pointed out that the case of the applicant may be directed to be considered again.


3. The learned counsel for the respondents has filed their counter reply and through counter reply it was indicated by the respondents that the case of the applicant along with number of other candidates was considered and when it was not found fit, it was rejected. The learned counsel for the respondents also pointed out that the applicant cannot claim as a matter of right for his name to be considered again for grant of compassionate appointment.

4. The learned counsel for the applicant has also filed their rejoinder and through rejoinder, mostly the averments made in the O.A. are reiterated.

5. The learned counsel for the respondents filed their supplementary counter reply and through supplementary counter reply, the contents of rejoinder are denied and the contents of the counter reply are reiterated.

6. Heard the learned counsel for the parties and perused the record.

7. The applicant who is the wife of the ex employee whereas the applicant No. 2 is the son who was working with the respondents organization and died in harness on 17.8.1998. After the death of the ex employee, the elder brother of the applicant No. 2 applied for compassionate appointment in 1998 and the case was considered by the committee and his name was recommended for appointment on Group D Post. But before an offer of appointment could have been issued to the elder brother of the applicant No. 2, he unfortunately expired. As such, the applicant No. 2 submitted an application for grant



of compassionate appointment. The respondents proceeded with the application of the applicant No. 2 for grant of compassionate appointment and the matter was placed before the CRC and the CRC could not recommend the case of the applicant for grant of compassionate appointment. As such it was rejected by means of impugned order. The bare perusal of the impugned order, shows that after completing the administrative process of the application of the applicant No. 2, he was called for interview on 29.4.2003 by the Committee and the Committee could not recommend the case of the applicant for grant of compassionate appointment to any Group D due to non availability of the vacancies. It is also indicated by the respondents that since the DOP&T has issued a circular dated 5.5.2003 and on the basis of the aforesaid O.M., the case of the applicant was closed.

8. It is needless to say that the O. M. dated 5.5.2003, was considered by the Hon'ble High Court in the case of Hari Ram Vs. Food Corporation of India reported in 2009 (3) UPLBEC 2212, and the said circular was quashed. The Hon'ble High Court while quashing the aforesaid OM has been pleased to observe as under:-

"The writ petition is allowed. The instructions contained in the Office Memorandum dated 5th May, 2003 of the Department of Personnel and Training Ministry of Personnel, Public Grievances and Pension, Government of India fixing time limit of three years for offering compassionate appointment is declared to be irrational, arbitrary, unreasonable and violative of Articles 14 and 16 of the Constitution of India."

9. Since the impugned order is solely based on the said circular which is no more in existence as such, observing on the part of the respondents that the case of the applicant stands finally closed in terms of the circular dated 5.5.2003 is unjustified. Accordingly, it requires interference by this Tribunal.

10. Considering the submissions made by the learned counsel for the parties and the documents available on record, the impugned order dated 20/24.6.2011 rejecting the claim of the applicant is quashed. The respondents are directed to reconsider the case of the applicant for grant of compassionate appointment by passing a reasoned and speaking order within a period of four months from the date of certified copy of

this order is produced and the decision so taken, be communicated to the applicant.

10. With the above observation, the O.A. is allowed. No order as to costs.

VR. Agrawal
(Navneet Kumar)
Member (J)

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