

Central Administrative Tribunal Lucknow Bench Lucknow

Original Application No: 365/2009

This, the 16th day of July 2010

Hon'ble Dr. A. K. Mishra, Member (A)

Raj Kumar alias Rajju, aged 33 years, son of Late Ram Dular, residen of 11, Hata Ram Das Sadar Bazar, Cantt, Lucknow.

Applicant

By Advocate Sri S. K. Dixit.

VERSUS

1. Union of India, through the Secretary, Ministry of Finance, New Delhi.
2. Commissioner Central Excise Allahabad.
3. Chairman Central Excise Committee/Commissioner, Allahabad.

Respondents

By Advocate Sri S.P. Singh.

ORDER

By Hon'ble Dr. A. K. Mishra, Member (A)

This application has been made challenging the decision dated 21.9.2007 of the Committee which considered and rejected his application along with others for compassionate appointment.

2. The applicant's father, who was working as Lower Division Clerk (LDC) in the Central Excise Division at Faizabad, died on 17.9.1995. The applicant made an application on 24.11.1996 for appointment on compassionate ground. According to the applicant, he was a deserving candidate; his case could not be considered for want of vacancy and the Committee took the impugned decision in pursuance of the OM dated 5.5.2003 Department of Personnel and Training (DOP&T) Government of India. It is alleged by the applicant that the instructions contained in the

aforesaid circular of DO&T are not in accordance with law. At the time of hearing, the learned counsel placed before me the decision of Allahabad High Court in the case of Hari Ram Vs. Food Corporation of India and Others [(2009) 3 UPLBEC 2212] in which the circular of the DOP&T was declared as violative of Articles 14 and 16 of the Constitution of India and the respondent authorities therein were directed to consider the petitioner's case for appointment without considering the maximum limit of the number of years after which a case was to be closed as per DOP&T circular.

3. The learned counsel for the respondents submits that there was no vacancy available under which anyone could be considered for compassionate appointment under the 5% quota fixed for the purpose. According to him, no such vacancy even exists today. In the circumstances, he pleads that the decision of the Circle Relaxation Committee was just and proper and in accordance with law laid down by the Hon'ble Supreme Court of India. In the impugned order, the Committee has cited the case of Umesh Kumar Nagpal Vs. State of Haryana and Others, JT(1994) (3)SC 525 in which it was observed that compassionate appointment could not be granted after a lapse of a reasonable period and further that it was not to be treated as a vested right which can be exercised at any time in future. They have also placed reliance on the ruling of the Supreme Court in Himanchal Road Transport Corp. Vs. Dinesh Kumar JT 1996 (5) SC 319 dated 07.05.1996 and Hindustan Aeronautics Ltd. Vs. Smt. A Radhika Thirumalai JT 1996 (9) SC 197, in which it was observed that the case for compassionate appointment could be considered only if a vacancy was available for that purpose. Admittedly, no vacancy existed on the date



the impugned order was passed in the year 2007. The cause of action arose in 1995 when the father of the applicant died. According to the counsel for the respondents, there is no vacancy even now. Even if the reference to the DOP&T OM dated 5.5.2003 is not taken into account, the position is not going to change. About 12 years had elapsed and I feel that the Committee took the decision to close the case of the applicant treating 12 long years as reasonable and long period to keep the case alive.

4. The factual context of the case Hari Ram (Supra) was different. In that case, the Committee itself had recommended that the applicant therein was eligible for appointment as the family was living in penury with almost no source of income and strongly recommended the appointment of the applicant therein. But the recommendation of the Committee was not acted upon and subsequently the case was closed taking advantage of DOP&T circular. Here the facts are different. More than 12 years had elapsed and the applicant could not be considered for want of vacancy under the reserved quota and no such vacancy is available even now. Under the circumstances, it is difficult to find fault with the decision taken by the respondent authorities, even if we hold that the circular dated 5.5.2003 of DOP&T is without effect.

5. In the circumstances, O.A. is dismissed. No costs.

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A. K. Mishra
(Dr. A. K. Mishra)
Member (A)