

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA.**

O.A. No. 452 of 06

Date of order : 30th May 2006

C O R A M

Hon'ble Ms. Sadhna Srivastava, Member (J)

Pankaj Kumar Sinha, S/o Late Awadhesh Kumar Sinha, Deputy Office Superintendent of Central Excise [Hqrs] Patna, r/o Bhawani Jageshwar Niketan, Sidheshwar Path, Chitraguptanagar, Patna.

....Applicant

By Advocate : Shri S.K. Sinha

Vs.

1. The Union of India through the Chairman, Central Board of Excise and Custom, North Block, New Delhi.
2. Chief Commissioner, Department of Revenue and Central Excise, Patna / Head Quarters [Patna].
3. Joint Commissioner [P & V] Central Excise [Hqrs] , Patna.
4. The Additional Commissioner , Central Excise and Custom, Central Excise, Patna.
5. Kiran Jha, W/o late Hari Chandra Jha, presently working as Stenographer in the office of Commissioner, Central Excise Division, Laheriasarai, Darbhanga.

....Respondents

By Advocate : Shri S.K. Tiwary.

ORDER

Sadhna Srivastava, M (J):- This OA has been filed against the order dated 27.3.06 [Annexure A/1[whereby the applicant's request for



compassionate appointment has been rejected for want of vacancy.

2. The facts, in brief, are that the applicant's father, late Awadhesh Kumar Sinha, while working as Deputy Office Superintendent, Central Excise, Patna died on 18.12.03. Immediately after the death of his father, the applicant filed a representation before the respondents for appointment on compassionate ground. Thereafter, he filed OA 137 of 06 which was disposed of with direction to the Commissioner, Central Excise, Head Quarters at Patna to treat the OA as a representation and decide the same by speaking order. Pursuant to the aforesaid direction, the impugned order has been passed.

3. Heard learned counsel for both the sides and perused the pleadings. The applicant's learned counsel has challenged the above order on the ground that this is arbitrary and unjustified, and the applicant has wrongly been denied appointment for want of vacancy. He further claims discrimination against respondent No. 5, and submits that one Kiran Jha has been appointed on 1.11.2004 on the post of Stenographer, and presently, she is working at Lakhisarai, whereas the applicant's case has been rejected for want of vacancy. It is further submitted that the department has advertised for filling up the post of Tax Assistant through Staff Selection Commission, therefore, it is wrong to say that there was no vacancy for appointment on compassionate ground. In support of his



argument, learned counsel for the applicant has placed reliance on the judgment, reported in 2004 [2] PLJR 195 [Rajesh Kumar Pandey vs. U.O.I & Ors] and AIR 2000 SC 1596 [Balbir Kaur and Another vs. Steel Authority of India Ltd and Ors.]

4. I have carefully gone through the judgment and found that even in these judgments, the principles followed is the same that the financial stringency and hardship is to be seen , and what has been held in the judgment is that the case cannot be rejected merely on the ground that the family has got terminal benefits. In the instant case, the applicant's case has been rejected for want of vacancy. However, in the written statement, the respondents have given details of retirement benefits which have been received by the family of the deceased. They have stated that KiranJha was found more deserving by the competent authority as both her deceased husband as well as Smt. Kiran Jha were physically handicapped. It is further submitted on behalf of the respondents that due to non-availability of vacancy under five per cent quota for compassionate appointment in the desired grade that is TA/Stenographer, the applicant could not be offered appointment.

5. During the course of argument, learned counsel for the respondents has made submissions that the applicant's case, in view of the office memorandum dated 5.5.03, has been considered twice and rejected



by the committee.

6. The Scheme for compassionate appointment is administered by the Nodal Ministry i.e Department of Personnel and Training [DOPT in short]. The instructions regarding operation of the Scheme are issued by that department from time to time. As per the relevant instructions of the DOPT, appointment on compassionate grounds is permissible only upto 5 % of the direct recruitment quota vide Government of India, DOPT letter No. 1401/6/95-Estt dated 26.9.95. The issue of clearing waiting list of the candidates for compassionate appointment by relaxing 5 % limit as one time measure was referred to the Nodal Ministry [i.e DOPT. However, it was not approved. Resultantly, wait listed candidates could not be given appointment either against the departmental post as vacancy within the prescribed ceiling was not available. In the year 2001 or later years, fresh applications were examined for which there is always a long queue. The fresh cases of indigence get precedence over the past cases in accordance with the objectives of the Scheme of the appointment on compassionate ground as laid down by the Nodal Ministry.

7. A situation similar to the present case arose in the case of Himachal Road Transport Corporation vs. Dinesh Kumar [1996 SCC (L&S) 1153]. In that case the Hon'ble Supreme Court was dealing with two cases where applications had been submitted by the dependents of the



deceased employee for appointment on compassionate ground and both of them were placed on the waiting list and had not been given appointment. They approached the Himachal Pradesh Administrative Tribunal, and the Tribunal directed Transport Corporation to appoint both of them. Setting aside the said decisions of the Tribunal, the Apex Court observed that in the absence of vacancy, it is not open to the Corporation to appoint a person to any post.

8. In the case of Hindustan Aeronautics Ltd vs. A Radhika Thirumalai, 1996 SCC (L&S) 1427, a Single Judge of High Court held that appointment on compassionate ground is given notwithstanding whether there is any vacancy, and if need be, by creating supernumerary post. The decision of learned Single Judge was confirmed by the Division Bench of the High Court. The Hon'ble Supreme Court held that reliance placed by the learned Single Judge on the case of Sushma Gosain, 1989 SCC (L&S) 662 was misplaced with an observation that the case of Sushma Gosain has to be read in the light of the facts of that particular case. The observations made in the case of Umesh Kumar Nagpal vs. State of Haryana, 1994 SCC [L&S] 930 to the effect that " the decision of Sushma Gosain has been misinterpreted to the point of distortion and that the decision does not justify compassionate appointment as a matter of course" were also quoted with approval.



9. The Hon'ble Supreme Court again in the case of UOI vs. Joginder Sharma [2002] 8 SCC 65 has held that the High Court / Tribunal cannot compel the department to relax the ceiling of vacancies and appoint a person. Since this method of appointment is in deviation of the normal recruitment process under the rules where people are waiting in the queue indefinitely. The policy laid down by the government regarding such appointment should not be departed from by the Courts / Tribunal by issuing direction for relaxation merely on account of sympathetic consideration or hardship of the person concerned. If in a given case, department of the government concerned declines as a matter of policy, not to deviate from the mandate of the provisions underlying the Scheme and refuses to relax the ceiling fixed therein, the Court cannot compel the authorities to exercise its jurisdiction in a particular way and that too by relaxing the essential conditions.

10. In the case of Umesh Kumar Nagpal [*supra*], the Hon'ble Supreme Court has observed that it must be remembered that as against the destitute family of the deceased employee , there are millions of other families which are equally, if not more destitute. If the dependents of the deceased employee finds its below his dignity to accept the post offered, he is free not to do so. The post is not offered to cater to his status but to see the family through the economic calamity. It was also observed that the

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compassionate appointment cannot be granted after a lapse of reasonable period. The consideration for such employment is not a vested right which can be exercised at any time in future. The compassionate appointment cannot be claimed and offered whatever the lapse of time and after the crisis is over. In the instant case, the applicant lost the bread earner in the year 2003. It is not known if the penurious condition of the applicant continues in the same state.

11. Again, in the case of State of Manipur vs. Md. Rajaodin [2003] 7 SCC 511, the Hon'ble Supreme court has observed that the purpose of providing compassionate appointments is to mitigate the hardship caused due to the sudden death of the bread winner in the family. It is to alleviate the distress of the family that such appointments are made but these considerations cannot operate even after a long delay. In the instant case also a delay has occurred and, therefore, the question is whether appointment has relevance after a long period of death of an employee. The Hon'ble Supreme Court has reiterated the same principle in the case of Punjab National Bank & Ors vs. Ashwani Kumar Taneja, 2005 [1] SLJ 30, with an observation that the compassionate appointment is an exception to the rule and cannot be given as a bounty.

12. Considered in the panorama of the aforesaid legal principles, the applicant is not entitled for issuance of direction by the Tribunal for his

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appointment to the post as claimed by him.

13. In the result, I am of the opinion that the applicant is not entitled to the relief as prayed for by him. The OA is, accordingly, dismissed, without any order as to the costs:


[Sadhna Srivastava] M [J]

/cbs/