

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 660/96

Date of Decision: 17-4-97

R.N. Mayekar

... Applicant

Shri B. Ranganathan

.. Advocate for
Applicant

-versus-

Union of India & Ors.

.. Respondent(s)

Shri Pandya for Shri M.I. Sethna

Advocate for
Respondent(s)

CORAM:

The Hon'ble Shri M.R. Kolhatkar, Member (A)

The Hon'ble

(1) To be referred to the Reporter or not?

(2) Whether it needs to be circulated to other Benches of the Tribunal?

M.R. Kolhatkar

(M.R. KOLHATKAR)

MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA.NO.660/96

pronounced this the 17th day of April 1997

CORAM: Hon'ble Shri M.R.Kolhatkar, Member (A)

R.N.Mayekar,
114, Block 12, C.G.S.Qtrs.,
Kane Nagar, Mumbai-400037. Applicant

By Advocate Shri B.Ranganathan

V/S.

1. Union of India through
The Chief Commissioner of
Income Tax, Aaykar Bhavan,
Mumbai-400 020.

2. The Commissioner of Income Tax,
Aaykar Bhavan, Mumbai.

3. The Dy.Chief Commissioner of
Income Tax, Aaykar Bhavan,
Mumbai. Respondents

By Advocate Shri Pandya for
Shri M.I.Sethna, CGSC

O R D E R

(Per: Shri M.R.Kolhatkar, Member (A))

In this OA, the applicant challenges the communication dated 13.3.1995 from the respondents rejecting his request for considering his case for appointment of his daughter Kum. Manik for a Group 'D' post on compassionate grounds. This case has a previous history. Earlier the applicant had sought appointment in respect of his elder daughter Kum. Rashmi. The earlier order is reproduced as under :-

" In the circumstances of the case, I am satisfied, that the applicant has been incapacitated on account of medical grounds, thereby he has been allowed to retire, which cannot be treated as voluntary retirement. Considering the predicament of the applicant and the members of his family, especially his unmarried daughter, the balance of convenience is in his favour. Therefore, in the interest of justice, I hereby direct the respondents to consider the request of the applicant once again, keeping in view of his incapacity on medical grounds to appoint his daughter on compassionate grounds and to see whether there is any possibility of absorbing her in any capacity as they deem fit. To that extent, the petition is partly allowed and accordingly the OA. is disposed of with the above direction. No order as to costs."

The order was passed on 17.6.1994 but within 8 days the of order she got married and as such he has requested favour of compassionate appointment (in) another daughter, Kum. Manik.

2. The contention of the applicant is that the Tribunal had granted relief in respect of his elder daughter and it was only a coincidence that she got married within 8 days of the order. The financial condition which led to the passing of the order by the Tribunal on 17.6.1994 has in no way changed and that the respondents ought to have considered his request for employment of his daughter Kum. Manik.

3. The respondents have opposed the OA. on several grounds. First of all, it is stated that there was a C.P. filed by the applicant in regard to earlier OA. No. 1306/93 and the same was disposed of by the Tribunal by its order dated 19.2.1996 which reads as under :-

" Heard Mr. B. Ranganathan, counsel for applicant who has filed C.P. NO. 138/95 and Mr. Suresh Kumar for respondents. Both the counsel concede that the direction given by this Tribunal vide its order dated 17.6.94 is in the case of compassionate appointment of daughter Kum. R.R. Mayekar. In para two of the judgement it is stated that on verification of family by the respondents there are only two dependants to the applicant viz. his wife and one daughter. His daughter got married after the judgement of the Tribunal dt. 17.6.94. In the circumstances counsel for respondents states that C.P. does not survive. C.P. is disposed of accordingly."

The counsel, therefore, states that OA. is barred by principles analogous to res-judicata. Secondly, the counsel states that the applicant has not come to the Tribunal with clean hands because the department's verification shows that the applicant has only two dependants, namely, his wife Vijaya and his daughter Rashmi and that the stand of the department is reflected in the Tribunal's findings in Para 2 of the order dated 17.6.1994 and it was because of this finding that the C.P. also came to be dismissed. Thirdly, the respondents contend that the direction of the Tribunal in its order dated 17.6.1994 were advisory and not mandatory in nature and in view of the [redacted] marriage of daughter, the question of giving compassionate appointment to another daughter does not arise.

4. Counsel for applicant has submitted that he had never suppressed the fact relating to his dependants, that at the time he made the application he had 4 dependants, viz. his wife Vijaya and his three daughters, viz. Rashmi, Manik and Sushma. The

fourth daughter Aruna was already married and was not shown as dependant and son Ravindra who stays separately was also not shown as dependant.

5. I have seen the application and the averments of the applicant in the related OA. viz. 1306/93. I do not find that the applicant had suppressed the facts relating to his dependants in the original OA. as well as in the present OA. So far as the Tribunal's observations in para 2 of the order dated 17.6.1994 in earlier OA. are concerned, they are not the findings of the Tribunal. These were the recital of the averments of the respondents. Moreover, the direction of the Tribunal to consider the daughter Rashmi for appointment has been read as the direction of the Tribunal for appointment of eligible dependant and since the financial conditions have not changed, the compassionate appointment should have been offered to his next daughter Manik. The allegations of the respondents that his wife does some business by way of selling of Vada pav etc. does not show that she has independant source of income but only shows that his wife is required to resort to miscellaneous activities to support the family.

6. I have already observed that the applicant has not suppressed any material facts. I am, therefore, not able to appreciate the contention of the respondents that the applicant has approached the Tribunal with unclean hands. I do not also agree that the department could have considered the directions of the Tribunal as advisory and not mandatory. It is for the Tribunal to interpret whether its instructions are advisory or mandatory as mandatory and I, therefore, see Para 6 of the order. It did indicate that the applicant was incapacitated and

his financial condition was such that interest of justice warranted that respondents may consider the possibility of absorbing his daughter in a suitable capacity as they deem fit. The intention clearly was that if a position was available, the defendant daughter of the applicant should have been offered an appointment. The applicant clearly belongs to lower middle class and the fact that his daughter is prepared to accept Group 'D' post shows the desperate condition of the family due to incapacitation of the only bread-winner of the family. It is true that the C.P. came to be dismissed but the scope of this Tribunal's jurisdiction in C.P. is strictly limited and I, therefore, do not attach weight to the fact that C.P. was dismissed. What I am concerned to see is whether the respondents have dealt fairly with the applicant when he placed facts before them and approached them for compassionate appointment to his other daughter Kum. Manik. I conclude that they have not.

7. I, hereby, allow the OA, and direct the respondents to consider the case of the applicant's daughter Kum. Manik for a Group 'D' post in the department subject to availability of vacancy for compassionate appointment. Action is to be taken in this regard within three months. No orders as to costs.

M.R.Kolhatkar

(M.R.KOLHATKAR)

MEMBER (A)

mrj.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

MUMBAI BENCH, MUMBAI,

REVIEW PETITION NO. 4 OF 1998

IN
ORIGINAL APPLICATION NO. 660/96.

Provisionally, this the 25th day of March 1998.

Coram: Hon'ble Shri M.R.Kolhatkar, Member(A).

R.N.Mayekar ... Applicant (Original)

(S.P.Kulkarni, Advocate)

V/s.

Union of India & Ors.

(Chief Commissioner of
Income Tax, Mumbai)

And

Chief Commissioner of
Income Tax, Mumbai.

... Respondents(Original)

(V.D.Vadhavkar, Advocate).

OR D E R

(Per Shri M.R.Kolhatkar, Member(A))

In this Review Petition the Review Petitioner/Original Respondents (Income-tax Department) have sought a review of my order dt. 17.4.1997 by which the application for grant of compassionate appointment was allowed and the respondents were directed to consider the case of the applicant's daughter Kum. Manik for a Group 'D' post in the department subject to availability of vacancy for compassionate appointment.

2. The respondent has filed an M.P. viz. M.P. 175/98 for condonation of delay in filing the R.P. ~~rehearing~~ The Judgment was delivered on 17.4.1997 and the same is stated to have been received on or about 26.5.1997 by the Department and time for filing a review therefrom was one month i.e. by 26.6.1997. The R.P. was filed on 21.10.1997 and there is thus a delay of

about 4 months. The respondents state that they received a report having a bearing on the Judgment on 9.7.1997. After appropriate and due consideration a decision was taken to move the Tribunal for review and the present R.P. came to be filed on 21.10.1997. According to the respondents, the report received by the respondents goes to the root of the matter and shows that the applicant had obtained relief by concealing vital information bearing on his financial position and therefore the delay ~~may~~ be condoned.

3. The counsel for the original applicant has opposed the M.P. for condonation of delay. According to him the delay is of about ~~four~~ months and that it is required ~~explained~~ day by day and the respondents have to be and failed in their duty ~~not~~ to explain the reasons, therefore the delay may not be condoned and the R.P. be dismissed on this ground alone. In the facts and circumstances of the case, I am inclined to condone the delay. The delay is condoned, M.P. is allowed.

4. So far as the R.P. is concerned, it is stated that in the course of enquiry under Sec. 133A of the Income-tax Act in the month of September, 1994 in the case of Shri Jagat M. Parikh it came out that Shri Ravindra Raman Mayekar the son of the ~~late~~ applicant in the present case who is stated to be living separately from the applicant was a Partner of the said Jagat M. Parikh. It further came out that Ravindra invested ~~Rs. 5 lac in the partnership~~ Rs. 5 lac in the partnership out of which Rs. 4 lac were from relatives and Rs. 1 lac was out of income from ancestral property. It was explained that

Ravindra's father i.e. the applicant owned 5 acres of land on which mango and coconut trees are grown. Shri Ravindra has also revealed that his mother Smt. Vijaya M. Mayekar had advanced a loan of Rs.5 lac to M/s. M&P Construction which was not repaid to her till 15.9.1994. It was further revealed that Shri Ravindra has been carrying on business in the name of "Kanda Batata (Onion Potato centre) Vikri Kendra" at Worli and that his mother Smt. Vijaya is also carrying on business in the name of "Worli Wada Pav Centre" from the same shop.

5. The respondents have enclosed a copy of the statement of Ravindra dt. 15.9.1994 (at page 9). They have also enclosed a copy of the Departmental report (at page 15).

6. The counsel for the review petitioners contends that the ~~material~~ record ^{on} shows that the applicant had made false statement regarding his financial condition. He had not disclosed the fact of owning agricultural land and substantial income ^{deriving} ^a ^{Incidentally,} there from. The reference to the wife of the applicant engaging in miscellaneous activities was also ~~material~~ reflected in the Judgment of the Court vide para 5 where it is stated that ~~his~~ wife does some business by way of selling of vada pav etc. which does not show that she has independent source of income but only shows that his wife is required to resort to miscellaneous activities to support the family.

7. The respondents have, therefore, prayed for revocation of the Order dt. 17.4.1997 and directing dismissal of the O.A.

8. When the Review Petition was received, it was decided not to decide it by circulation, but to hear it in the open court. The applicant was given liberty to file a reply to the Review Petition. No reply, was however filed till the date of final hearing. The learned counsel for the original applicant has contended that it is well settled that when a review is sought on the ground of discovery of new evidence, the evidence must be relevant, clear and conclusive. The new evidence must be such as is presumably to be believed and if believed, would be conclusive. In this connection, he has referred to the case law cited at page 1599 of Lal's commentary on Administrative Tribunals Act IIIrd Edition. The above publication at page 1600 cites English case in Guest v. Abbotson (1922) where Scrutton, L.J. observed :

"In order to obtain a new trial, for the purpose of calling fresh evidence, litigant should show (i) that such evidence was available, and of undoubted character; (ii) that the evidence was so material that its absence might cause a miscarriage of justice; (iii) that it could not with reasonable care and diligence have been brought forward at the time."

The learned counsel stated that in the light of this settled position the evidence under section 133A of the Income-tax Act cannot be considered to be such a strong evidence as to over throw the original Judgment. It is contended that the department has not made any extensive enquiry regarding the ancestral property of the applicant. The Tribunal had accepted the position that Ravindra does not stay with the applicant and no material has been produced to corroborate Ravindra's statement regarding mother's business by obtaining the statement.

of his mother. It is further contended that the enquiry was made in 1994 and the O.A. was filed in 1996 and the department ought to have been aware of the statement and at this late stage the department cannot rely on such collateral evidence.

9. The learned counsel for the review petitioner has contended that there is a nexus between mother and Ravindra whether or not he stays separately. ~~No~~ reply has been filed by the applicant although the Tribunal gave liberty to them and that the evidence brought out by the department can definitely be stated to be strong.

10. I have considered the matter. The scheme of compassionate appointment has been formulated by the Government with a view to provide immediate assistance to the dependants of the employee who dies in harness or who ~~is~~ medically incapacitated. The financial distress test is required to be satisfied. The fresh material which is brought on record by the Department does show that the financial position of the applicant was not such as could pass the test of distress. The learned counsel for review petitioner is quite right in saying that it was open to the applicant to rebut the allegations in the statement of Ravindra on which the department has relied. In my view, therefore, the evidence brought forward by the respondents is certainly credible and is conclusive as to the financially comfortable position of the original applicant. I consider that the tests laid down in Guest v. Abbotson are fulfilled in this case because the evidence was available in 1994, that is at the time respondents filed their written statement, ^{that the}

evidence is material and that considering the vastness of the department of Income-tax in which there is a large number of Circles for assessment and the assessment work is distinct from the work of Personnel Branch, the department could not with reasonable care have brought forward the material earlier.

11. I am therefore, of the view, that my Judgment and recalled dt. 17.4.1997 is liable to be reviewed/and I accordingly recall the same.

12. I further hold that as the test for grant of compassionate appointment (~~is~~) not fulfilled by the applicant, the applicant is not entitled to the relief claimed by him. The O.A. No.660/96 is therefore dismissed with no orders as to costs.

MR. Kolhatkar

(M.R.KOLHATKAR)
MEMBER(A).

B.

(T)