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CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH

CIRCUIT COURT SITTING AT INDORE

Original Application No. 703 of 2005

Indore, this the 28th day of July, 2006

Hon'ble Shri Justice B. Panigrahi, Chairman
Hon'ble Dr. G.C. Srivastava, Vice Chairman

Javed Khan, S/o. Shri Aziz Khan,
aged about 27 years, Designation-Candidate,
Office Address - OIC, Survey of India,
No. 44. Party (CC), CGO Complex-
Shivaji Cheraha, AB Road, Indore, ... Applicant
H.No.3083, Kalimata Road, Mhow(MP).-
453441
(By Advocate - Shri I.H.Khan)

V e r s u s

1. Union of India, through the Secretary, Govt. of India, Ministry of Science and Technology, Department of Survey of India, New Delhi.
2. The Surveyor General, Post Box. No. 37, Dehradun - 248001.
3. The Director of Survey of India (Central Circle), Jabalpur.
4. Officer-in-Charge, Survey of India No.44, Party (CC), CGO Complex, Shivaji Cheraha, AB Road, Indore.... Respondents

(By Advocate - Shri Umesh Gajankush)

O R D E R (Oral)

By Justice B.P. Panigrahi, Chairman.-

The applicant's father died in harness on 22.9.1999 while he was serving in Survey of India. His father had completed 30 years of qualifying service at the time of his death. It is alleged that the applicant's father was the sole bread earner in the family and after his demise the family landed into financial crises and was in distress. Therefore, the applicant filed an application for compassionate appointment on 26.4.2000. He has claimed that he should be given appointment under compassionate scheme against any LDC/UDC post, since he was holding a master's degree in commerce.

2. The respondents have filed their reply in which they have stated that appointment under compassionate scheme has been restricted to 5% quota by OM dated 22.6.2001. The respondent no.1 has also decided that a committee shall be constituted for examining the prayer for appointment on compassionate grounds depending upon the availability of vacancies. The applicant's case was carefully examined by the said committee along with other persons who are similarly situated but since other deserving cases were there, the applicant could not be given appointment. They have taken the plea that the OA is also barred by limitation since within a period of three years from the date of accrual of cause of action the applicant failed to approach the Tribunal. The respondent-authorities further stated that the terminal benefits to the tune of Rs.4,78,840/- have been released to the applicant's family. Therefore, it cannot be said that the family is in a distress condition. We are of course not persuaded by such a plea, as the terminal benefits goes to the widow of the deceased and not to the other dependents of the family. Merely because the terminal benefits were released to the family, the applicant's claim cannot be rejected. But, here we find that the applicant's father died on 22.9.1999 and the case was filed some time in 2005. Mr.Khan, appearing for the applicant has submitted that since the applicant has been making several representations one after another expecting that the respondents may provide him a job, therefore, he did not file a case before the Tribunal. It is settled position of law that mere submission of representations will not save the period of limitation. It is not understood why did he wait for such a long time when the offer of appointment was not given to him within a reasonable period.

3. In this particular case from the reply of the respondents it is seen that 5% quota meant for compassionate appointment has already been exhausted. The committee also

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carefully examined the applicant's case vis-a-vis others. Since other deserving cases were there, the applicant could not be considered for appointment under the compassionate scheme. Looking to the case of the applicant from every angle, we find that there is no merit in this Original Application.

4. The learned counsel appearing ~~for~~ from the respondents has relied upon the recent judgment of the Hon'ble Supreme Court in the case of Commissioner of Public Instructions and others Vs. K.R.Vishwanath, 2005 AIR SCW 4102, paragraphs 10 & 11 of which read as under:-

"10. As was observed in State of Haryana and Ors Vs. Rani Devi & anr. (AIR 1996 SC 2445), it need not be pointed out that the claim of person concerned for appointment on compassionate ground is based on the premises that he was dependent on the deceased-employee. Strictly this claim cannot be upheld on the touchstone of Article 14 or 16 of the Constitution of India. However, such claim is considered as reasonable and permissible on the basis of sudden crisis occurring in the family of such employee who has served the State and dies while in service. That is why it is necessary for the authorities to frame rules, regulations or to issue such administrative orders which can stand the test of Articles 14 and 16. Appointment on compassionate ground cannot be claimed as a matter of right. Die-in-harness Scheme cannot be made applicable to all types of posts irrespective of the nature of service rendered by the deceased employee. In Rani Devi's case (supra) it was held that scheme regarding appointment on compassionate ground if extended to all types of casual or adhoc employees including those who worked as apprentices cannot be justified on constitutional grounds. In Life Insurance Corporation of India Vs. Asha Ramachandra Ambekar (Mrs) and Anr. (1994 (2)SCC 718), it was pointed out that High Courts and Administrative Tribunals cannot confer benediction impelled by sympathetic considerations to make appointments on compassionate grounds when the regulations framed in respect thereof do not cover and contemplates such appointments. It was noted in Umesh Kumar Nagpal V. State of Haryana and Ors. (1994 (4)SCC 138), that as a rule in public service appointment should be made strictly on the basis of open invitation of application and merit. The appointment on compassionate ground is not another source of recruitment but merely an exception to the aforesaid requirement taking into consideration the fact of the death of employee while in service leaving his family without any means of livelihood. In such cases the object is to enable the family to get over sudden financial crisis. But such appointments on compassionate ground have to be made in accordance with the rules, regulations or administrative instructions taking into consideration the financial condition of the family of the deceased.

11. In Smt. Sushma Gosain and Ors. Vs. Union of India and Ors. (1989 (4)SCC 468), it was observed that in all claims of appointment on compassionate grounds, there

should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointments should, therefore, be provided immediately to redeem the family in distress. The fact that the ward was a minor at the time of death of his father is no ground, unless the scheme itself envisages specifically otherwise, to state that as and when such minor becomes major he can be appointed without any time consciousness or limit. The above view was reiterated in Phoolwati (Smt.) v. Union of India and Ors, 1991 Supp(2) SCC 689, and Union of India and Ors. v. Bhagwan Singh (1995) 6 SCC 476. In Director of Education (Secondary) and Anr. v. Pushpendra Kumar and Ors (1998 (5) SCC 192), it was observed that in matter of compassionate appointment there cannot be insistence for a particular post. Out of purely humanitarian consideration and having regard to the fact that unless some source of livelihood is provided the family would not be able to make both ends meet, provisions are made for giving appointment to one of the dependents of the deceased who may be eligible for appointment. Care has, however, to be taken that provision for ground of compassionate employment which is in the nature of an exception to the general provisions does not unduly interfere with the right of those other persons who are eligible for appointment to seek appointment against the post which would have been available, but for the provision enabling appointment being made on compassionate grounds of the dependant of the deceased employee. As it is in the nature of exception to the general provisions it cannot substitute the provision to which it is an exception and thereby nullify the main provision by taking away completely the right conferred by the main provision".

5. In view of above, we do not find any merit in this OA. Accordingly, the OA is dismissed, however, without any order as to costs.

Gowarikar
(Dr. G.C. Srivastava)
Vice Chairman

B. Panigrahi
(B. Panigrahi)
Chairman

rkv.

प्रस्तुति का नियम अनुसार निम्नलिखित विधायकों द्वारा दिलाई गई है।

- (1) डॉ. गोवारिकर, विजय विधायक
- (2) डॉ. ब. पानिग्राही, विजय विधायक
- (3) डॉ. गोवारिकर, विजय विधायक
- (4) डॉ. गोवारिकर, विजय विधायक

1. H. Khan Dr. Khan
Dr. Gagan Singh
Dr. M. M. M. M.

उप रजिस्ट्रर

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Agree
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