

Reserved
(On 12.10.2018)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the **31st** day of **October** 2018

Original Application No. 330/00209 of 2016

Hon'ble Mr. Gokul Chandra Pati, Member – A

Aresh Kumar Srivastava, S/o Late Suresh Chandra Srivastava, R/o House No. C-131, Awas Vikas Colony, Meera Bhawan, District Pratapgarh, U.P.

...Applicant
By Adv: Shri K.S. Srivastava

V E R S U S

1. Union of India through Secretary, Ministry of Central Excise and Customs, New Delhi.
2. Chief Commissioner Central Excise, Customs and Service Tax, 7-A, Ashoka Road, Lucknow.
3. Commissioner Central Excise and Customs, Allahabad.

... Respondents
By Adv: Shri L.M. Singh

O R D E R

The facts in this case in brief, are that the father of the applicant, while being employed under the respondents as Deputy Office Superintendent Endorsement-II, expired on 31.08.2008 while in service. Thereafter, the applicant moved the respondents, followed by representation by his mother, for appointment of the applicant on compassionate ground. When no action was taken, the applicant filed OA No. 1444/2011, which was disposed of by this Tribunal vide order dated 26.11.2011 (Annexure No. 3 to the OA), giving a direction the respondents to take a final decision on the pending representation of the applicant with regard to his appointment on compassionate ground within a period of two months. In compliance of the direction of this Tribunal, the respondent No. 2 passed an order dated 08.05.2012 (Annexure No. 4 to the OA).

2. It was stated by the respondents that the case of the applicant could not be considered for appointment on compassionate ground because of lack of adequate number of vacancies. Being aggrieved, the applicant submitted another application dated 16.07.2012, which was considered by the respondents and vide order dated 17.10.2012 (Annexure No. 6 to the OA), the applicant was informed about lack of vacant post, for which his case could not be considered. It was further informed by the respondents that his application has been kept pending for consideration in future. The respondents further issued a letter dated 06.05.2014 (Annexure No. 7 to the OA) to the applicant, asking for additional documents for appointment against the post of Tax Assistant and those documents were duly submitted by the applicant.

3. Thereafter, when no action was taken by the respondents, the applicant obtained a letter dated 17.12.2015 (Annexure No. 10 to the OA), in reply to RTI Application, in which it was stated that 10 vacant posts in Group 'C' are available in the department for compassionate appointment. Thereafter, the applicant submitted a reminder dated 10.01.2016 (Annexure No. 11 to the OA) and when no action was taken by the respondents, the applicant filed the present OA with the following prayers:-

- A. *To issue a direction to the opposite party no. 2 i.e. Chief Commissioner Central Excise, Customs and Service Tax 7-A, Ashoka Road, Lucknow, to pass the appropriate order in regard the compassionate appointment of the applicant in place of his father under dying-in-harness Rules in pursuance of their orders / letters dated 08.05.2012, 17.10.2012, 06.05.2014 and 17.12.2015 without unreasonable delay. (Annexure No. 4, 6, 7 and 10 of compilation I).***
- B. *To issue any other order or direction which this Hon'ble Tribunal may deem fit and proper under the facts and circumstances of the case.***
- C. *Award the cost of original application to the applicant."***

4. The respondents filed the counter affidavit and stated that the applicant's case was considered but he could not be appointed due to limited vacancy upto August 2012 and more deserving candidates were appointed. It was further stated in the counter affidavit as under:-

"12.....The Applicant was informed vide office letter dated 17.10.2012 that his case was considered on 19.09.2012 at Lucknow for compassionate appointment by the Departmental Committee, but due to non availability of vacancy under compassionate appointment quota upto August, 2012 the Applicant could not offer appointment. The cadre control, Lucknow was sought information regarding current marital status of candidates who had applied for appointment on compassionate ground in Group 'c'. The notary affidavit submitted by the Applicant was sent to the cadre control, Lucknow. Presently about 123 cases for compassionate appointment is pending for consideration. All the cases including the Applicant are in process and same may be finalized in due course, but without prejudice to the right of any candidate."

5. The applicant have filed the Rejoinder affidavit, stressing mainly on the averment that as per the reply dated 17.12.2015, there are 10 vacant posts available in the department for appointment on compassionate ground.

6. Learned counsels were heard on the matter on 12.10.2018 and they reiterated the averments in their respective pleadings. While the applicant's counsel emphasized on the fact that the case of the applicant is not being considered for appointment in spite of availability of 10 vacancies as stated in the letter dated 17.12.2015 (Annexure No. 10 to the OA), the respondents' counsel submitted that the case of the applicant could not be considered due to inadequate number of vacancies and it is under consideration of the respondents as stated in the Counter affidavit.

7. As per the Frequently Asked Questions (in short FAQ) on compassionate appointment uploaded in the portal of the Department of Personnel and Training (in short DOPT), the question no. 2 and the reply are as under:-

"Question

2. What is the objective of scheme for compassionate appointments?

Answer

The objective of the Scheme is to grant appointment on compassionate grounds to a dependent family member of a Government servant who has died while in service or who is retired on medical grounds before attaining the age of 55 years (57 years for erstwhile Group 'D' employees), thereby leaving the family in penury and without any means of sustainable livelihood so as to

provide relief to the family of the Government servant concerned from financial destitution and to help it get over the emergency."

From above, it is clear that the objective of the Scheme of compassionate appointment is to provide relief to the family of the deceased government servant from financial destitution and to help it get over the emergency. Therefore, it implies that the assistance needs to be provided as per the rules and guidelines of the Government as soon as possible, so as to achieve the desired objective of the Scheme.

8. In this case, the applicant's case has been found to be eligible to be covered under the Scheme, as indicated by the respondents in their pleadings and the letters communicated to the applicant and his case for appointment could not be considered in view of inadequate number of vacancies and availability of more deserving candidates than the applicants. It is not mentioned by the respondents on what criteria or basis on which the relative merit of the candidates is decided and the same has not been disputed by the applicant.

9. in view of the above, taking into consideration the averments of the respondents in para 12 of the Counter affidavit, the respondents are directed to consider the case of the applicant along with other cases strictly as per the guidelines and the rules applicable for the scheme for compassionate appointment and dispose of the pending case of the applicant by passing a speaking order, copy of which shall be communicated to the applicant within six months from the date of receipt of a certified copy of this order. The OA is disposed of with these directions. There will be no order as to costs.

(**Gokul Chandra Pati**)
Member – A

/pc/