

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.352 of 2012

Cuttack this the 25th day of May, 2018

CORAM:

THE HON'BLE DR.MRUTYUNJAY SARANGI, MEMBER(A)

Sujit Kumar Behera, aged about 26 years, S/o. late Sudhakar Behera, C/o.Pravakar Behera, At-Gandia, PO-Gandiapatna, PS-Gandia, District-Dhenkanal, at present Plot No.3275, At-Chakeisiani, PO-Rasulgarh, PS-Mancheswar, Bhubaneswar, District-Khurda

...Applicant

By the Advocate(s)-M/s.T.K.Mishra

S.K.Sahoo

A.K.Behera

-VERSUS-

Union of India represented through:

1. The Secretary, Ministry of Finance, Department of Revenue Control Board of Excise & Custom, North Block, New Delhi-110 001
2. Chief Commissioner, Office of the Commissionerate, Central Excise Customs & Service Tax, Bhubaneswar-II, C.R.Building, Rajaswa Vihar, Bhubaneswar-751 007 (Orissa)

...Respondents

By the Advocate(s)-Mr.J.K.Nayak

ORDER

DR.MRUTYUNJAY SARANGI, MEMBER(A):

The applicant is the son of Shri late Sudhakar Behera who, while working as Deputy Office Superintendent (DOS) in the Central Excise & Customs died of heart attack on 24.2.2008. When the father died, he was survived by his wife and two sons and a daughter. The applicant is the elder son. His mother had submitted an application on 11.4.2008 to the Commissioner of Central Excise & Customs requesting for compassionate appointment to the applicant and the applicant himself had also

made a formal application on 7.7.2009 stating that he is a Science Graduate and his mother's family is in financial distress. Subsequently, he submitted another representation on 23.5.2011 to the Chief Commissioner of Central Excise, Customs & Service Tax, Bhubaneswar. Since no action was taken on his representations, he had filed O.A.No.754 of 2011 before this Tribunal which was disposed of on 25.11.2011 with a direction to Respondent No.2 to consider the applicant's representation dated 23.5.2011 and pass a reasoned order within 90 days. In compliance of the order of this Tribunal, the Commissioner, Central Excise, Customs & Srevices Tax, Bhubaneswar-II passed the impugned order dated 7.1.2012(A/4) rejecting the representation of the applicant with the following order.

"In view of the facts and circumstances of the case as discussed above, it is observed that considering the befitting-ness of educational qualification of the applicant, Bhubaneswar-I Commissionerate under Bhubaneswar Zone has considered the case of applicant for appointment on compassionate ground to the post of Tax Assistant from time to time but could not offer appointment for want of a vacancy in the post of T.A. against compassionate appointment quota and ultimately, his case has crossed the prescribed time limit of 3 years & has been treated as finally closed in terms of the DOPT OM dated 5.5.2003, as discussed in para-5.1 and 5.2 supra. As the cadre of Ministerial Officer is administered by Bhubaneswar-I Commissionerate in Bhubaneswar Zone, the application stands duly considered by the Competent Authority and the undersigned has no competence to pass any other order as regards this. Further, that there being no post of Sepoy available against compassionate appointment quota to be offered to the applicant though not befitting to his qualification by Bhubaneswar-II Commissionerate under Bhubaneswar Zone as discussed in Para-6, his

application cannot be considered for appointment as Sepoy. Accordingly, as per the direction of Hon'ble CAT, the representation dated 21.5.2013 is considered and is rejected as per the discussion above.

This order is issued in compliance of Hon'ble CAT Cuttack Bench order dated 25.11.2011 superficially directing this authority to consider the application 25.05.2011 and pass a speaking order".

Aggrieved by this impugned order dated 17.1.2012, the applicant has filed the present O.A. praying for the following reliefs:

"It is therefore, most humbly prayed that considering the aforesaid facts and circumstances, this Hon'ble Tribunal may graciously be pleased to allow this application and issue direction to the respondent no.2 to give appointment to the applicant under compassionate ground in any post and to quash the Annexure-A/4 the order of rejection for compassionate appointment".

2. The applicant has based his prayer mainly on the ground that his family is in a distressed condition after the death of his father and he is willing to work in any post other than Tax Assistant or a Sepoy under compassionate appointment.

3. The Respondents in their counter reply filed on 28.6.2012 have contested the claim of the applicant. It is their contention that appointment on compassionate ground should be made only in regular vacancy as per the DOP&T OM No.14014/6/94-Estt.(D) dated 9.10.1998. The applicant could not be given compassionate appointment since there was no vacancy in the

post of Tax Assistant and Sepoy. Therefore, the applicant's O.A. lacks merit and should be dismissed.

4. The matter was argued on 4.5.2018 by the learned counsels from both the sides. I have perused the documents submitted by them. The issue to be decided in the present O.A. is whether the applicant is entitled for consideration for compassionate appointment by Respondent No.2. It is a settled law that there is no vested right for compassionate appointment. However every applicant has a right to be considered for compassionate appointment in a just and fair manner vis-à-vis the claim of similarly situated applicants. The Hon'ble Supreme Court in a catena of judgments has held that compassionate appointment can be considered for candidates whose sole breadwinner in the family have expired while in service. [**Haryana SEB vs. Naresh Tanwar (1996) 8 SCC 23, Santosh Kumar Dubey v. State of UP, (2009) 6 SCC 481, Haryana SEB vs. Krishna Devi (2002)10SCC 246, State of U.P. vs. Paras Nath 1998, (1998) 2 SCC 412 and National Hydroelectric Power Corporation vs. Nanak Chand (2004) 12 SCC 487**]. In **State Bank of India vs. Anju Jain (2008) 8SCC 475**, the Hon'ble Apex Court had pertinently observed the following.

“Appointment on compassionate ground is never considered a right of a person. In fact, such appointment is violative of rule of equality enshrined and guaranteed under Article 14 of the Constitution. As per settled law, when any appointment is to be made in Government or

semi-Government or in public office, cases of all eligible candidates must be considered alike. That is the mandate of Article 14. Normally, therefore, State or its instrumentality making any appointment to public office, cannot ignore such mandate. At the same time, however, in certain circumstances, appointment on compassionate ground of dependents of the deceased employee is considered inevitable so that the family of the deceased employee may not starve. The primary object of such scheme is to save the bereaved family from sudden financial crisis occurring due to death of the sole bread earner. It is thus an exception to the general rule of equality and not another independent and parallel source of employment”.

5. Keeping this in mind, the Government in their wisdom have put a ceiling of 5% of direct recruit posts for compassionate appointment. This obviously implies that the opportunity for compassionate appointment will be limited and there will be a stiff competition for the jobs since at any point of time the number of applicants for compassionate appointment will far exceed the number of jobs available (5% of the direct recruitment posts). The government have also made provision for consideration of the applications for compassionate appointment giving equal opportunity to all such applicants by providing for their consideration in the appropriate Committee for Compassionate Appointment which will examine each application against certain laid down criteria. Such criteria include the level of indigence of the family, family pension, terminal benefits, monthly income, number of earning members and income from property, extent of movable/immovable property, number of dependents, number

of unmarried daughters, number of minor children and left over service of the deceased employee. There is a reasonable expectation on the part of the applicants that their cases will be considered against a properly laid down criteria on an equal footing with other applicants and those who are the most deserving will be offered appointment on compassionate ground.

6. In 2012, the Government issued the DOPT OM No. F. No. 14014/3/2011-Estt.(D) dated 26.07.2012 in which the time limit for consideration of the request for compassionate appointment has been removed. The OM dated 26.07.2012 and the subsequent clarification dated 04.10.2012 read as follows:

"The primary objective of scheme for compassionate appointment circulated vide O.M. No. 14014/6/94-Estt(D) dated 09.10.1998 is to provide immediate assistance to relieve the dependent family of the deceased or medically retired Government servant from financial destitution i.e. penurious condition. The Hon'ble Supreme Court in its judgment dated 05.04.2011 in Civil Appeal No. 2206 of 2006 filed by Local Administration Department vs. M. Selvanayagam @ Kumaravelu has observed that "an appointment made many years after the death of the employee or without due consideration of the financial resources available to his/her dependents and the financial deprivation caused to the dependents as a result of his death, simply because the claimant happened to be one of the dependents of the deceased employee would be directly in conflict with Articles 14 & 16 of the Constitution and hence, quite bad and illegal. In dealing with cases of compassionate appointment, it is imperative to keep this vital aspect in mind".

2. This Department's O.M. No. 14014/6/ 1994-Estt. (D) dated 09.10.1998 provided that Ministries/Departments

can consider requests for compassionate appointment even where the death or retirement on medical grounds of a Government servant took place long back, say five years or so. While considering such belated requests it was, however, to be kept in view that the concept of compassionate appointment is largely related to the need for immediate assistance to the family of the Government servant in order to relieve it from economic distress. The very fact that the family has been able to manage somehow all these years should normally be taken as adequate proof that the family had some dependable means of subsistence. Therefore, examination of such cases call for a great deal of circumspection. The decision to make appointment on compassionate grounds in such cases was to be taken only at the level of the Secretary of the Department/Ministry concerned.

3. Subsequently vide this Department's O.M. No. 14014/19/2002-Estt. (D) dated 5th May, 2003 a time limit of three years time was prescribed for considering cases of compassionate appointment. Keeping in view the Hon'ble High Court Allahabad judgment dated 07.05.2010 in Civil Misc. Writ Petition No. 13102 of 2010, the issue has been re-examined in consultation with Ministry of Law. It has been decided to withdraw the instructions contained in the O.M. dated 05.05.2003."

7. In the present case, the applicant's representation dated 21.5.2013 was rejected on the ground that no vacancy was available for the post of Tax Assistant or Sepoy. The applicant is willing to be considered for any post as mentioned in his representation and also in Para-8(b) of the O.A. which specifically states that he is willing to be considered for any post. The Respondents have rejected the applicant's representation also on the ground that more than three years have passed and that the applicant's case has crossed the prescribed time limit of three years and has been treated as closed in terms of DOP&T OM dated 5.5.2003. However, in a

subsequent OM issued by the DOP&T dated 26.7.2012 it has been stipulated that there is no time limit for consideration of request for appointment on compassionate grounds. Even as per OM dated 5.5.2003 the applicant's case should be considered at least for three times. In view of the above, respondents are directed to consider the case of the applicant at least for two more times and if he is found eligible vis-à-vis the other applicants, he may be given employment in any post as per the extant rules and the policy laid down by the Government. The Respondents are directed to consider his case and pass a suitable appropriate order within a period of 90 days from the date of receipt of this order. No costs.

(DR.MRUTYUNJAY SARANGI)
MEMBER(A)

BKS

In **Haryana SEB vs. Naresh Tanswar (1996) 8 SCC 23**, **Santosh Kumar Dubey v. State of UP, (2009) 6 SCC 481**, **Haryana SEB vs. Krishna Devi (2002) 10 SCC 246**, **State of U.P. vs. Paras Nath 1998, (1998) 2 SCC 412** and **National Hydroelectric Power Corporation vs. Nanak Chand (2004) 12 SCC 487**, the Hon'ble Apex Court had recognized the need for providing compassionate appointment when the family of the deceased is in dire needs. In **State Bank of India vs. Anju Jain (2008) 8 SCC 475**, the Hon'ble Supreme Court had pertinently observed the following.

“Appointment on compassionate ground is never considered a right of a person. In fact, such appointment is violative of rule of equality enshrined and guaranteed under Article 14 of the Constitution. As per settled law, when any appointment is to be made in Government or semi-Government or in public office, cases of all eligible candidates must be considered alike. That is the mandate of Article 14. Normally, therefore, State or its instrumentality making any appointment to public office, cannot ignore such mandate. At the same time, however, in certain circumstances, appointment on compassionate ground of dependents of the deceased employee is considered inevitable so that the family of the deceased employee may not starve. The primary object of such scheme is to save the bereaved family from sudden financial crisis occurring due to death of the sole bread earner. It is thus an exception to the general rule of equality and not another independent and parallel source of employment”.

15. In the case of **V.Sivamurthy Vs. State of A.P., (2008) 13 SCC 730**, the Hon'ble Supreme Court have observed the following in respect of principles relating to compassionate appointment.

“.....9. The principles relating to compassionate appointments may be summarized thus;

(a) Compassionate appointment based only on descent is impermissible. Appointments in public service should be made strictly on the basis of open invitation

of applications and comparative merit, having regard to Articles 14 and 16 of the Constitution of India. Though no other mode of appointment is permissible, appointments on compassionate grounds are well recognized exception to the said general rule, carved out in the interest of justice to meet certain contingencies.

(b) Two well recognized contingencies which are carved out as exceptions to the general rule are;

(i) Appointment on compassionate grounds to meet the sudden crisis occurring in a family on account of the death of the bread-winner while in service.

(ii) Appointment on compassionate ground to meet the crisis in a family on account of medical invalidation of the bread winner.

Another contingency, though less recognized, is where land holders lose their entire land for a public project, the scheme provides for compassionate appointment to members of the families of project affected persons. (Particularly where the law under which the acquisition is made does provide for market value and solatium, as compensation).

(c) Compassionate appointment can neither be claimed, nor be granted, unless the rules governing the service permit such appointments. Such appointments shall be strictly in accordance with the scheme governing such appointments and against existing vacancies.

(d) Compassionate appointments are permissible only in the case of a dependant member of family of the employee concerned, that is spouse, son or daughter and not other relatives. Such appointments should be only to posts in the lower category, that is, class III and IV posts and the crises cannot be permitted to be converted into a boon by seeking employment in Class I or II posts."

16. A perusal of the catena of judgments pronounced by the Hon'ble Apex Court, Hon'ble High Court and various Benches of this Tribunal discussed at para 14 and 15 above makes it abundantly clear that the Courts of law have firmly supported the principle that compassionate appointment

cannot be denied merely because the family of the deceased have got some financial benefits consequent to the death of the sole bread winner of the family. The overwhelming trend of the judgments is that the applicants for compassionate appointment have to be considered for providing a fresh job so that the immediate financial need can be met and dire consequences of distress can be avoided. At the same time in various judgments the Courts have also laid down the principles that compassionate appointment is not a matter of right and cannot take away the principles enunciated in the constitution of equal opportunity for employment. In **V.Sivamurthy Vs. State of A.P., (2008) 13 SCC 730, Santosh Kumar Dubey Vs. State of U.P., (2009) 6 SCC 481**, it has been held that there is no vested right on the relatives of the deceased employee to seek and obtain compassionate appointment. In **Umesh Kumar Nagpal Vs. State of Haryana, (1994) 4 SCC 138**, the Hon'ble Apex Court clearly stated that in public service appointments should be made strictly on the basis of open invitation of applications on 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 the employee while in service leaving his family without any means of livelihood.

Clarification dated 04.10.2012:

Sub: Clarification for clarification to consideration of compassionate appointment cases reg.

Sir,

In continuation of Board's letter of even number dated 03.08.2012 on the above mentioned subject and to say that with reference to the DOP&T instruction contained in their OM No. 14014/3/2011-Estt.(D) dated 26.07.2012 a reference was made them to clarify whether the cases of compassionate appointment already decided and closed after expiry of 3 years in terms of their OM dated 5.5.2003 are required to be re-opened/examined or not.

2. The DOPT has now clarified that "with issue of instructions dated 26.07.2012, there is no time limit for consideration of request for appointment on compassionate grounds which is to be considered on merit in terms of instructions contained in their Department's OM dated 09.10.1998 as amended from

time to time. To avoid grievances/litigations administrative Department is advised to consider requests for compassionate appointment which have been already considered/closed again and take decision on merit of the case”.

3. The above decision may please be brought to the notice of all concerned for information, guidance and compliance.”