

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTRACK BENCH, CUTTACK

O.A.No.632 of 2014  
Cuttack this the 2<sup>nd</sup> day of November, 2017

CORAM:  
HON'BLE SHRI MRUTYUNJAY SARANGI, MEMBER(A)

1. Batakrushna Mohanta, aged about 21 years, S/o. late Kali Charan Mohanta, resident of Village-Khandapal, PO-Champajhar, Via-Thakurmunda, Dist-Mayurbhanj, Odisha, PIN-757 038.
2. Smt.Kandri Mohanta, aged about 46 years, W/o. late Kalicharana Mohanta, Vill- Khandapal, PO-Champajhar, Via-Thakurmunda, Dist-Mayurbhanj, Odisha, PIN-757 038.

...Applicants

By the Advocate(s)-M/s.A.A.Dash  
M.K.Balabantaray  
A.N.Pattnaik  
S.A.Pattnaik  
D.K.Mohanty

-VERSUS-

Union of India represented through:

1. The Director General, H.O.D., Geological Survey of India, Ministry of Geological Survey of India, Eastern Region, Bhu-Bijnan Bhawan, 2<sup>nd</sup> Floor  
Block-DK-6, Sector-11, Salt Lake City, Kolkata-700 091, West Bengal
2. Director (Drilling), H.O.D., Deputy Director General & Geological Survey of India, Eastern Region, Bhu-Bijnan Bhawan, 2<sup>nd</sup> Floor, Block-DK-6, Sector-11, Salt Lake City, Kolkata-700 091
3. Deputy Director General & HOD, Geological Survey of India, C.R.P., D.A.V. Road, Unit No.8, Gopabandhu Nagar, Bhubaneswar, Dist-Khurda-751 008 Odisha

...Respondents

By the Advocate(s)- Mr.D.K.Mallick  
ORDER  
DR.MRUTYUNJAY SARANGI, MEMBER(A)

The first and second applicants are respectively son and wife of a deceased Government employee, who died on 8.12.2004 while working as Laboratory Assistant (Drilling, Gr.III) under the Deputy Director General/HOD, Geological Survey of India, Bhubaneswar (Res.No.3). At the time of his death there were three surviving legal heirs, viz., wife, son and a daughter. The first applicant was only 10 years old at the time of the death of his father. The second applicant made an application on 26.06.2003 for appointment on compassionate ground, but did not get any response from the respondents. After waiting for 10 years, she sent another application on 4.9.2013 for appointment of her son on compassionate ground as her family is poor and it is impossible on the part of the family to survive. On 10.09.2013, the Director, (Drilling) & HOD, Eastern Region (Respondent No.2) forwarded the representation of the second applicant to the Deputy Director, Geological Survey of India, Eastern Region, Calcutta for further necessary action. On 15.10.2013, the Deputy Director General & HOD, Geological Survey of India, Eastern Region wrote a letter to the second applicant rejecting her request for appointment of her son on compassionate ground due to the delay in submitting the application. Aggrieved by this, applicants have filed this O.A. praying for the following reliefs:

- i) This Hon'ble Tribunal may be pleased to quash the rejection order dated 15.10.2013

passed by the Respondent No.2 under Annexure-6.

- ii) And further be pleased to direct the Respondents to appoint the applicant under compassionate appointment in any vacant post lying with the Respondents.
- iii) And to pass such further order/orders as are deemed just and proper in the facts and circumstances of the case for the ends of justice.

2. Applicant have based their prayer mainly on the ground that the son was a minor at the time of his husband's death. He finished his High School Certificate Examination in the year 2007 and has also obtained the National Apprenticeship Certificate in the Electrician Trade from the National Metallurgical Lab, Jamshedpur in the year 2011. However the application of the mother for compassionate appointment after the death of her husband had not got any response from the respondents and the first applicant's application has been rejected by the letter dated 15.10.2013. The mother had filed her a Writ Petition No.28220/2014 in the Hon'ble High Court of Orissa with a prayer to issue a Writ of Certiorari by quashing the rejection order dated 15.10.2013 and also to issue a Writ of Mandamus to appoint her son on compassionate ground in any vacant post by the respondents. The Hon'ble High Court, however, by judgment dated 11.04.2014 disposed off the matter with the observation that they have no jurisdiction to entertain the application, but the petitioner was granted liberty to move before the appropriate forum ventilating his

grievances. The first applicant's mother and sister have already given their consent for compassionate appointment and therefore, taking into account the poverty of the family and the financial hardships suffered by them, the rejection of the 1<sup>st</sup> applicant's application for compassionate appointment is a mala fide exercise of powers by the Respondent No.2.

3. The Respondents have filed their reply on 21.11.2014 in which they have contested the claim of the applicants. It is their contention that the wife of the deceased Government servant (Applicant No.2) is receiving family pension granted to her after the death of her husband. She had also received all the retirement benefits. The application by the son of the deceased employee (Applicant No.1) was received only on 4.9.2013, although he had not attained the age of 18 years on 5.3.2010. There is a lapse of three years five months and 28 days in submitting the application by the son for compassionate appointment. Therefore, the application was rejected. The earlier application submitted by the wife of the deceased employee (Applicant No.2) in the O.A. was incomplete and returned to her to file in a complete format in July, 2003. No action was taken by her for more than 10 years and the application of the son of the deceased employee was submitted on 4.9.2013. The very fact that the family of Smt.Kundri Mohanta applicant No.2 has been able to manage from 2003 to 2015 without grant of compassionate appointment by the

Government is an adequate proof that the family had some dependable means of subsistence. The family of the deceased employee had received a total amount of Rs.1,25,197 towards DCRG and other retirement benefits. They are also receiving family pension of Rs.3500/- per month and the admissible allowance. Due to the belated application made by applicant no.1, his request for compassionate appointment has been rejected. It has been submitted that the claim for compassionate appointment is not a matter of right. The O.A. therefore lacks merit and is liable to be dismissed.

4. I heard the learned counsels from both the sides and perused the documents submitted by them. During the course of arguments, learned counsel for the applicant cited the judgment of the Hon'ble High Court of Punjab & Haryana at Chandigarh in CWP No.4303 of 2009 and connected writ petitions (O&M) in Krishna Kumar vs. State of Haryana & Ors. decided on 20.04.2012, in which a three Judges Bench has held that once the application is already pending, the respondent-State cannot be permitted to reject the claim on hyper-technical ground and it is expected of a Welfare State to act fairly in the implementation of a beneficial legislation.

5. On perusal of the records, it is clear that the applicant no.2, the wife of the deceased Government employee had submitted an application for compassionate appointment on

26.06.2003(A/3). The respondents in their reply to the O.A. have stated that they had returned the application for necessary correction and to file it in complete format in July, 2003 itself, but the applicant no.2 had not taken any further action. The applicant no.1, son of the deceased employee, had not attained the age of 18 years on 5.3.2010. Application for compassionate appointment was submitted by the mother of applicant no.1 on 4.9.2013 after a gap of around three and half years. The letter of rejection dated 15.10.2013(A/6) reads as follows:

“Sub: Belated case for compassionate appointment

- reg:

With reference to your application No. Nil dated 04/09/2013 on the captioned subject, in this connection, it is intimated that as per Govt. of India guidelines and DDG(P), GSI office circular No.12031/CAC Minutes/CHQ/08-17, Vol.II dated 8.10.2012 item No. 10, the application for compassionate appointment from the applicant (i.e. eligible dependent of Govt. servant) should reach the appropriate authority within one year from the date of death of the Govt. servant. The application should be accompanied with all information and documents. A further extension of time limit upto maximum of 6 months can be given by the Director General, GSI on case to case basis, provided a request in this regard is furnished by the applicant well in advance. In the case of minor children, the time would commence from day he/she attained the age of 18 (eighteen) years. In this case, your son has completed 18 years on 5.3.2010 as per the records given by you (son's date of birth is 6.3.1992) and you have originated the application for compassionate appointment on 4.9.2013. So, there is a lapse of 3 years 5 months 28 days. Your belated request for compassionate appointment in

respect of your son cannot be acceded to by the competent authority in GSI, ER and the inconvenience caused is deeply regretted".

6. The Government have issued guidelines on compassionate appointment from time to time including the OM No.14014/6/94-Estt.(D) dated 09.10.1998 of DOP&T. The following principles are followed while considering cases for compassionate appointment:

i) The appointment on compassionate ground may be done when:

- a) a Government servant dies in harness or is retired on medical grounds before attaining the age of 55 years (57 years for Group 'D' Government servants);
- b) the family of deceased Government Servant is in indigent condition;
- c) the person seeking compassionate appointment is a dependent family member of the deceased Government servant, that is to say that he/she is spouse; son; daughter; brother/sister(in the case of unmarried Govt. servant) of the deceased Government servant who was wholly dependent on him;
- d) the claimant has attained the age of 18 years;
- e) the claimant is eligible and suitable for the post on which his compassionate appointment is being considered.

ii) Any request for compassionate appointment may be considered with greater sympathy by applying relaxed standards depending on the facts and circumstances of the case.

iii) 5% of the vacancies are to be filled by appointment on compassionate grounds.

iv) Compassionate appointments can be made in Group 'C' or 'D' post only.

- v) While considering an application for compassionate appointment, a balanced and objective assessment of financial condition must be made taking into account its assets and liabilities, presence of earning member, size of the family, ages of children, and essential needs of the family etc.
- vi) An application for compassionate appointment shall not be rejected merely on the ground that the family of Govt. Servant has received benefits under various welfare schemes.
- vii) Compassionate appointment shall have precedence over absorption of surplus employees and regularization of daily wagers.

By an Office Memorandum dated 5<sup>th</sup> May, 2003, following modifications were introduced in the compassionate appointment scheme-

- (a) If compassionate appointment to genuine and deserving persons cannot be offered in the first year due to non-availability of regular vacancy, his name must be continued for consideration for one more year.
- (b) The maximum time a person's name can be kept under consideration for offering Compassionate Appointment will be three years.

The DOPT OM No.14014/19/2002-Estt(D) dated 05.05.2003 has provided the following:

- “1. The undersigned is directed to refer to Department of Personnel and Training OM No.14014/6/94-Estt.(D) dated October, 9, 1998 and (O.M.) No.14014/23/99-Estt.(D) dated December, 3, 1999 on the above subject and to say that the question of prescribing a time limit for making appointment on compassionate grounds has been examined in the light of representations received, stating that the one year limit prescribed for grant of compassionate appointment is often resulting in

depriving genuine cases seeking compassionate appointments on account of regular vacancies not being available, within the prescribed period of one year and within the prescribed ceiling of 5% direct recruitment quota.

2. It has therefore been decided that if compassionate appointment to genuine and deserving cases as per the guidelines contained in the above OMs is not possible in the first year due to non-availability or regular vacancy the prescribed committee may, review such cases to evaluate the financial conditions of the family to arrive at a decision as to whether a particular case warrants extension by one more year for consideration for compassionate appointment by the Committee, subject to availability of a clear vacancy within the prescribed 5% quota. If on scrutiny by the committee a case is considered to be deserving, the name of such a person can be continued for consideration for one more year”.
3. The maximum time a person’s name can be kept under consideration for offering compassionate appointment will be three years, subject to the condition that the prescribed committee has reviewed and certified the penurious condition of the applicant at the end of the first and the second year. After three years, if compassionate appointment is not possible to be offered to the applicant, his case will be finally closed and will not be considered again”.

7. The issue of compassionate appointment has been extensively dealt with in a catena of judicial pronouncements.

**In Haryana SEB vs. NareshTanswar (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**, 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) 8SCC 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".

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.”

8. In a case of compassionate appointment, every applicant who is a legal heir of a deceased employee deserves to be considered along with similarly placed applicants. The applicant has cited the judgment of Hon'ble Punjab & Haryana High Court in Krishna Kumar (supra) wherein it has been held that once the application is already pending, the respondent-State cannot be permitted to reject the claim on hyper-technical

ground and it is expected of a Welfare State to act fairly in the implementation of a beneficial legislation. In the present case, however, although the applicant no.1 should have applied in March, 2010, the delay of about three and half years has not been explained by him. The respondents have rightly held that the power to condone delay of about three and half years is not vested with the competent authority. Applicants' reliance on Krishna Kumar's case (*supra*) is misplaced since in that case an application was already pending before the competent authority for compassionate appointment and a one time relaxation had been given for six months over and above one year in submitting applications. In the present case the fact of delay of 10 years by the wife of the deceased in pursuing her case for compassionate appointment and the delay of three and half years by the son is admitted. The death of the employee occurred in the year 2002 and the application for compassionate appointment by the son was submitted after lapse of 11 years in the year 2013. In a *catena* of judgments (quoted at Para-7 above), the Hon'ble Supreme Court has held that the primary object of compassionate appointment is to overcome the financial distress caused by the death of the employee. In the present case, due to the long gap between the death of the Government employee and date of application, the question of immediate succor to the family has lost its relevance. The claim to compassionate appointment cannot

hang indefinitely for fruition. Action by the applicants should be prompt and applications should be followed up with diligence.

9. In view of the above, I find no ground to interfere in the order passed by Respondent No.2 dated 15.10.2013. The O.A. is therefore, dismissed being devoid of merit. No costs.

(DR.MRUTYUNJAY SARANGI)  
MEMBER(A)

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