

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA 161/2015

Present: Hon'ble Mr. Gokul Chandra Pati, Administrative Member

Bhakta Charan Dash, aged about 32 years, S/o Late Bharat Charan Dash, Village – Ambapada, Post – Karamul, PS- Gondia, Dist. – Dhenkanal.

.....Applicant.

VERSUS

1. Union of India, represented through its Cabinet Secretary to Government of India, Cabinet Secretariat, East Block-5, R.K.Puram, New Delhi-110066.
2. Director, Aviation Research Centre, ARC Headquarters, Directorate General of Security (Cabinet Secretariat), Block V (East), R.K.Puram, New Delhi – 110066.
3. The Deputy Director of Aviation Research Centre, Charbatia, At/PO-Charbatia, Choudwar, Dist. – Cuttack.
4. Asst. Director (Admn) ARC, Govt. Of India, At/PO- Charbatia, Choudwar, Dist. – Cuttack.

.....Respondents.

For the applicant : Mr.D.K.Mohanty, counsel

For the respondents: Mr.S.Behera, counsel

Heard & reserved on : 4.1.2019

Order on : 9.1.2019

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The applicant, through this Original Application (in short OA) seeks the following reliefs:-

- (i) To quash the order of rejection dt. 12.5.2014 under Annexure A/6.
- (ii) To direct the respondent to provide employment to the applicant under compassionate quota since the committee has already found the case is deserving.
- (iii) to pass any other order/orders as deemed fit and proper."

2. The facts in brief are that applicant's father, while working as a Cook under the respondents, died in harness on 25.9.1999 leaving the widow, two sons and two daughters out of whom one was married. Since the applicant's father was the only earning member, the family faced hardship. The mother of the applicant submitted a representation for employment of the applicant under compassionate appointment and the request was rejected by the respondents vide order dated 6.5.2005 (Annexure-A/3) on the ground that the applicant's case was not found to be more deserving. This was challenged in

the OA No. 720/2005 and vide order dated 31.10.2007. the OA was disposed of with a direction to the respondents to consider the case of the applicant. The respondents again rejected the case vide order dated 9.5.2008, which was challenged in the second round OA No. 336/2008. This OA was disposed of vide order dated 13.1.2010 for re-consideration of the case. The respondents again rejected the case vide order dated 5.7.2011 (Annexure-A/4), which was also challenged in third round OA No. 650/2011 which was disposed of vide order dated 19.3.2013 (Annexure-A/5). Vide order dated 12.5.2014 (Annexure-A/6), the respondents have rejected the case again.

3. Following reasons/grounds have been advanced in the OA:-

- i) No cogent reason has been assigned for rejecting the case.
- ii) The compassionate appointment scheme is meant to enable the family of the deceased employee to get over the sudden financial crisis.
- iii) The respondents, while rejecting the case should have supplied a copy of the should have been supplied to the applicant.
- iv) The Committee did not assess the family's liability/income properly. No document from Tahsildar was called for to ascertain income of the family.
- v) The case of the applicant should have been considered as per the old rules as per the judgment of Hon'ble Apex Court in the case of Y.V. Ranglah and others vs. J. Sreenivasa Rao and others and P. Mahendran and others vs. State of Karnataka.
- vi) Cases where the employee had expire prior to the applicant have already been considered. If there is no vacancy, then his case should have been forwarded to other departments.
- vii) The candidates who were more deserving and for what reason, have not been disclosed in the impugned order.

4. The respondents have opposed the OA by filing the Counter stating that this Tribunal, vide order dated 3.11.2014 passed in the CP No. 14/2014, the impugned order has been accepted to be in compliance with the direction of this Tribunal. Death of the employee will not automatically entitle the family for appointment on compassionate ground, which has to be considered within 5% of the total vacancy available. It is stated that the case of the applicant had been considered as per the guidelines of Government. Copies of the minutes of the committee in different meetings have been enclosed with the Counter.

5. We have heard Mr. D.K. Mohanty, learned counsel for the applicant. He argued that the impugned order has mentioned the same reason of other candidates with more merit, for not offering the appointment to the applicant and this reason was not accepted earlier by the Tribunal. It was also submitted that another reason mentioned in the impugned order was that 14 years have passed since death of the deceased employee and the objective of the scheme is

to provide early succour to the family. It was argued that it has been delayed by 14 years due to non-consideration of his case for which, the applicant had to approach the Tribunal three times in the past and this is the fourth round of litigation. It was further argued that if sufficient vacancy was not available in the department, the applicant's case could have been recommended to other department in the light of the judgment of Hon'ble High Court in the case of Union of India & others vs. Purna Chandra Swain. Learned counsel also cited another judgment of Hon'ble High Court for Punjab & Haryana in the case of Krishna Kumari vs. State of Haryana & others in which it was held that the rules applicable at the time of death of the employee would be applicable while taking decision on compassionate appointment. Hon'ble Supreme Court's judgment in the case of **Canara Bank & Anr. V. M. Mahesh Kumar, reported in 2015 AIR SCW 3212**, was also cited by the learned counsel for the applicant to argue that the rule applicable at the time of death of the employee will apply. He referred to the circular dated 9.10.1998 (Annexure-R/12) to point out that as per para 7(f) of the circular, it is stipulated that if sufficient vacancies are not available in any particular office to accommodate the applicant, then his case should have been sent to other Ministry/Department. He argued that the circular dated 22.6.2001 of the DOPT (Annexure-R/13) will not be applicable to this case.

6. Learned counsel for the applicant has filed a written note of submission mainly reiterating the averments in the OA. It is stated that the impugned order is cryptic and mentions no reason for which it is against the law as per the judgment in the case of Mohinder Singh & Anr. -vs- The Chief Election Commissioner, New Delhi & Others [AIR 1978 SC 851].

7. Mr. S. Behera, learned counsel for the respondents submitted that the respondents have considered the case of the applicant as per the direction of the Tribunal and as stated in the minutes dated 24.4.2014 of the Committee to consider the cases of compassionate appointment under the respondents (Annexure-R/11), the applicant's case has been considered and he could not be accommodated in view of the limited vacancies available. It was further argued that the cases which have been recommended, were more deserving than the case of the applicant as explained in the minutes dated 24.4.2014. It was also submitted that the DOPT circular dated 22.6.2001 (Annexure-R/13) specifies that the recommendation of the Compassionate Appointment Committee (in short CAC) should be for the most deserving cases depending on the vacancies available with the Ministry/Department concerned.

8. The pleadings of the parties on record as well as the submissions by learned counsels have been duly considered. The impugned order dated 12.5.2014 (A/6) states as under:-

"Subject: Compassionate Appointment i.r.o. Sh. Bhakta Charan Das, S/o Late Bharat Ch. Dash Ex-Cook.

Reference Hon'ble CAT, Cuttack Order dt. 19/3/2013 on OA 650/2011 and your application dated 6.5.2013 regarding compassionate appointment in ARC.

2. It is stated that your case for compassionate appointment in ARC was considered but not recommended as 14 years have passed since the death of the Govt. Employee and the objective of compassionate appointment as a means of providing immediate/early succour to the family of the deceased employee, is not longer valid in your case. Further, with the limited availability of vacancies, those recommended by the committee in this priority grouping have more merit.

3. In view of the above, your request for compassionate appointment has not been acceded to by the Compassionate Appointment Committee."

9. Regarding the reason that more deserving case than the applicant were considered, it is noted that the minutes of the CAC held on 24.4.2014 (Annexure-R/11) stated the following under the Column 13 (Reasoning for recommendation) in respect of the applicant:-

"Reasoning for recommendation – In compliance to directions of the Hon'ble CAT/Cuttack in OA 610/2011, the applicant's case has been carefully considered, and it is observed that –

- (i) It is now 14 years since the death of the employee and the objective of compassionate appointment as a means of providing immediate/early succour to the family of the deceased employee, is no longer valid in this case.
- (ii) Based on available vacancies, the committee has been able to recommend only two cases that are not 'fresh'. (That is, have already been considered at least once in earlier years, but regretted then.) BOM cases were those where death occurred about 2 years back and therefore need for compassionate appointment could still be argued, to subsist. In the first case, the employee died very young and the widow, who is qualified & has a minor son & father-in-law to look after, has been recommended. In the second case, the deceased employee belonged to the SC community and the applicant, who is still unmarried, has a younger brother also to look after (apart from mother). Hence, the applicant has no brother & both sisters are married.
- (iii) In totality therefore, considering the relative merits of the case & vacancy position, the request of Shri Das cannot be accepted."

10. From above, it is clear that two cases stated to have been recommended have been stated to be more deserving than the applicant's case. The reasons for recommending other cases have been mentioned in the Minutes. This Tribunal cannot go into the correctness or relative merit of the cases considered by the CAC, nor the CAC's recommendations has been challenged in the OA. The direction of the Tribunal vide order dated 19.3.2013 (A/5) was to reconsider the case of the applicant. The applicant had filed the Contempt Petition (C.P. No. 14/14) alleging that the order dated 12.5.2014 violated the

order of this Tribunal and the C.P. was dropped vide order dated 3.11.2014 (Annexure-R/1) of this Tribunal, as stated in para 2(c) of the counter. It is stated in order dated 3.11.2014 as under:-

".....After perusal of show cause along with Annexure-R/3, we find that there has been no wilful and deliberate violation of the orders of the Tribunal which is the subject matter of contempt proceedings. Accordingly, we hold that the order for violation of which this CP has been filed has already been complied with. Therefore, the CP is dropped and notice on the alleged contemnors is discharged."

It is noted that the applicant has not also denied the averments regarding the order dated 3.11.2014 in para 2(c) of the counter. Hence, the order dated 19.3.2013 of this Tribunal has been duly complied by the respondents as held in the order dated 3.11.2014. The applicant did not mention anything in the OA about the C.P. No. 14/14 filed by him or about the order dated 3.11.2014 and the reason for not disclosing about the order dated 3.11.2014 has not been explained in the pleadings or submissions on behalf of the applicant. In view of the discussions in paragraphs 8, 9 and 10 above, it cannot be said the impugned order dated 3.11.2014 is cryptic and has not disclosed the reasons.

11. It is also noticed that death of the applicant's father occurred on 25.9.1999. The applicant was about seventeen and half years at the time of death, as his date of birth as mentioned in the minutes of the CAC dated 24.4.2014 (Annexure-R/11) is 24.2.1082. It is stated in the rejection order dated 6.5.2005 (A/3) that the application for the appointment on compassionate ground was submitted on 27.7.2004, i.e. when the applicant was about 21 years. The OA is silent as to whether any application for compassionate appointment was submitted immediately after the applicant's age was 18 years, prior to submitting the application dated 27.7.2004, which was rejected vide order dated 6.5.2005 (vide para 4.3 of the OA). It is seen that by the time the application was submitted on 27.7.2004, the DOPT circular dated 22.6.2001 was in force. Further, it is the settled law that the compassionate appointment is not a matter of right and that its objective is to mitigate immediate financial distress faced by the family of the deceased employee.

12. The judgment of Hon'ble High Court in the case of **Purna Chandra Swain (supra)**, the death of the employee occurred in 1996 and the application for compassionate appointment was moved in the same year. The respondents were directed to consider the case of the applicant against vacancy in other departments in view of the provisions in the circular/rule that was in force as on 1996. In the judgment in the case of **Krishna Kumari (supra)**, the dispute was whether the policy relaxation regarding applying within one year of

attaining the age and educational qualification for the job, would also apply for pending applications.

13. In the case of **M. Mahesh Kumar (supra)**, the application for appointment on compassionate ground was submitted on 30.11.1998 and death of the employee was on 10.10.1998. It was held by Hon'ble Apex Court as under:-

"..... The Circular dated 14.2.2005 being an administrative or executive order cannot have retrospective effect so as to take away the right accrued to the respondent as per circular dated 1993."

14. The judgments cited above have been relied upon by learned counsel for the applicant to argue that since father of the applicant died on 25.9.1999, the DOPT circular dated 9.10.1998, in which the provision for sending the name to other Ministries/departments was in force, for these cases. The DOPT circular dated 22.6.2001 (Annexure R/13), deleting the provision relating to referring the case to other department/Ministry if sufficient number of post is not available to consider the deserving cases came into effect from 22.6.2001. As discussed above, in all the cited cases, the application for compassionate appointment was submitted in the same year as the year of death when DOPT OM dated 22.6.2001 was not in force. But in this OA, as discussed in para 11 above, by the time the application for compassionate appointment was submitted in 2004, the DOPT circular dated 22.6.2001 (Annexure R/13) has already been issued. There is nothing on record to show that the application for compassionate appointment was submitted any time prior to issue of DOPT OM dated 22.6.2001. The present OA is therefore, factually distinguishable from the cases cited by learned counsel for the applicant, due to which the cited judgments will not be helpful for the applicant.

15. In the circumstances as discussed above, the applicant does not have a case for sending his name to other departments and his case has been duly reconsidered as discussed in paragraphs 9 and 10 above. Accordingly, the OA is liable to fail and hence, it is dismissed, with no order as to costs.

(GOKUL CHANDRA PATI)
MEMBER (A)

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