

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/742/2014

Date of Reserve:15.03.2019

Date of Order:29.04.2019

CORAM:

HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

1. Jyoti Ranjan Prusty, aged about 30 years, S/o. Late Kalpataru Prusty.
2. Binapani Prusty, aged about 52 years, W/o. Late Kalpataru Prusty.

Both are Vill-Patna, PO-Mahiuddinpur, Via-Chatra, Dist-Jagatsinghpur.

...Applicants

By the Advocate(s)-M/s.Mr.D.K.Mohanty

-VERSUS-

Union of India represented through:

1. The Director General of Posts, Ministry of Telecommunication, Dept. Of Posts, Dak Bhawan, Sansad Marg, New Delhi-1.
2. Chief Post Master General, Odisha Circle, Bhubaneswar, Dist-Khurda.
3. Superintendent of Post Offices, Cuttack South Division, Cuttack-753 001.

...Respondents

By the Advocate-(s)-Mr.L.Jena

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

In this Original Application under Section 19 of the A.T.Act, 1985, applicants have prayed for the following reliefs:

- i) To quash order dated 4.12.2009 under Annexure-A/4, order dated 14.12.2010 under Annexure-A/6, order dated 2.11.2011 under Annexure-A/9 and order dated 20.6.2014 under Annexure-A/12.
- ii) To direct the respondents to immediately provide employment on compassionate ground since the committee has already found the case of the applicant is deserving one but due to paucity of vacancy cannot afford to him.
- iii) To pass any other order/orders as deem fit and proper.

2. Applicant No.1 is the son of the deceased Postal employee, who while working as Sub Post Master of Debidol Sub Post Office under Jagatsinghpur HO passed away on 3.6.2006. Applicant No.2 is the wife of the deceased employee.

3. Facts of the matter as revealed from the records are thus: Application for compassionate appointment in favour of applicant No.1 had been considered by the Circle Relaxation Committee in its meeting held on 3.11.2009. However, the same was turned down vide communication dated 4.12.2009(A/4) on the ground that the CRC did not recommend his case as the applicant's liability and condition was not found as indigent in comparison with other cases being considered by the said CRC. Aggrieved with this, both the applicants had approached this Tribunal in O.A.No.343 of 2010, which disposed of the same vide order dated 16.07.2010, the relevant part of which reads as follows:

"...However, as pointed out by learned counsel for the applicants ten days time is granted to the applicants to make representation, if so advised, incorporating the grounds based on which they seek to annul the impugned letter to the Respondent No.1. On receipt of the said representation, Respondent No.1 is directed to take a view on the same and communicate the decision through a reasoned order to the applicants within a period of 45 days. With the aforesaid observation and direction and without expressing any opinion on the merit of the matter, this O.A stands disposed of at this admission stage".

4. Complying with the above direction, Respondents issued order dated 14.12.2010(A/6), the relevant part of which reads as under:

"In pursuance of the direction of the Hon'ble Tribunal, the case of the applicant was reconsidered against the available vacancies in PA/SA cadre by the CRC on 24.11.2010. The CRC considered the case of the applicant along with 38 cases put before it in accordance with the Departmental guidelines and instructions issued by the Directorate letter No.37-36/2004-SPB-I/C dated 20.01.2010. Each case was judged by allocating points to the applicant based on various attributes on a hundred-point scale.

The CRC selected the most deserving cases limited to the number of vacancies available for compassionate appointment.

5. In pursuance of the direction of the Hon'ble Tribunal, the case of the applicant was reconsidered by the CRC held on 24.11.2010 for PA/SA & Postman Cadre as per his qualification for the post and was not recommended on the ground due to want of vacancy.

6. Being not satisfied with the above decision, the applicant No.1 submitted a representation dated 10.05.2011 to the Respondent No.2 inter alia stating that he may be adjusted against any GDS post subject to future vacancy in Gr.C or D cadre which has not been considered so far. Thereafter, the applicant no.1 approached this Tribunal in O.A.No.600 of 2011 and this Tribunal vide order dated 14.09.2011 disposed of the said O.A. with direction to Respondent No.2 to consider the pending representation at A/6 dated 10.5.2011 and pass a reasoned order within a stipulated time frame. Respondent No.2 thereafter passed an order dated 2.11.2011(A/9) which mentions as follows:

"In pursuance of the direction of the Hon'ble CAT, the case of Sri Jyotiranjana Prusty was reconsidered in the CRC held on 11.10.2011 the CRC did not approve the case for compassionate appointment on the ground that the applicant did not come under the comparative merit points.

I accept the recommendation of the Circle Relaxation Committee and reject the case of the applicant for compassionate appointment accordingly".

7. While the matter stood thus, applicant no.1 submitted a representation dated 11.06.2014 (A/11) to Respondent No.2 to provide him an employment on compassionate grounds. In response to this, the applicant was intimated vide communication dated 20.06.2014 (A/12) in which his request for

compassionate appointment was regretted. The relevant part of the communication is as follows:

"I am directed to intimate that since your compassionate appointment case has already been considered thrice by the CRC held on 03.11.2009, 24.11.2010 & 11.10.2011 and your case has not been approved, as per existing rules, further request for consideration cannot be accepted".

8. Aggrieved with this, the applicants have approached this Tribunal praying for the reliefs as mentioned above.

9. The applicant has assailed the impugned order of rejection dated 20.6.2014 (A/12) stating the same as total non-application of mind. The earlier considerations which were made differs from each other and since the family is in penurious condition, applicant no.1 deserves a compassionate appointment.

10. Respondents have filed their counter opposing the prayer of the applicant. While making averments as already mentioned above, they have pointed out that since the case of the applicant no.1 has been considered by the CRC three times and there being no provision to consider him again, the O.A. merits no consideration.

11. Heard the learned counsels for both the sides and perused the records including the rejoinder filed by the applicant and the written notes of submission submitted by both the sides. It reveals from the record that in the first instance, whereas the case of the applicant no.1's case was rejected on the ground that that the CRC did not recommend as the applicant's liability and condition was not found as indigent in comparison with other cases being considered by the said CRC, for the second time, his case was rejected on the ground of want of vacancy. For the third time, the CRC did not approve the

case for compassionate appointment on the ground that the applicant did not come under the comparative merit points.

12. This Tribunal considered the rival submissions threadbare. In this connection, it is to be noted that the DOP&T has issued consolidated instructions vide Office Memorandum dated 16.01.2013 in the matter of compassionate appointment. It has been indicated therein that prescribing time limit for considering applications for compassionate appointment has been reviewed vide this office O.M.No.14014/3/2011-Estt.(D) dated 26.07.2012. Subject to availability of vacancy and instructions on the subject issued by this Department and as amended from time to time, any application for compassionate appointment is to be considered without any time limit and decision taken on merit in each case. For the sake of clarity, Paragraphs-8 and 9 of the said OM are extracted hereunder:

"8. TIME LIMIT FOR CONSIDERING APPLICATIONS FOR COMPASSIONATE APPOINTMENT.

Prescribing time limit for considering applications for compassionate appointment has been reviewed vide this Department O.M.No.14014/3/2011-Estt.(D) dated 26.07.2012. Subject to availability of a vacancy and instructions on the subject issued by this Department and as amended from time to time, any application for compassionate appointment is to be considered without any time limit and decision taken on merit in each case.

9. BELATED REQUESTS FOR COMPASSIONATE APPOINTMENT.

(a) 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 should, however, 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 would call for a great deal of circumspection.

The decision to make appointment on compassionate grounds in such cases may, therefore, be taken only at the level of the Secretary of the Department/Ministry concerned.

- (b) Whether a request for compassionate appointment is belated or not maybe decided with reference to the date of death or retirement on medical ground of a government servant and not the age of the applicant at the time of consideration.
- © The onus of examining the penurious condition of dependent family will rest with the authority making compassionate appointment (Para 4 of OM No.14014/3/2011-Estt.(D) dated 26.07.2012".

13. Viewed from this angle, the plea of the respondents that there is no provision for considering the applicant no.1's case beyond three times, in the face of the aforementioned Office Memorandum, falls to the ground. In the circumstances, the respondents are directed to reconsider the case of the applicant no.1 for compassionate appointment subject to other provisions of the extant rules and instructions and pass appropriate orders to be communicated to the applicant within a reasonable time period.

14. In the result, the O.A. is thus allowed, with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

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