

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

O.A.No.260/307/2018

Date of Reserve:15.03.2019

Date of Order:18.04.2019

CORAM:

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

1. Smt.Kusum Nayak, aged about 66 years, W/o. Late Gedu Nayak.
2. Kumari Kabita Nayak, aged about 44 years, D/o. Late Gedu Nayak.

Both the applicants are permanent resident of Bateswar, PO/PS-Motiganj, Dist-Balasore-3.

...Applicants

By the Advocate(s)-M/s.S.K.Ojha  
S.K.Nayak

-VERSUS-

Union of India represented through:

1. The Secretary to Government of India, Ministry of Defence, Sena Bhawan, New Delhi-110 011.
2. The Director General, Defence Research Development Department, Directorate of Management Services, DRDO Bhawan, Rajaji Marg, New Delh-110 011.
3. Director, Proof & Experimental Establishment, DRDO, At/PO/PS-Chandipur, Balasore, Odisha-756 025.

...Respondents

By the Advocate-(s)-Mr.D.K.Mallick

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

Applicant No.1 is the wife of late Gedu Nayak, who, while working as Safaiwala died of cancer on 20.12.1996. Applicant No.2 is the daughter of the deceased and applicant No.1. In the year, 1999, applicant No.1 submitted an application for pensionary benefits as well as compassionate appointment and pensionary benefits are stated to have been settled. Since it was difficult to manage the family, applicant No.1 submitted a representation for compassionate appointment in favour of applicant No.2. In response to this, it was communicated vide letter dated 26.02.2015 (A/4) intimating that their

earlier request having been forwarded was not considered by the DRDO Headquarters and that the status of application was communicated vide letters dated 05.03.2004 and 07.06.2004. Therefore, challenging the legality and validity of the communication dated 26.02.2015 (A/4) the applicants have approached this Tribunal praying for the following reliefs:

- i) To admit the Original Application
- ii) To quash the office letter dated 26.02.2015 (Annex.A/4) and direct the Respondents more particularly the Resp.No.2 & 3 to reconsider the case of the applicants extending benefit of compassionate appointment to Applicant No.2 within a stipulated period to save the distress family.
- iii) To pass any other order/orders as deemed fit and proper in the facts of the case and for ends of justice.

2. The grounds urged by the applicants in support of their prayer are as follows;

- i) The plea taken by the respondents that the fact of non-consideration of compassionate appointment was communicated way back in the year 1999 and 2004 is false and fabricated. Had it been so, the information sought under the RTI Act in this regard would have been provided without the same being withheld.
- ii) Non-consideration of the request for compassionate appointment by the DRDO Hq. as communicated vide letter dated 26.02.2015 is illegal, arbitrary and colourable exercise of power. On the other hand, the request for compassionate appointment has been turned down by an authority who is not competent to take a decision in that behalf.
- iii) The applicants are in penurious condition.

3. Besides, the applicants have filed M.A.No.179/2018 praying for condonation of delay in approaching this Tribunal. According to them, the delay is neither intentional nor deliberate and it was due to acute financial hardships, the applicants could not approach this Tribunal in time. It has been pointed out that applicant no.1 is illiterate and as such he was unaware of the

benefits granted to the family after the death of a Government employee. It has been pointed out that since they had left the place of residence in order to earn their livelihood, it was not possible to approach the Tribunal within the prescribed period of limitation.

4. Further, the applicants have drawn attention of this Tribunal to the consolidated instructions issued by the DOP&T vide Office Memorandum dated 16.01.2013 (A/1) in the matter of compassionate appointment. According to applicants, 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. Applicants have submitted that to make the object of the scheme more useful, it has been held that delay in lodging the claim is not a matter if condition of distress is still persists and the family actually needs the assistance.

5. On the other hand, opposing the prayer of the applicants respondents have filed their counter. It has been submitted that consequent upon the death of Gedu Naak, her wife, applicant No.1 submitted an application on 29.11.1999 enclosing all original documents before Respondent No.3 with a request to offer an appointment on compassionate grounds in favour of applicant No.2. On completion of procedural formalities, the matter was forwarded to the DRDO Hq. on 08.06.2000 for consideration by the competent authority. However, the competent authority rejected the claim on the ground that the applicant No.1 had applied for compassionate appointment on 29.1.1999, i.e.,

02 years 11 months after the death of her husband on 20.12.1996 and hence, the claim was barred by limitation. Respondents have submitted that vide DOP&T OM dated 05.05.2003, a time-limit of three years was prescribed for considering the cases of compassionate appointments. However, vide OM dated 26.07.2012, the time limit for consideration of the cases for compassionate appointment has been withdrawn and all cases are to be considered. As per the said instruction, while considering belated requests, it is 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. Therefore, examinations of such cases call for a great deal of circumspection. Respondents have pointed out that the object of granting compassionate appointment is to enable the family to tide over the sudden crisis and to relieve the family of the deceased from financial destitution and to help it get over the emergency. In this case, the Government employee died on 20.12.1996 and the applicant applied for compassionate appointment on 29.11.1999, after 02 years & 11 months which contradicts the provision of DOP&T OM dated 03.12.1999 and hence, the claim being time-barred, the DRDO Hqs. at New Delhi rejected the request which was intimated to the applicant. It has been submitted that Respondent No.3 vide his letter dated 04.04.2001 requested the competent authority to approve compassionate appointment by making one time exception, but no fruitful result was received. Accordingly, the applicant was intimated vide letters dated 05.03.2004 07.06.2004 and dated 26.02.2015. In the end, respondents have submitted that the O.A. being devoid of merit is liable to be dismissed.

6. Heard the learned counsels for both the sides at great length and perused the records. Also considered the Misc. Application No.179/2018 for condonation of delay. As regards the point urged by the applicants that there is no time limit for considering the cases of compassionate appointment in view of DOP&T OM dated 26.07.2012, the contents thereof has been taken into consideration by this Tribunal. In this connection, 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".

7. This Tribunal considered the rival submissions in the light of instructions issued by the Government of India from time to time in the matter of compassionate appointment. The fact of rejection of the request for compassionate appointment as revealed from the communication dated 26.02.2015 is that since the husband of the applicant NO.1 had passed away in the year 1996 and the request for compassionate appointment was made in the year 1999, the same was rejected on the ground of being time-barred and communicated in the year 2004. On a reference being made to letter dated 05.03.2004 as furnished by the respondents to their counter-reply, the relevant part of the same reads as follows:

"Subject: Employment of Kumari Kabita Nayak (D/o. late Shri Gedu Naak) on compassionate ground:  
Madam,

I am directed to refer to your application dated 29 Nov. 1999 for employment on compassionate ground and to inform you that your applicant has been duly examined. However, it is intimated that it is not possible to offer you any appointment on compassionate ground under the extant guidelines on the subject. As such, your request for compassionate appointment has not been acceded to by the competent authority".

8. This, by itself makes it amply clear that the authorities at the helm of affairs failed to apply their mind on the basis of rules and instructions governing the subject. When the scheme for compassionate appointment has been formulated by the Government as a measure of benevolence to provide immediate succour to be dependent members of the bereaved family, the very object and intention lags behind the scheme appears not have been taken into consideration by the respondents while not considering the case of the

applicant no.2 for compassionate appointment. Therefore, the Tribunal is of the opinion that an injustice had been meted out to the applicants since their request for compassionate appointment was not considered keeping in view the object and intention of laying down such a legislation. However, by the operation of consolidated instructions issued by the Government of India, as quoted above, I am inclined to remit the matter back to Respondent No. 1 with a direction to consider the grievance of the applicant within the four corners of rules and instructions on the subject and pass an appropriate orders within a period of sixty days from the date of receipt of this order.

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

10. With the above, all the Misc. Applications stand disposed of.

(SWARUP KUMAR MISHRA)  
MEMBER(J)

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