

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 833 of 2016

Present: Hon'ble Mr.Gokul Chandra Pati, Member (A)

1. Manas Kumar Kundu, aged about 34 years, S/o Late Madan Mohan Kundu (Khalasi OGDC/Ptg GP).
 2. Susanti Kundu, aged about 59 years, W/o late Madan Mohan Kundu.
- All are residing at Vill - Chandapur, PO - Biridi Road, Diist-Jagatsinghpur-754111, Odisha.

.....Applicant.

VERSUS

1. Union of India represented through its Secretary, Ministry of Science & Technology, Department of Science & Technology, New Delhi.
2. Survey of India, represented through its Surveyor General, Office of the Surveyor General of India, Hathibarkala Estate, Post Box No. 37, Dehradun-248001, State- Uttarakhand, India.
3. Orissa Geo Spatial Data Centre, represented through its Additional Surveyor General, IIS & M, Orissa, GDC, Survey of India, Survey Bhawan, PO- R.R.Lab, Bhubaneswar – 751013.

.....Respondents.

For the applicant : Mr.S.Mohanty, counsel

For the respondents: Mr.A.K.Mohapatra, counsel

Heard & reserved on : 26.7.2019

Order on : 20.8.2019

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

In this case, the applicant is the son of Late M.M. Kundu who was working as a Khalasi under the respondents when he expired on 6.5.2010, leaving behind his wife, four daughters and the one son. The applicant applied for compassionate appointment on 5.1.2011 . No decision on it was taken till 8.6.2016 (Annexure-A/3) when it was informed to the applicant that since his case could not be accommodated for more than 5 years even after adequate consideration, it has been rejected. The applicant, being aggrieved by this order has filed this OA with prayer for the following reliefs:-

- “(i) To quash the order dated 8.6.2016 under Annexure A/3 passed by respondent No.2, concurrently holding the same as illegal, arbitrary and not sustainable in the eye of law.
- (ii) The applicant's application under compassionate appointment may kindly be considered and give an appointment within a stipulated period to eliminate the financial starvation.

- (iii) Pass any other relief/reliefs be passed as this Hon'ble Tribunal may deem fit and proper."

2. The grounds advanced in the OA is that the reason for rejecting his application was stated to be delay which is contrary to the judgments of Hon'ble Apex Court in the following cases:-

- i) Sushma Gosain & Others -vs- Union of India & Others [(1989) 4 SCC 468]
- ii) MGB Gramin Bank -vs- Chakrawarti Singh [(2014) 13 SCC 583]
- iii) Umesh Kumar Nagpal -vs- State of Haryana & Others [(1994) 4 SCC 138]
- iv) State of Manipur -vs- Md. Rajaodin [(2003) 7 SCC 511]
- v) Steel Authority of India Ltd. -vs- Madhusudan Das & Others [(2008) 15 SCC 560]
- vi) Sanjay Kumar -vs- State of Bihar & Others [(2000) 7 SCC 192]
- vii) Canara Bank & Others -vs- M. Mahesh Kumar [(2015) 7 SCC 412]
- vii) Bhawani Prasad Sonkar -vs- Union of India & Others [(2011) 4 SCC 209]
- viii) Balbir Kaur & Another -vs- Steel Authority of India Ltd. & Others [(2000) 6 SCC 493]

3. Counter has been filed opposing the OA stating that as per the guidelines, the applications for compassionate appointment are to be considered as per the guidelines and it is not necessary that each and every case has to be considered. There is a restriction put on the number of posts which can be offered for compassionate appointment. The respondents have justified their decision communicated vide order dated 8.6.2016 (A/3) by citing the following judgments of Hon'ble Apex Court:-

- i) Shri Umesh Kumar Nagpal -vs- State of Haryana & Others [JT 1994(3) SC 525]
- ii) Chief Engineer (Naval Works) & Another -vs- A.P. Asha [(2015) 15 SCC 310]
- iii) Local Administration Department -vs- M. Selvanayagam @ Kumaravelu [2011(2) CLJ (SC) 209]

4. No Rejoinder has been filed by the applicant. Learned counsels for both the parties were heard in the matter and they repeated the grounds taken in their respective pleadings. While the applicant's counsel pointed out that the only reason for rejection of the applicant's case was that it was there for more than 5 years as stated in the impugned order at Annexure-A/3, the respondents' counsel submitted that his case had been considered in a number of times and it was not accepted each time as more deserving candidates were there, as explained in the Counter.

5. I have perused the impugned order and the pleadings of the parties. In the impugned order dated 8.6.2016 (A/3) enclosing the order dated 25.5.2016,

stated that the reason for rejecting the applicant's case was that his case was more than 5 years old. Whether his case has been duly considered by the respondents and if so, how many times in the past it was considered and the reasons for not allowing the applicant's case for compassionate appointment has not been mentioned in the order dated 8.6.2016/245.2016 (Annexure-A/3).

9. As explained in the Counter, the case of the applicant has been considered by the Board of Officers during 2012 (proceeding at Annexure-R/1), during 2013 (proceeding at Annexure-R/3), during 2014 (proceeding at Annexure-R/4), during 2015 (proceeding at Annexure-R/5) and again during 2016 (proceeding at Annexure-R/6). It is further mentioned in the Counter that since adequate consideration has been given to the applicant, the Board of Officer recommended that the case of the applicant might be closed. Nothing has been mentioned in the Counter if the decision taken in respect of the applicant was communicated to the applicant with the reason for non-acceptance of his case as mentioned in the proceedings of the meeting of the Board of Officers.

10. In the Counter, the judgments in the case of Shri Umesh Kumar Nagpal (supra) and A.P. Asha (supra) have been referred to. In the case of A.P. Asha (supra), it is held by Hon'ble Apex Court vide the judgment dated 15.10.2015 as under:-

"4. There is a policy for making an appointment on compassionate grounds and as per the said policy, according to the appellants, the claimants, who are more deserving for appointment on compassionate grounds, are given appointment and therefore, though the case of the respondent was considered, she could not be appointed as there were claimants who were more needy than the respondent. In the circumstances, the respondent had approached the Central Administrative Tribunal and the Tribunal directed the appellants to again consider the case of the respondent for appointment on compassionate ground. Being aggrieved by the order passed by the Tribunal, the appellants had filed a writ petition before the High Court, which has been dismissed and therefore, this appeal.

5. Upon perusal of the record, we find that the respondent was not given appointment on compassionate ground as per the policy of the appellants because, as per the policy, more deserving candidates were available for giving appointment on the compassionate ground. In the circumstances, according to the appellants, the direction was not justifiable as the case of the respondent had already been considered thrice but every time the persons who were more deserving were appointed on compassionate ground.

6. In our opinion, the respondent has no right to be appointed on compassionate ground on the death of her husband if there is somebody more needy than the respondent. It is clear from the record that the policy of the appellants has been strictly adhered to in the matter of giving appointment on compassionate ground."

11. It is the settled law that the compassionate appointment cannot be claimed as a matter of right, but every candidate who applies for appointment

under the scheme, is entitled for consideration of his/her case in accordance with the scheme and for being informed about result of such consideration. In this case, the applicant's case has been considered by the Board of Officers during 2012, 2013, 2014, 2015 and 2016 and it was found to be unacceptable as more deserving candidates were available for consideration. Such contentions in the Counter have not been contradicted by the applicant. The judgments cited by the applicant in the OA will not be helpful for the applicant's case since his case has been duly considered a number of times and it could not be accepted under the rules as more deserving candidates were available. None of the judgment cited by the applicant in the OA has laid down the law, under which the action of the respondents can be faulted.

12. In view of the above discussions, I am of the view that there is no reason for interfering with the decision of the respondents in the case. The OA, being devoid of merit, is accordingly dismissed. No order as to cost.

(GOKUL CHANDRA PATI)

MEMBER (A)

I.Nath