

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH: HYDERABAD**

**Original Application No.21/223/2018**

**Reserved on: 12.07.2019**

**Pronounced on: 17. 07.2019**

Between:

Orsu Rama Rao,  
S/o. late O. Subba Rao, Aged 31 years, Gr. C,  
Occ: Un-employee, R/o. H. No. 2-10-83,  
Kummarabasthi, Uppal, Hyderabad.

... Applicant

And

1. The Surveyor General (HQ),  
Survey of India, Dehradun,  
Uttarakhand, India – 248 001.
2. The Director,  
AP Geo-Spatial Data Centre,  
Uppal, Hyderabad – 500 039.
3. The Assistant Surveyor General,  
Survey of India,  
Dehradun, Uttarakhand, India – 248 001.
4. The Union of India, rep. by its Secretary,  
Department of Science and Technology,  
Technology Bhavan, New Delhi – 110 016.

... Respondents

Counsel for the Applicant      ...      Mr. M.R. Tagore

Counsel for the Respondents      ...      Mr. V. Vinod Kumar, Sr. CGSC

***CORAM:***

***Hon'ble Mr. B.V. Sudhakar, Member (Admn.)***

**ORDER**

*{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.) }*

2. OA is filed in not providing compassionate appointment to the applicant.

3. Brief facts of the case are that the applicant's father while working for the respondents passed away on 3.11.2005. Applicant's mother made a representation on 10.04.2006 for compassionate appointment to the applicant. The request was rejected on 07.05.2010 stating that his case was considered for three years, but he could find place amongst the most deserving candidates. Hence, rejected. Aggrieved, applicant filed OA 358/2013, wherein respondents were directed to reconsider the case of the applicant. Respondents reconsidered and rejected his request on 12.06.2015. Challenging the rejection, present OA has been filed.

4. Contentions of the applicant are that the orders of rejection of the respondent are against the instructions contained in DOPT dt. 26.07.2012 wherein it was stated that there is no time limit for considering the cases for compassionate appointment. Respondents have not issued a speaking and reasoned order, in the sense that they did not disclose the merit of the candidates who were considered for compassionate appointment as well as the merit of the applicant. They are wilfully not revealing details required. There is no transparency in the selection process of the respondents. Applicant's family is large and is living in indigent circumstances.

5. Respondents in the reply statement opposed the contentions of the applicant by stating that the case of the applicant was considered four times by the department during the period 2007 to 2010. However, applicant's name could not find place amongst the most deserving candidates to the extent of available vacancies during the said period. Consequently, he could not be offered compassionate appointment. Aggrieved, when the applicant filed OA 358/2013, based on the directions of the Tribunal in the said OA, respondents again reconsidered the case of the applicant on 29.04.2015 and 30.04.2015 and found that the applicant could not be selected on relative merit and availability of vacancies. Respondents state that they have been evaluating the applications based on certain attributes. Applicant got only 51 out of 100 points and stood at 70<sup>th</sup> position in the merit list and the number of vacancies being 12, only those candidates who were within 12 positions, could be selected. Thus, as can be seen, the case of the applicant has been given adequate consideration 5 times. Respondents have also cited the judgment of the Hon'ble Allahabad Bench of this Tribunal in OA 331/00273/2017, wherein it was held that the applicant cannot force the respondents for considering her case innumerable times and there should be some limitation. Besides, Hon'ble Supreme Court of India vide order dt. 15.0.2015 in the matter of Chief Engineer (Naval Works) & Anr Vs. A.P. Asha held as under:

*“Tribunal was not right in giving direction to the appellants to consider the case of the respondent again and again, especially when the case of the respondent had been considered and had been rejected, in view of the fact that more deserving claimants were available at the relevant time, we are*

*therefore of the view that the High Court committed an error by upholding the order of the Tribunal.”*

Respondents have also quoted the observation of the Hon’ble Apex Court vide order dt. 05.04.2011 in Civil Appeal No. 2206 of 2006 in Local Administration Department Vs. M. Selvanayagam @ Kumaravelu, wherein it has been held as under:

*“an appointment made many years after the death of the employee or without due consideration of the financial resources available to his/ her dependents and the financial deprivation caused to the dependents as a result of his death, simply because the claimant happened to be one of the dependents of the deceased employee would be directly in conflict with Articles 14 & 16 of the Constitution and hence, quite bad and illegal in dealing with cases of compassionate appointment, it is imperative to keep this vital aspect in mind.”*

Besides, as per DOPT OM dt. 09.10.1998, compassionate appointment has to be given to the families to relieve them of the economic distress and that too, in the form of immediate assistance. Respondents claim that since the family could manage for many years without compassionate appointment, it is obvious that the family has dependable means of subsistence. The impugned order is a speaking order wherein total number of candidates, number of vacancies, points secured by the applicant and the position secured by the applicant have been given in detail. It is not mandatory to supply merit list of other applicants.

6. Heard learned counsel for both sides and perused the material on record and rejoinder filed by the applicant.

7(I) The main contention of the applicant is that respondents are not indicating points allotted to each of the attributes while making selection. In the absence of such details, selection process cannot be termed as transparent. The impugned order dt. 12.06.2015 issued by the respondents only gives details of the marks obtained by the applicant. It does not reveal marks obtained by others who have been considered along with him. Whenever any order is issued, which has civil consequence, it necessarily has to be a reasoned order and an order which is not reasoned, is invalid in the eye of law. Hon'ble High Court of Jharkhand in Jit Lal Ray v. State of Jharkhand in WP(C) No. 469 of 2019 decided on 26-04-2019, has observed as under:

*“It is settled position of law that a decision without any reason will be said to be not sustainable in the eyes of law, because the order in absence of any reason, also amounts to the violation of the principles of natural justice.”*

In the present case, impugned order cannot be termed as a reasoned order since the applicant was considered along with many other candidates for a suitable post on compassionate grounds. Respondents, when they considered the applicant's case for selection, the basic thing to be done was to reveal as to the number of marks obtained by all the candidates so that those appeared would be fully convinced that their cases were fairly considered and accepted/ rejected. We are in the era of Right to Information. In fact, respondents ought to disclose such information suo

motu in a public domain, either through their website or by a circular in writing. This being so, it is surprising to state that the respondents have taken a stand that, it is not necessary to communicate such details. In fact, applicant has been contesting that marks have not been properly allocated to him in regard to the attribute about monthly income. By not revealing the relevant details, respondents are making themselves susceptible to the allegation of being biased in their selection. In fact, applicant did allege so in the OA/ rejoinder. However, respondents submitted the required details along with the reply statement, but not in the impugned order. It is well-settled principle that the impugned order cannot be improved by filing affidavit/ reply statement. It has been clearly held so by the Hon'ble Apex Court in *Mohinder Singh Gill & Anr vs The Chief Election Commissioner*, on 2 December, 1977, reported in 1978 AIR 851, 1978 SCR (3) 272, as extracted below.

*“The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. in Gordhandas Bhanji*

*“Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to effect the actions and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.*

*Orders are not like old wine becoming better as they grow older.”*

II. Therefore, in view of the aforesaid, respondents in not repeatedly informing the applicant, though pleading for the same, to reveal the marks secured for each attribute is not a fair proposition, particularly, in the context of selection when the competition is acute. Respondents have to adopt ways and means which display absolute transparency and objectivity. In fact, this Tribunal would like to suggest that the respondents should try to prepare a list of candidates considered for compassionate appointment in three parts – first one consisting of those candidates selected along with marks that they have secured in each of the attribute; second one should consist of those candidates who have not been selected with marks attribute-wise and the third one should enlist the candidates whose cases have been considered based on the orders of the courts with details referred to. Number of vacancies and the year-wise vacancies need also to be indicated. Once this information is placed in the public domain, either by displaying in website of the respondents or by any other means which is convenient to them, grievances arising in regard to compassionate appointment would subside. It is left open to the respondents to work upon this suggestion so that the valuable time of the respondents/ prospective applicants could be saved. Of course, unnecessary litigation too can be avoided.

III. Respondents have cited the judgments of the Coordinate Bench of this Tribunal as well as that of the Hon’ble Supreme Court in

support of their contention. The essence of these judgments is that compassionate appointment has to be offered based on the indigent circumstances in which the family is placed. According to the DOPT OM dt. 16.01.2013, respondents are expected to depute a responsible official from their organization to guide and assist the family in applying for compassionate appointment. Reply statement does not indicate as to whether they have deputed any such officer or not. By deputing an officer, there will be twin benefits of guiding the family as well as assessing the indigent circumstances in which the family is placed. Such a report would have given a view about the indigent circumstance in which the family is placed. Without assessing the indigent circumstances of the family of the applicant, respondents rejecting his case is not fair, to say the least. Besides, DOPT OM dt. 16.01.2013 has also made it clear that there is no time limit in considering the cases for compassionate appointment. However, the baseline is to assess the indigent circumstances. As seen from the respondents, the respondent did consider the case of the applicant on four occasions, but nowhere, did they make a genuine effort to realistically assess the indigent circumstances in which the family is placed and thereafter, take a decision. Documents do help in assessing the indigent circumstances to some extent, but not in the way a visit would have. Perhaps, this was the motive in laying such a condition by DOPT vide OM dt. 16.01.2013. Thus, the judgment cited by the respondents would not be relevant in the context of they failing to assess the indigent circumstances of the applicant as per OM dt. 16.01.2013.



IV. Thus, from the aforesaid, it is obvious that respondents have not acted as per rules and the impugned order is also invalid in view of the observations of superior judicial forums cited. Consequently, the impugned orders dated 03.06.2015 and 12.06.2015 are quashed and set aside.

V. Therefore, the respondents are directed as under:

- (a) To reconsider the case of the applicant for compassionate appointment and issue a speaking and well reasoned order with full details as suggested, so that a grievance would not crop up in future.
- (b) Time granted to implement the order is three months from the date of receipt of this order.
- (c) With the above directions, the OA is allowed. There shall be no order as to costs.

**(B.V. SUDHAKAR)**  
**MEMBER (ADMN.)**

Dated, the 17<sup>th</sup> of July, 2019

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