



CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
KOLKATA

No. O.A.169 of 2013
MA No. 350/00136/2015

Date of order : 3.9.2015

PRESENT:

The Hon'ble Mr.A.K.Patnaik, Judicial Member
The Hon'ble Ms.Jaya Das Gupta, Admn. Member

....

Shri Santosh Kumar Sahoo,
Son of Late Sarbeswar Sahoo,
aged about 34 years,
residing at Village Gangajoara,
Post. Nayabad,
PS. Sonarpur,
District-South 24 parganas,
Pin-743369,
Kolkata-700 150,
as unemployed.

.....Applicant

For the applicant : Mr. G.C. Chakraborty, counsel

-VERSUS-

1. Union of India service through
the Comptroller and Auditor General of India,
Pocket-9,
Deen Dayal Upadhyaya Marg,
New Delhi-110 124.
2. The Accountant (A&E),
West Bengal Treasury Building,
Kolkata-700 001.
3. The Principal Accountant General (A&E),
West Bengal,
Treasury Building,
Kolkata-700 001.
4. The Director, Indian Audits and Accounts Department,
Treasury Building, 2, Government Place West Bengal,
Kolkata-700 001.

5. Accountant General (A&E),
W.B, Ex-Office (Appellate Authority),
Kolkata-700 001.
6. The Senior Accounts Officer (Administration),
Indian Audit and Accounts Department,
Office of the Accountant General (A.E),
West Bengal-700001,
Kolkata.

.....Respondents

For the respondents : Mr. S.K. Bhattacharyya, counsel

ORDER

A.K.PATNAIK, JM:

In compliance of the order of the Hon'ble High Court of Calcutta dated 18.03.2015 in WPCT 55 of 2015, the Original Application No. 169 of 2013 has been heard by this Division Bench afresh and perused the materials placed on record.

2. The applicant has filed this application under Section 19 of Administrative Tribunals Act, 1985 seeking the following reliefs:-

- "8 i) An order directing the respondents authorities to take immediate steps for appointment on the applicant on compassionate ground forthwith;
- ii) An order directing the respondent authority to give effect of the recommendation of the Screening Committee for appointment of the applicant on compassionate ground;
- iii) An order directing the respondents to restrain from giving employment to other until and unless the case of the application disposed of.
- iv) An order of appointment of the applicant on compassionate ground be passed directing the



respondent authority to cancel, without or rescind the Government order if any against the applicant.

- v) To quash, cancel or rescind the impugned order dated 13.05.2008 passed by the authority concern and to give appointment of the applicant on compassionate ground;
- vi) And/or to pass such other or further order as to Your Lordships may seem fit and proper."

3. The letter dated 13th May, 2008 impugned in this OA is extracted hereunder for ready reference:

"In invited a reference to your prayer dated 11.1.2008 on the subject indicated above, I am to inform you that your prayer for reconsideration of your son's employment in this office on compassionate ground was carefully examined but the benefit of compassionate appointment could not be entertained by the competent authority."

4. Shorn of unnecessary details, it would suffice to state that the father of the Applicant (Sarbeswar Sahoo) was an accountant under the Respondents authority and while working as such, he died prematurely on 28.11.2005 leaving behind his widow and two sons. Thereafter, as per the rules/executive instructions, the widow applied for appointment on compassionate ground in favour of the applicant. However, finally in letter dated 13.05.2008, the Respondent Authority rejected the prayer for appointment on compassionate ground, referred to supra. Hence, being aggrieved, the applicant has filed this OA with the prayers mentioned above.



5. The Respondents have filed their counter stoutly opposing the prayers of the Applicant on the grounds that in the recruitment year 2007 there were three vacancies (Gr. C – 02 & Gr. D – 01), and the aspirant candidates were four for Gr. C and two for Group D posts. The Screening Committee held on 04.12.2007 considered the cases of the six candidates. The case of the applicant was considered for a Group C post on 04.12.2007 and he was called for an interview. On 14.12.2007 the Committee interviewed the four candidates, viz. Shri Santosh Sahoo, the applicant herein, Shri Prasenjit Pakira, Shri Akash Biswas and Shri Rabindra Kumar Giri. Shri Santosh Sahoo, though had the requisite minimum qualifications for being considered for the post of Clerk/Typist, a Group C post, but on the basis of his performance in the Interview, he was found neither suitable for appointment for the post of the Clerk/Typist nor as a Group D post. The Applicant herein was accordingly informed vide letter bearing No.Admn.-1/990(R)/2007-08/1463 dated 3rd January 2008 that his prayer for appointment on compassionate could not be granted. This was also reiterated in letter dated 13th May, 2008.

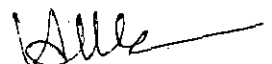
6. The learned counsel for the applicant placing reliance on the averments made in the OA, has contended that as per the rules after the death of the bread earner of the family i.e. his father, the applicant would have been provided appointment on compassionate ground; especially because, the family is still continuing in financial



distress. But the Committee rejected the case of the applicant without considering the very object of providing such appointment to one of the family members of the deceased employee. Accordingly, he has prayed for the reliefs claimed in this OA.

On the other hand, the Learned Counsel appearing for the Respondents placing reliance on the averments made in the counter has contended that one cannot claim appointment on compassionate ground as a matter of right and appointment on compassionate ground is subject to fulfillment all the conditions provided in the rules/executive instructions. Since, for the reasons stated in the minutes, the Committee did not consider the case of the applicant to be one so as to be provided appointment on compassionate ground, no interference is warranted. In stating so, the Learned Counsel for the Respondents has prayed for dismissal of this OA.

7. It is needless to state that the whole object of granting compassionate employment is to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. Further more, as a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment or



any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies (Ref: **Umesh Kumar Nagpal vs. State of Haryana & Ors. [JT 1994 Vol.3 SC 525]**). In the instant case, the father of the applied died on 28.11.2005 in other words, ten years before but the family could survive in absence of any appointment on compassionate ground.

Further, in the case of **State Bank of India and Another vs. Raj Kumar [2010(11) SCC 661]**, the Hon'ble Apex Court emphasized that "compassionate appointment is not a source of recruitment. It is an exception to general rule that recruitment to public services should be on basis of merit, by open invitation, providing equal opportunity to all eligible persons to participate in selection process." Again in Hon'ble Supreme Court in Civil Appeal No.2206 of 2006 dated 05.04.2011 in the case of **Local Administrative Department vs. M. Selvanayagam @ Kumaravelu** was pleased to observe that "an appointment made many years after the death of the employee without due consideration of financial resources available to his/her dependents and the final 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 is to be directly in conflict with Article 14 and 16 of the Constitution and hence, quite bad and illegal. In dealing with the cases of compassionate appointment it is imperative to keep this vital aspect in mind."

8. It is not the case of the applicant that the Respondent Authorities had adopted the procedure discriminatorily rather to avoid any discrimination or impropriety and to maintain uniformity in the matter of selection, the respondents have followed one procedure for all and in that process, the applicant was not found suitable for appointment on compassionate ground and offered the appointment who were found suitable in the selection which at no stretch of imagination can be found faulted with.

9. Considering the facts of the case, findings of the Screening Committee regarding his unsuitability for the post and the law of the land quoted above, we find no merit in this OA which is accordingly dismissed. MA is accordingly disposed of. No costs.

(Ms. Jaya Das Gupta)
Admn. Member

(A.K. Patnaik)
Judicial Member