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CENTRAL ADMINISTRATIVE TRIBUNAL CALCUTTA BENCH

Original Application No.350/00208/2016

Date of Order: This, 25th day of September, 2019

THE HON'BLE SMT. MANJULA DAS, JUDICIAL MEMBER

THE HON'BLE MR NEKKHOMANG NEHSIAL, ADMINISTRATIVE MEMBER

1. Diptam Biswas
Son of Late Tapan Kumar Biswas

2. Smt. Lily Biswas
Wife of Late Tapan Kumar Biswas

Both of the applicants residing at "Na Hanyate" Apartment
Flat No. B-5 (3rd Floor), 3/3, M.B. Road, Belgharia, Kolkata-
700056.

... Applicant

- Versus -

1. Union of India through the AC & ARS (N), Office of the
Comptroller & Auditor General of India, Packet - 9, Deen
Dayal Upadhyay Marg, New Delhi - 110124.

2. Accountant General India, Audit and Accounts Department
(Receipt, Works & Local Bodies Audit), W.B. Local Audit
Department, CGO Complex 'C' East Wing (Floor), Salt Lake
City, DF Block Sector - 1, Kolkata - 700064.

3. Principal Accounts General (G & SSA), Local Audit
Department, 2, Govt. Place (West), Treasury Building,
Kolkata - 700001.

4. Deputy Accountant General (SS - III), Local Audit Department, 2, Government Place (West), Treasury Building, Kolkata - 700001.
5. Sr. Deputy Account General, (Local Bodies) Local Audit Department, CGO Complex, Salt Lake City, Kolkata - 700064.

.. Respondents

For applicant (Adv): Sri B R Das

For respondents (Adv): Sri S Roy

ORDER (ORAL)

MANJULA DAS, MEMBER (J):

In this OA, filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant is seeking the following relief(s):-

"8.i) Rescind, recall, withdraw and/or cancel the order being Annexure-A1, denying the petitioner appointment on the grounds as mentioned thereunder and closing the case.

ii) Re-open the assessments by the DSC after 10.01.2012 so as to ascertain the relative positions on the basis of actual evaluations under the rules vis-à-vis the vacancies under 5% quota being available in each case.

iii) Treat the case as alive for all intents and purpose in due consideration of his priority and seniority reckoned from date of application i.e. 28.08.2009 for appointment of petitioner No. 1.

iv) Certify and transmit the entire records and papers pertaining to the applicants' case so that after



the causes shown thereof conscionable justice may be done unto the applicants by way of grant of relief as prayed for in (i) to (iii), above.

v) Pass such other order/orders and/or direction/directions as deemed fit and proper.

vi) Costs."

2. This is the second round of litigation seeking compassionate appointment. The facts are already delineated in the earlier round of litigation, namely OA.285/2013. This Tribunal vide order dated 09.12.2014 disposed of the said OA as follows:-

"4. In such view of the matter, since the authorities themselves have decided to keep the matter under consideration for three years the O.A. is disposed of with a direction to act in accordance with law and pass appropriate reasoned & speaking order and when the matter is placed before next DSC."

The respondents have communicated the applicants vide order dated 27.04.2015, that applicant no.1 did not deserve compassionate appointment on the ground amongst others that the financial circumstances of the family did not call for such appointment on the grounds:

(a) The applicant no.2 was an Assistant Teacher in a pensionable establishment;

- (b) the family received terminal benefits of Rs.12,21,695/-;
- (c) applicant no.2 is receiving family pension of Rs.10,695 plus DA which at current rate (at that time) worked out to Rs.22,138/-;
- (d) the deceased did not have any unmarried daughter; and
- (e) the applicants have a residential flat.

Accordingly, the respondents have closed the matter for further consideration. Being aggrieved, the applicants filed this OA.

3. The specific contention of the learned counsel for the applicant is that as per prescribed evaluation system the empowered DSC had awarded 95 marks out of 180 marks to the deceased family. The applicants were communicated on 21.02.2012 that the application for compassionate appointment would be under consideration for three years. However, his case was not considered in 2013 and 2014 and in purported compliance of the order of this Tribunal dated 09.12.2014 in OA.285/2013, the DSC has considered the case and recommended that his case did not deserve compassionate



appointment and accordingly closed the matter for further consideration. Learned counsel forcefully contended that though applicant's family scored 95 merit points, the DSC did not consider his case in 2013 but considered the sole case of Shri Dilip Kumar Kumhar, son of late Ramchandra Kumar Kumhar and recommended for extension for one more year as there was no vacancy. The DSC in its meeting dated 22.09.2014 too did not consider the case of the applicants and only considered the case sole candidate and recommended Ms Km Neha who scored only 80 merit points, which is much lesser than the applicants. Referring to last para of page 11 of the written statement, the learned counsel contended that the respondents vide letter dated 19.11.2013 requested the family of late Ramchandra Kumar Kumhar to nominate another person to seek compassionate appointment. According to the learned counsel, the respondents could not have educated the deceased family to change the heirs. In support of his contention learned counsel relied on the decision of the Hon'ble Supreme Court in the case of **Shreejith L vs Dy. Director Education, Kerala & Others, (2012) 7 SCC 248.**



4. Learned counsel further submitted when one vacancy for compassionate appointment occurred in 2014, the applicant no.1 was eligible for consideration scoring 95 merit points, however, Ms. Km. Neha was appointed on compassionate ground who scored only 80 merit points. Learned counsel submitted that since the applicant no.1 was more deserving candidate having scored more merit points than Ms. Km. Neha, and his case having not been considered in 2013 and 2014, the respondents may be directed to reconsider his case and appoint him on compassionate ground even by creating a supernumerary post. In support of his contention, learned counsel relied on the decision of the Hon'ble Supreme Court in the case of **Sushama Gossain & Others vs Union of India & Others, 1989 SCC (L&S) 662.**

5. Learned counsel for the respondents, on the other hand, submitted that this Tribunal vide order dated 16.05.2018 had made certain queries and the respondents have answered the queries in details. Learned counsel referring to the written statement and their reply to the queries submitted that the DSC had considered the case of the applicants afresh in its meeting dated 16.04.2015. The DSC observed that at the time of

evaluation of marks the applicant no.2 did not show any income from other sources (other than family pension). According to the learned counsel, applicant no.2 was an Assistant Teacher in a pensionable establishment, therefore, definitely she had also received terminal benefits. Learned counsel contended that had the applicant no.2 disclosed that material facts, the family must have scored much lesser marks than 95 marks. Learned counsel also submitted that the family have a residential flat and the DSC considered the matter and observed that financial circumstances of the family was very congenial for bringing up the one and only child of the deceased and there was no compelling circumstances of the family apparently evident at that material point of time. According to the learned counsel, the DSC recommended to close the case for compassionate appointment as the applicant no.1 did not deserve appointment. Further, the recommendation of the DSC had been accepted by the competent authority.

6. We have heard both the sides, perused the pleadings and the materials placed on record and also the decisions relied upon.



7. Admittedly, the respondents vide their letter dated 21.02.2012 communicated that application for compassionate appointment would be under consideration for three years. Said undertaking was recorded by this Tribunal in its decision dated 09.12.2014. However, case of the applicant no.1 was not placed before the DSC on 30.09.2013 nor on 22.09.2014. From the reply it is apparent that the applicant scored 95 merit points but his case was not placed before the DSC and the candidate scoring 80 merit points was considered solely and was recommended for compassionate appointment, and accordingly she was appointed. It transpires from the perusal of last sub para of page 11 of the written statement that the respondents had advised the bereave family to change their nominee so that his/her case can be considered for compassionate appointment. In the case of **Shreejith L (supra)**, the Hon'ble Supreme Court had held as under:-

"We do not see any obligation on the part of the institution or the Manager to go in search of the legal heirs of deceased employees or educate them about their right to seek an appointment under the scheme."

Though the respondents tried to impress us that the DSC could not properly evaluate the determining factors in arriving financial

eligibility, fact remains that a duly constituted empowered DSC had awarded 95 merit points to the applicant but his case was not considered by the DSC in 2013 and 2014 and candidate scoring much lesser merit points (80) was considered solely and recommended which shows that applicant no.1 was more deserving than the candidate scoring 80 marks who was appointed. Therefore, the case requires reconsideration. Learned counsel forcefully contended that since the applicant no.1 is more deserving case, he may be appointed on compassionate ground even by creating a supernumerary post in the event there is no vacancy. The Hon'ble Supreme Court while dealing with a compassionate appointment matter in the case of **Sushama Gossain (supra)** held as under:-

"If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant."

8. In view of the above, the respondents are directed to reconsider the case of the applicant no.1 for compassionate appointment in the light of the above observations and the decisions of the Hon'ble Supreme Court in the case of **Shreejith L and Sushama Gossain** as cited and extracted above within a period of three months from the date of receipt of this order.

9. The OA is disposed of as above. There shall be no order as to costs.

(NEKKHOMANG NEHSIAL)
ADMINISTRATIVE MEMBER

(MANJULA DAS)
JUDICIAL MEMBER

/BB/

