IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17113 of 2022

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1. The Union of India through the Comptroller and Auditor General of India, Government of India, 10 Bahadur Shah Zafar Marg, New Delhi- 110002
2. The Accountant General (A and E) Office of Accountant General, Mahalekhakar Bhawan, Bir Chand Patel Path, R Block, PO- GPO, P.S.- Kotwali, Town and District- Patna (Bihar), Pin Code- 800001.
3. The Senior Deputy Accountant General (Administration), Office of Accountant General, Mahalekhakar Bhawan, Bir Chand Patel Path, R Block, PO- GPO, P.S.- Kotwali, Town and District- Patna (Bihar), Pin Code- 800001.

... ... Petitioner/s

Versus

Ms Preeti Sharma Daughter of Late Surendra Kumar Sharma, Resident of Flat No. 203, Block- B, Basudeo Apartment, Ranjan Yadav Path, Road No. 2, Baily Road, Danapur Town, District- Patna.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr.Bindhyachal Rai
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE PURNENDU SINGH)

Date : 15-12-2022

The Appellant(Union of India) has assailed the judgment and order dated 09.03.022 passed by the Central Administrative Tribunal, Patna Bench, Patna by which, the learned Tribunal has quashed the order dated 05.11.2018 passed by the senior Deputy Accountant General(Administration), Patna whereby, the request for compassionate appointment of the respondent had been rejected.

2. The facts culled out from the records of the case are that, Surender Kumar Sharma, father of respondent no. 1, while

working as Senior Divisional Officer, Rural Work Division, Aereaj, East Champaran, died on 21.02.2016, leaving behind him his widow, two dependent daughters and a minor son. The mother of the respondent preferred an application dated 04.07.2016 for appointment of her daughter, Ms. Preeti Sharma(Respondent) on compassionate ground. The Welfare Officer submitted verification report of the family of the deceased government employee on 04.01.2017. Pursuant to this report, the Account General (A&E)/Bihar/Patna constituted a Departmental Screening Committee for considering the case on compassionate appointments on 19.07.2017. Departmental Screening Committee considered three cases of compassionate appointment, including that of the Respondent in its meeting convened on 24.08.2017, on the basis of different parameters prescribed in DoPT OM and headquarter office circular No.34, dated 09.10.1998 and 28.09.106 respectively. The Screening Committee allotted 90 marks out of 165 marks to the respondent and she managed to secure 2nd position among three candidates and the Committee recommended her name for appointment to the post of MTS in group 'C' cadre. In consonance with Rule 13 (d) of the scheme for appointment on compassionate ground vide DoPT OM dated 09.10.1998, the recommendations of the

Committee was sent to the Accepting Authority on 27.08.2017. The Accepting Authority was in disagreement with the recommendations of the Departmental Screening Committee and referred the matter on 25.04.2018 to Deputy Controller and Auditor General (LB & HR), New Delhi for final decision vide No. A.G. (A&E)/Bih/Comp. Apptt/144, the competent Authority, who rejected the request of the respondent for appointment on compassionate ground on 04.10.2018 and communicated the same vide Letter dated 05.11.2018 under the signature of Senior Deputy Accountant General(Administration).

3. Aggrieved by the order of rejection dated 04.10.2018, the respondent preferred O.A. Application No. 050/00044/2019 under Section 19 of the Administrative Tribunal Act, 1985, which was allowed by order dated 09.03.2022. Aggrieved, the petitioners have preferred the present writ for quashing the order dated 09.03.2022 passed by the Learned Central Administrative Tribunal, Patna Bench, Patna.

4. Learned Counsel on behalf the petitioner submitted that, the Accepting Authority did not agree with the recommendation of the Departmental Screening Committee for appointment of respondent to the post of MTS in group ‘C’

cadre, on the ground that there is no justification that the family is in ‘dire need of financial assistance’, which is the single most important factor for determining whether to give compassionate appointment to a candidate or not. The Committee failed to assess this single most important factor, therefore, the case of the Respondent was rightly rejected. Learned Counsel further submitted that huge amount of retiral benefits of the deceased, Late Surendra Kumar Sharma, was paid to the Respondent’s family and it is also to be noted that the family is getting pension and is in possession of movable as well as immovable properties. In this background, he submitted that the learned Central Administrative Tribunal has not applied its judicious mind while allowing the O.A. Application of the Respondent. Learned Counsel further submitted that the family has sustained itself for a long period and the compassionate appointment is for meeting immediate financial crisis and on this ground the appellant seeks the order dated 09.03.2022 passed in O.A. No. 050/00044/2019 is to be quashed.

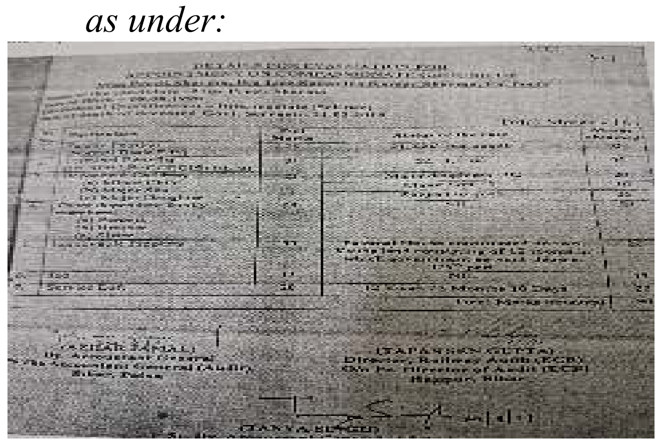
5. *Per Contra*, learned counsel appearing on behalf of the Respondent submitted that the O.A. has been preferred jointly by the widow and daughter of the deceased employee, immediately after his death in the year 2016. The Departmental

Screening Committee evaluated the case of the respondent on different parameters based on DoPT OM and headquarter office circular No. 34 and awarded 90 marks out of 165 marks to the respondent. The Committee had, while recommending the appointment of the respondent on compassionate ground to the post of MTS in group ‘C’ cadre, discussed the composition of the family and its financial position and found that the deceased had left behind him two unmarried daughters who are jobless and one minor son whose education was main liability of the family. It is also submitted that the order dated 05.11.2018 passed by the Senior Deputy Accountant General (Administration) rejecting the claim of the Respondent is a non speaking order.

6. Heard rival submissions of the parties and perused the material on record and the impugned order passed by the learned Tribunal. Prima facie, it appears that the Departmental Screening Committee,upon evaluation of the financial condition of the family of the Respondent had found that the deceased employee has left behind him, his widow, two unmarried dependent daughters and a minor son, whose education was a major liability on the family. The Departmental Screening Committee had also taken into consideration the parameters set

on the basis of DoPT OM and headquarter circular No. 34, with respect to the appointment on compassionate ground and awarded 90 marks out of 165 marks and consequently, recommended respondent to the post of MTS in grade ‘C’ cadre. The learned Tribunal has taken note of the details for evaluation for the appointment on compassionate grounds of Ms. Preeti Sharma, daughter of late Surendra Kumar Sharma, Ex-D.A.O and reproduced the same in paragraph no. 8 of the impugned order which is as under:

> *“8. Considered the submissions advanced. Before we proceed further to advert to merits of the OA, we need to allude to some undisputable but relevant & necessary facts for disposal of this OA. The deceased employee died leaving behind his widow, two unmarried daughters and a minor son. The details for evaluation for her appointment noted down by the Departmental Screening Committee is as under:*



7. The Accepting Authority did not agree with the

recommendation of the Committee for offering appointment on compassionate ground because the Committee had failed to provide any compelling grounds for proving the fact that the family of the respondent was in 'dire need of financial assistance' hence, rejected the request of MS. Preeti Sharma - respondent for appointment on compassionate ground.

8. On perusal of the order dated 05.11.2018 passed by the Senior Deputy Accountant General (Administration), it appears that the same is a non speaking order passed without assigning any reasons that there was adequate financial source of the family to reject the claim of the respondent. Even no reasons have been assigned for disagreement with the recommendation of the Departmental Screening Committee.

9. It has been held by the Apex Court in case of ***Kranti Associates Private Limited and Another. v. SH. Masood Ahmed Khan and Others*** reported in ***(2010) 9 SCC 496***. In paragraph nos. 14, 45 and 47 the Apex Court has held as under:-

> ***"14.*** *The expression "speaking order" was first coined by Lord Chancellor Earl Cairns in a rather strange context. The Lord Chancellor, while explaining the ambit of the writ of certiorari, referred to orders with errors on the face of the record and pointed out that an order with errors on its face, is a*

speaking order. (See pp. 1878-97, Vol. 4, Appeal Cases 30 at 40 of the Report).

***45.** In English v. Emery Reimbold and Strick Ltd. [(2002) 1 WLR 2409 : (2002) 3 All ER 385 (CA)] it has been held that justice will not be done if it is not apparent to the parties why one has won and the other has lost. The House of Lords in Cullen v. Chief Constable of the Royal Ulster Constabulary [(2003) 1 WLR 1763 : (2004) 2 All ER 237 (HL)] , Lord Bingham of Cornhill and Lord Steyn, on the requirement of reason held : (WLR p. 1769, para 7)*

"7. ... First, they impose a discipline ... which may contribute to such refusals being considered with care. Secondly, reasons encourage transparency ... Thirdly, they assist the courts in performing their supervisory function if judicial review proceedings are launched."

***47.** Summarising the above discussion, this Court holds:*

(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

(b) A quasi-judicial authority must record reasons in support of its conclusions.

(c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

(f) Reasons have virtually become as indispensable a component of a decision-

making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(g) Reasons facilitate the process of judicial review by superior courts.

(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or "rubber-stamp reasons" is not to be equated with a valid decision-making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial

Candor [(1987) 100 Harvard Law Review 731-37] .)

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See Ruiz Torija v. Spain [(1994) 19 EHRR 553] EHRR, at 562 para 29 and Anya v. University of Oxford [2001 EWCA Civ 405 (CA)] , wherein the Court referred to Article 6 of the European Convention of Human Rights which requires,

"adequate and intelligent reasons must be given for judicial decisions".

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "due process."

10. In view of the fact that no reason has been assigned by the Competent Authority, the Senior Deputy Accountant General in his order dated 05.11.2018 which is against the law laid down by the Apex Court in case of Kranti Associates (supra). The order passed by the Competent Authority dated 05.11.2018 is hereby set aside and the order of the learned Tribunal dated 09.03.2022 requires no interference.

11. The concerned appellant is hereby directed to appoint the respondent on compassionate ground in view of the fact that the respondent fulfills all the conditions for being appointed on

compassionate ground. Such exercise may be considered by the Competent Authority within a period of three months from the date of communication of this order to meet the very object of providing compassionate appointment.

12. Accordingly, the present writ petition is dismissed.

(P. B. Bajanthri, J)

(Purnendu Singh, J)

Niraj/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	
Transmission Date	N.A.