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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

ORIGINAL APPLICATION No. 194 OF 1987.

Date of decision .. March 16, 1988.

Abdul Sultan Khan, son of late Abdul Dayan Khan.
At/P.O- Sunhat, Barkhualane, Dist- Balasore.

.. Applicant.

Versus

1. Union of India through the Development Commissioner,
Ministry of Industry (Department of Industrial Development)
SISI, Nirman Bhawan, New Delhi.
2. Director, Small Industries Service Institute,
Tulsipur, Cuttack-8

.. Respondents.

Mr. G.A.R.Dora, Advocate .. For Applicant.

Mr. Tahali Dalai, Addl. Standing
Counsel (Central) .. For Respondents.

C O R A M :

THE HON'BLE MR. B.R. PATEL, VICE CHAIRMAN

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THE HON'BLE MR. K.P. ACHARYA, JUDICIAL MEMBER.

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1. Whether the reporters from local papers have been
permitted to see the judgment ? Yes.
 2. To be referred to the reporters or not ? No.
 3. Whether Their Lordships wish to see the fair
copy of the judgment ? Yes .
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J U D G M E N T

K.P.ACHARYA, MEMBER (J), In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant prays to command the respondents to give a suitable job, namely, a post of Lower Division Clerk under the Director of Small Industries Service Institute, Cuttack.

2. Shortly stated, the case of the applicant is that his father was a Driver under the Director, Small Industries Service Institute, Cuttack and he died on 2.8.1983, vide Death Certificate, Annexure-2. The applicant's father Abdul Dayan Khan left behind his widow, four sons and two daughters. Out of the four sons, one of them is the applicant in this case. The prayer of the applicant is to the above effect.

3. We did not wait for filing of a counter because the facts are very simple in nature and almost undisputed.

4. We have heard Mr. G.A.R.Dora, learned counsel for the applicant and Mr. Tahali Dalai, learned Additional Standing Counsel for the Central Government at some length. Before we express any opinion on the merits of the application it is worth-while to state succinctly a few facts leading to the filing of this application. Father of the present applicant Abdul Dayan Khan died on 2.8.1983 leaving behind his widow, four sons and two daughters out of whom the third son is the applicant in this application. The first son of Abdul Dayan Khan is employed as a Peon in Balasore Municipality and this employment was obtained by the first son six years prior to the death of Abdul Dayan Khan. The second son of the father of the applicant is suffering from mental derangement and the

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fourth son is a minor studying in a school. One daughter of Abdul Dayankhan is married and the other is unmarried. In these circumstances, the applicant made an application to the appropriate authority for giving an appointment on compassionate grounds. The applicant was asked to undergo a type test and it is told to us that in compliance with the said direction, the applicant had appeared at the Test and was successful. There appeared to be some defects in the application which was filed by the applicant before the appropriate authority and vide Annexure-A/5, the applicant was asked to remove such defects and thereafter the applicant did so. Suddenly the applicant received an order contained in Annexure- A/8 dated 12/14-5-1987 from the Assistant Director (Admn.), Small Industries Service Institute, Tulsipur, Cuttack intimating the fact that the competent authority didnot agree to the appointment on compassionate grounds as a Lower Division Clerk. In such circumstances , the applicant has approached this Bench for an appropriate direction according to law .

5. After hearing learned counsel for both sides , we are of opinion that probably the appointment has not been given to the applicant due to the fact that one of his brother is serving in Balasore Municipality. We say so because this is the apprehension of the applicant that on this ground alone his application stood rejected even though all information were furnished by the applicant vide Annexure -A/7 dated 28.7.1986 in response to the query made by the Assistant Director, vide Annexure-A/6 dated 2.7.1986. Mr. Dora, learned counsel for the applicant invited our attention to the instructions of the Government of India in regard to the

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criteria of eligibility, educational qualifications and when there is one earning member already in existence in the family, on compassionate ground appointment could be given to the legal representatives of a particular deceased officer in a particular institute. For ready reference of the competent authority, we would quote the relevant portions and in addition to the same we would also quote para-3 of O.M.O.No.14014/10/76-Estt (D) dated 25.5.1977 issued by the Government of India in the Ministry of Home Affairs (Department of Personnel & AR) relating to the subject- appointment of sons/daughters/ near relations of a Government servant who died in harness, leaving his family in immediate need of assistance.

" Para-3 :-
Some Departments wanted clarification about the orders issued in O.M.No.F.14/21/67-Estt.B dated the 1st January 1968, paragraph 2, which mentions that even where there is already an earning member in the family, grant of a compassionate appointment may be considered without reference to the Employment Exchange. All such appointments would, however, be made with the prior approval of the Secretary of the Ministry/ Department concerned, who will before approving an appointment, satisfy himself that the grant of this concession is justified having regard to the number of dependents left by the deceased Government servant, the assets and liabilities left by him, the income of the earning member as also his liabilities. However, the benefit of compassionate appointment should not be granted to more than one dependant of a deceased/invalidated

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Government servant. Where one dependent has already been employed on compassionate grounds, a second dependent cannot be appointed on compassionate ground unless the first appointment is cancelled".

In case employment of the elder brother of the applicant in Balasore Municipality has weighed with the competent authority, we would say that the matter needs reconsideration because not only Abdul Dayan Khan died in harness but the paltry amount drawn by the elder brother of the applicant would not allow the family members of deceased Abdul Dayan Khan to meet their both ends. The elder brother of the applicant has also three dependents namely, his wife, and two minor daughters. It can be easily conceived and imagined how difficult ^{it is} for a person in these very hard days to maintain his wife and two minor daughters drawing a paltry amount towards pay of a peon. In such circumstances, the Government of India rightly thought that a service obtained by a particular member of the family would not disentitle the appropriate authority to take compassionate view for giving an appointment in an office in which the particular incumbent had breathed his last. Therefore, we would direct the respondents to re-consider the matter and give an appointment to the applicant whenever vacancy arises subject to his suitability.

6. Thus, the application is accordingly disposed of leaving the parties to bear their own costs.

B.R. PATEL, VICE CHAIRMAN,
Central Admn. Tribunal,
Cuttack Bench/Rdy, SPA/16.3.88.

9 agree.

..... 16.3.88
Member (Judicial)

..... 16.3.88
Vice Chairman.