

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO: 429 OF 1990

Date of decision: 24.4.92

MAMATA PATTNAIK ..

Petitioner

Versus

Union of India and others ..

Opp. Parties.

For the Petitioner

.. M/s Devanand Misra, Deepak Misra,
A. Deo, B.S. Tripathy, P. Panda,
Advocates.

For the respondents

.. Mr. Ashok Mohanty and Mr.
Aswini Mishra, Sr. Standing
Counsel (Central)

CORAM:

THE HONOURABLE MR. K.P. ACHARAYA, VICE CHAIRMAN

AND

THE HONOURABLE MISS. USHA SAVARA, MEMBER (ADMN.)

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1. Whether reporters of local papers may be allowed 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.

(141)

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Mr. A.K. Misra, Standing Counsel.

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C O R A M :

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A N D

THE HONOURABLE MISS. USHA SAVARA, MEMBER (ADMN.)

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J U D G M E N T

K.P. ACHAR YA, V.C.

In this application under section 19 of the Administrative Tribunals Act, 1985, the Petitioner prays to quash the notice of termination of the services issued to the Petitioner vide Annexure-3 and further direction be given to Opposite Party No.2 to consider the case of the petitioner sympathetically and to give a posting at Bhubaneswar and/or Opposite Party No.3 i.e. Director General of Posts be directed

W to give an appointment to the Petitioner in the Office of the

11211

Deputy Director of Accounts (Postal) at Cuttack.

2. Shortly stated the case of the Petitioner is that her father expired in the year 1986 and her brother Durgamadhab Patnaik while serving as Labour Administrator under the Welfare Commissioner at Raipur suddenly died on 19.5.1987 due to kidney failure. The only legal representatives left behind by her father were her widow mother and herself. The Petitioner did not choose to marry because she owed a moral responsibility to lookafter her ailing mother who is a chronic heart patient and consistently deteriorated in her health condition due to the sad demise of her father and brother so much so the mother of the Petitioner developed mental derangement and required constant medical attention. It is further stated by the Petitioner that the Opposite Party Nos 1 and 2 graciously took a very sympathetic view over the Petitioner and provided her a clerical job on temporary basis and posted her at Barbil in the District of Keonjhar. The Petitioner worked at Barbil with effect from 17th May, 1989 and due to her predicament relating to the illness of her mother, she was compelled to avail leave very often about which her authorities had expressed resentment and the authorities also gave notice to the Petitioner that her services will be terminated if she avails leave frequently. Ultimately vide Annexure-3 dated 21st June, 1990 notice was given to the Petitioner by the Welfare Commissioner that her services shall stand terminated with effect from the date

//3//

of expiry of a period of one month from the date on which this notice will be served and ultimately the services of the petitioner has been terminated.

3. As regards the alternative prayer made by the Petitioner for her appointment in the Office of the Deputy Director of Accounts (Postal), Cuttack it is stated in the Petition that Shri Rangadhar Das who belongs to the Ministry of Defence and Shri M.G. Parida who belongs to Technical Department were transferred to the Postal Department on compassionate grounds. Hence the Prayer of the Petitioner for giving her posting in the above mentioned office of the Postal Department should be allowed.

4. Counter has been filed on behalf of Opposite Party Nos. 1 and 2 namely Secretary, Ministry of Labour, New Delhi and Commissioner of Labour and Cess, Government of India, Bhubaneswar. Counter has also been filed separately by Opposite Party No. 3 i.e. the Director General of Post, New Delhi. Opposite Party Nos. 1 and 2 admitted in their counter that a compassionate appointment was given to the Petitioner and she was posted at Barbali but her services was terminated because of the ~~continuous~~ ^{continuous} ~~consistent~~ leave availed by her at the cost of the Government Work and therefore, the authority had no other option but to terminate the services of the Petitioner and this was done after giving due warning to the Petitioner not to avail leave at the cost of Government work.

10
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5. In the counter filed on behalf of Opposite Party No.3, it is stated that in very rare deserving cases applications for appointment in the Postal Department is considered only when an application is received through proper channel and the prayer is allowed subject to availability of vacancy. No such application has been received from the Petitioner. Therefore, prayer of the Petitioner on this account should be dismissed.

6. We have heard Mr. Deepak Misra learned Counsel for the Petitioner and Mr. Aswini Kumar Misra learned Senior Standing Counsel (Central) for the Postal Department and Mr. Ashok Mohanty learned Senior Standing Counsel (Central) for the Central Government. We have also perused the pleadings of the parties.

7. On a perusal of the pleadings and on hearing counsel for both sides, we have absolutely no doubt in our mind to hold that Opposite Party Nos.1 and 2 took a very sympathetic view over the Petitioner by giving her an appointment on compassionate ground and that the administrative authorities of the Welfare Department have sufficiently tolerated the conduct of the Petitioner while absenting herself from duty which must have caused a lot of inconvenience for the administration. There is no denial in the counter regarding the ailment of the mother of the petitioner and that the only legal representatives left behind by the father of the Petitioner were the widow mother and the petitioner herself. Taking into consideration the natural sequence of human conduct, the Petitioner was placed in between the horns of a dilemma as to who should get preference, the chronic ailing mother or the Government Work. Naturally the daughter must have given

115//

more weight for the mother than the Government work. Highly appreciating the tolerance of the administrative authority of the Petitioner, we cannot denounce or disapprove the preference given by the daughter which is nothing but natural on the principle of 'blood is thicker than water'. Due to the aforesaid circumstances we cannot persuade ourselves to be reluctant to hold that the petitioner did not have any mala fide intention but she ~~was~~ actually availed leave at the cost of the Government work under compelling and unavoidable circumstances.

7. In view of the peculiar facts and circumstances of this case, we feel persuaded to take a compassionate view over the Petitioner as was taken by the authorities in the Department of Welfare and we feel inclined to say to the Petitioner that discharge of Government work in the proper manner is of no less importance. Therefore, without treating this as a precedent we would quash the order of termination passed by the competent authority terminating the services of the Petitioner and direct that the Petitioner should be reinstated into service and a posting may be given to her either at Bhubaneswar or at Cuttack, if possible, and if not possible she may be given a posting at any other place which is the administrative authority deems fit and proper. However, still we would commend to the authority to try to give her a posting at Bhubaneswar or Cuttack.

8. As regards the prayer of the Petitioner to give her appointment in the office of the Deputy Director of Accounts (Postal), Cuttack there was no dispute presented before us regarding the assertion of the Petitioner regarding the

12
19
11611

appointment of Shri R.D.Das and Shri M.G.Parida in the Postal Department. We are in complete agreement with the submission of Opposite Party No.3 in its counter that the case of the Petitioner cannot be considered without an application, through proper channel. In view of the peculiar facts and circumstances of this case we would direct that in case the petitioner is not adjusted either at Cuttack or at Bhubaneswar after her reinstatement she may file an application through proper channel addressing the same to Opposite Party No.3, who may sympathetically consider the prayer of the Petitioner and if possible to give her appointment/posting in the Postal Department either at Cuttack or at Bhubaneswar.

9. The Petitioner will not be entitled to any backwages after reinstatement and her seniority will be ranked at the bottom of the list as she will be treated as a fresh appointee.

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

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L. Narasimha Rao
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MEMBER (ADMINISTRATIVE)

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K. Mohanty
24.4.92
.....
VICE CHAIRMAN

Central Administrative Tribunal,
Cuttack Bench, Cuttack/K.Mohanty.