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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 115 of 1990

Date of Decision: 13.10.1992

Aji Tarai & another

Applicant

Versus

Union of India & Others

Respondents

For the applicant

Mrs. Mera Das,
Advocate

For the respondents

Mr. Ashok Mohanty,
Sr. Standing Counsel
(Central Government)

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C O R A M :

THE HONOURABLE MR. K. P. ACHARYA, VICE-CHAIRMAN

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1. Whether the reporters of local newspapers may be allowed to see the judgment ? Yes
2. To be referred to reporters or not ? *ND*
3. Whether His Lordship wishes to see the fair copy of the judgment ? Yes

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JUDGMENT

MR.K.P.ACHARYA, VICE-CHAIRMAN, In this application under Section 19 of the Administrative Tribunals Act, 1985, the petitioners pray for issuing a direction to the opposite parties to give an appointment to the petitioner No.2 on compassionate grounds in a post suitable to his educational qualifications etc.

2. Shortly stated the case of the petitioner is that one Shri Dhadi Tarai died in harness while working as Motor Driver in the Central Institute of Fresh Water Aquaculture at Kaushalyagang on 30.10.1987. Petitioners made a representation to the opposite parties to give compassionate appointment to Shri Debendra Tarai, son of Late Dhadi Tarai. In the present application Smt. Aji Tarai is the widow of Dhadi Tarai and Debendra is the son of Late Dhadi Tarai. Hence this application has been filed with the aforesaid prayer.

3. Though Mr. Ashok Mohanty, learned ~~Sr. Standing~~ Counsel appearing for the opposite parties prayed for an adjournment to file counter, I did not like to accede to this request, because this case was admitted on 11.4.1990 and several adjournments have been granted to file counter; yet the opposite parties did not file any counter. On 22.9.1992 on the insistence of Mr. Ashok Mohanty I peremptorily granted adjournment to file counter by 12.10.1992 and it was further observed that in case counter is not filed by the date fixed, the Court would proceed to hear the case on merits without counter. A copy of this order was sent to the opposite parties and as yet the opposite parties did not feel it necessary to file counter.

4. I have heard Mrs. Mira Das, learned counsel for the

petitioner and Mr. Ashok Mohanty, learned counsel appearing for the opposite parties.

5. Mrs. Das contended that Dhadi Tarai has died in harness and therefore keeping in view the modern trend of decisions of the Apex Court and several administrative instructions issued by the Government of India, in this case, direction should be given to the opposite parties to give compassionate appointment to the petitioner no.2 (Debendra Tarai). Assertions made in the petition ^{have not} ~~having~~ been denied by the opposite parties, ⁱⁿ as no counter has been filed and therefore there is no option left for the Court but to presume that the assertions made by the petitioners are true and correct.

6. I feel ^{tempted} ~~admitted~~ to quote the observations of the Apex Court pronounced in the case of Smt. Phoolwati vs. Union of India and others reported in AIR 1991 SC 469 ^{and} ~~quoted~~ with approval the observation made by Their Lordships in the case of Smt. Susama Gosain vs. Union of India reported in AIR 1989 SC 1976. In the case of Susama Gosain Their Lordships were pleased to observe as follows :

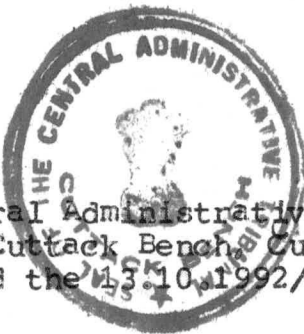
" As it can be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment, supernumerary post should be created to accommodate the applicant".

This view expressed in the case of Susama Gosain ^{by} has been quoted with the approval of Their Lordships

deciding the case of Smt. Phoolwati. Every son of the soil is bound by the observation of the Apex Court. Therefore I would impress upon the opposite parties that without any further delay, expeditious steps should be taken in this matter i.e. appointment of the petitioner on the compassionate grounds.

7. I would direct that the petitioner be appointed to a post commensurate with his educational qualification etc. by the opposite parties within 60 days from the date of receipt of a copy of the judgment, even by creation of supernumerary post. *The age bar is relaxed*

8. Thus the application stands allowed leaving the parties to bear their own costs.



Central Administrative Tribunal
Cuttack Bench, Cuttack
dated the 13.10.1992/BLK. Sahoo

Regd. Secy
13.10.92
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 115 of 1990

Date of decision: 30.4.1993

Shri Aji Tarai and another .. Applicants

-Versus-

Union of India and others .. Respondents

For the Applicant ... Smt. Meera Das, Advocate

For the Respondents ... Mr. Ashok Mohanty,
Sr. Standing Counsel
(Railway).

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C O R A M :

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

...

1. Whether reporters of local papers may be allowed to see the judgment? Yes.
2. To be referred to the reporters or not? *M*
3. Whether His Lordship 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,V.C. In this application under section 19 of the Administrative Tribunals Act,1985,the petitioner prays for a direction to the Opposite Parties to appoint the Petitioner No.3 on compassionate ground in a suitable post commensurate with his educational qualification.

2. Shortly stated the case of the petitioner is that one Shri Dhadi Tarai died in harness while working as Motor Driver in the Central Institute of Fresh Water Acquaculture at Kaushalyagang on 30-10-1987.Petitioner made a representation to the Opposite Parties to give compassionate appointment to Shri Debendra Tarai son of late Dhadi Tarai. In the present application Smt. Ajit Tarai is the widow of Dhadi Tarai and Debendra is the son of late Dhadi Tarai.Hence this application has been filed with the aforesaid prayer.

3. In their counter,the Opposite Parties maintained that the legal representatives of the deceased have been paid huge amount of gratuity money and other financial benefits and further

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also the elder son of the deceased and Smt. Aji Tarai namely Rabindra Tarai is serving under the Opposite Parties as a Driver T-2 with effect from 25th January, 1978 and therefore, the grounds for which compassionate appointment is made is not attracted and hence the application should be dismissed in limine.

4. Initially this case was heard on merits on 30th October, 1992 and judgment was dictated and pronounced in open court refusing to grant any adjournment to file counter as several adjournments have already been granted. A review application bearing No. 32 of 1992 was also filed by Mr. Ashok Mahant on behalf of the Opposite Parties urging that since the Opposite Parties were under a genuine impression that the case has been finally disposed of on 25.6.1990, counter was not filed and on that ground the Review Application was allowed. The judgment dated 13th October, 1992 passed in Original Application No. 115 of 1990 was cancelled and the case has been reheard.

5. Mrs. Meera Das learned counsel appearing for the petitioner relied upon a judgment of this

Bench passed in O.A. No. 465 of 1992 on 29th January, 1993 wherein it was observed that payment of D.C.R.G. and family pension is not a ground to reject the prayer of a particular person or a member of the deceased family, where the family is in distress owing to the death of a bread earner and in this connection reliance was placed on the judgment of the Principal Bench forming subject matter of O.A. 194 of 1991. I have no dispute with Mrs. Das learned counsel appearing for the petitioner that due to aforesaid circumstances, prevailing in this particular case, application of the petitioner should be dismissed. But the argument advanced by Mr. Ashok Mohanty learned Senior Standing Counsel (Railway) that one of the brothers of the petitioner No. 2 namely eldest son of Petitioner No. 1 is already serving in the same organisation under the Opposite Parties, *heavily weighs with me.* Appointment on compassionate grounds is made only to give some help to the distressed family to sustain the livelihood of the members of the deceased family. Of course Mrs. Das strenuously

urged that the eldest son does not take care of the mother and brothers and has no connection with the family. This is a general plea which is always taken to overcome the arguments that there is already a bread earner in the family. Besides the bald assertion made in the petition, there is absolutely no evidence before me in this regard. In such circumstances, if the compassionate appointment is given to another member of the same family, then a more deserving person may go without any fruits. Therefore, in my opinion, the principle laid down in the aforesaid judgment namely O.A. No. 465 of 1992 has no application to the facts of the present case and on questions of fact both the cases are completely distinguishable.

6. In such circumstances, I find no merit in this case which stands dismissed leaving the parties to bear their own costs.

[Signature]
30.4.93

VICE CHAIRMAN