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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 364 of 1994

Cuttack this the 6th day of March, 1995.

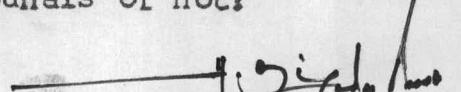
Swadeshpriya Sahoo Applicant

Versus

Union of India & Others Respondents

(For instructions)

1. Whether it be referred to the reporters or not? No.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunals or not? No.


(H. RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)

06 MAR 95

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.**

Original Application No. 364 of 1994

Ves.

(1) Union of India
represented through the
Secretary to Govt. of India,
Ministry of Planning,
Department of Statistics,
Central Secretariat,
New Delhi.

(2) The Director,
National Sample Survey Organisation(FOD),
West Block No.8, Wing No.6,
First Floor, R.K.Puram,
New Delhi-110022.

(3) The Regional Assistant Director,
National Sample Survey Organisation(FOD),
At-3A, Bhubaneswari, PO/PS-Bhubaneswar,
District-Khurda.

By the Advocate : Mr. Ashok Mishra, Senior Standing Counsel (Central).

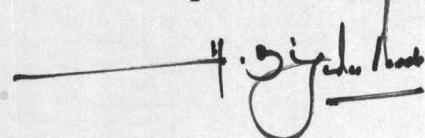
ORDER

H. RAJENDRA PRASAD, MEMBER (ADMN.) The Petitioner, Swadeshpriya Sahoo, applied for a suitable appointment under the respondents on 25-8-1993. He was seeking an appointment in the place of his father, Shri K.C. Sahoo, Investigator, NSSO(FOD), who retired on medical invalidation on 1.1.1993 under Rule -38 of CCS (Pension) Rules, 1972.

The applicant is a graduate and, according to his statement, he is duty-bound to look after his retired father, mother, two sisters and a brother. None is employed in the family. Swadeshpriya's application was, however, rejected on 14. 7. 1993, after which he represented again to Respondent No.2 on 28.7.1993 requesting for a reconsideration of his case. He had not received any reply to this last representation until the filing of the present original application.

2. The applicant seeks a direction to the respondents to absorb him in a suitable post in relaxation of the normal recruitment rules, on compassionate ground.

3. The respondents in their counter affidavit explain that Shri K.C. Sahoo, the applicant's father, was a candidate made available by the surplus cell of the Home Ministry for appointment in their Deptt. His total service in the Department was of less than five years. Explaining the reasons for the rejection of the applicant's request, the respondents mention that the retired employee had received more than Rs. 85,000/- by way of terminal benefits besides a pension of Rs. 2,305/- per month. It is also revealed



by the respondents that the applicant's father had at various times been sanctioned advances from Provident Fund for the specific and stated purpose of the marriage of his two daughters and the son viz., the present applicant. Going by this fact, it is evident to the respondents that both daughters are married already and are no longer dependent on the retired official. And since the father had also obtained an advance for the purpose of the Wedding of his son (the present applicant), the presumption is that he is duly employed since, in their view, he could not possibly have got married if he were unemployed. They also add that there is no record to show that the applicant's father was a diabetic from 1989, as claimed by him, although he was reported to have availed of leave in varying spells on different occasions on medical grounds other than diabetes. It is the impression of the respondents, therefore, that the applicant's father had sought voluntary retirement on medical invalidation in order to merely help his son secure a job, whereas he was quite at liberty to opt only for voluntary retirement having put in 33 years of service, instead of choosing medical invalidation as the route to retirement. The respondents also add that mere possession of requisite educational qualification does not automatically entitle

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any one to claim a post, since many other requirements have to be fulfilled before a request of this nature is approved or accepted. And finally the respondents say that as the applicant had been duly married before his father's retirement, he is no longer a part of the family nor, by the same logic, a dependent on his father and cannot, therefore, claim an appointment for himself.

The applicant's father has filed an affidavit to the effect that none of his daughters, or the son (the present applicant) is married so far; that the advances sanctioned from his GPF have had to be spent on his own medical treatment; that, besides diabetes, he suffers from various other ailments which require constant medication; and finally that he needs ^a pace-maker too, which he is unable to procure for want of funds or resources. As regards his diabetic condition prior to 1989, it is mentioned by the retired employee that he had in fact claimed medical re-imbursement on many occasions during his service, prior to 1989, for the treatment of diabetes and that the assertion of the respondents to the contrary is not borne out by the facts on record. He states finally that his family, comprising six adult members, is indeed in a state of continuing indigence because his pension is too meager for sustenance of a large household.

T. S. J. [Signature]

4. The facts of the case have been examined, ^{the} and arguments of both parties noted carefully. It is to be said that the reasons leading to the rejection of the applicant's request are flawed on many counts. Firstly, the mere fact of drawal of advances from Provident Fund for a particular reason may not confirm automatically that the money was spent for the purpose applied for. In such an eventuality, the drawee can at best be guilty of falsehood, and could have been appropriately dealt with if the facts had become known after the drawal of the advance(s). The applicant's father states on oath now that none of his children is married. This fact could be easily verified for correctness, if necessary. Thus, even though Shri K. C. Sahoo ^{of} may have been guilty ^{un} truth in projecting incorrect reasons for drawal of G. P. F. advances, it cannot alone constitute a valid ground for the eventual rejection of the present application.

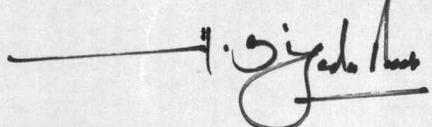
5. Secondly, the presumption that the applicant may have been married prior to his father's retirement merely because a certain advance had been applied for for his Wedding also suffers from the same weakness and is, therefore, far-fetched. It may not always be necessary, though probable, ~~in~~ in the present social ^{context,} ~~that~~ a person cannot get married until or unless he is employed. Such cannot be stated or taken as a distinct

T. S. Gopalakrishna

or absolute possibility. Secondly, when it is now averred in a sworn statement that the applicant is not married yet, the actual position can be verified by further enquiry, if necessary.

6. As regards the receipt of 'considerable' terminal benefits by the employee after his retirement, it is noticed that this amount actually represents the encashment of leave, final withdrawal from GPF, refund from CGIES and the gratuity. These are normal benefits available to any employee on retirement and cannot be regarded as constituting an impediment to the consideration of his son's appointment, if he is otherwise eligible and covered by rules. To assert, therefore, that as the family received more than Rs. 85,000/- after Shri K.C. Sahoo's retirement, this fact by itself in some way constitutes a bar against the consideration of his son's claim is clearly unacceptable.

7. The respondents suspect that Shri Sahoo had managed to proceed on retirement on medical invalidation with a view only to secure a job for his son. Even if there be a grain of probability in such suspicion, it is not really understood how such a stand can be accepted at this stage. If the respondents had reasons to accept the bonafides surrounding the retirement of Shri K.C. Sahoo, they were free to



obtain a second medical opinion. But having permitted him to retire on invalidation on due and proper medical advice, it would be incorrect now to suspect his motives which, in any case, cannot be established with any degree of certainty. They are no more than suspicions.

8. The respondents also say that before any appointment can be approved in relaxation of normal recruitment rules, the department has to satisfy itself as to many other aspects of the case e.g. reservation for SC and STs, proportions and overall limits of the permissible reservations, preference to be accorded to 'death' cases over ' invalidation' cases, etc. Except making a general statement of this nature, the respondents have not chosen to shed any light on the actual position obtaining in their department with reference to any or all those factors at the time of their rejection of the applicant's request. It is not shown, for example, that the acceptance of the applicant's request would have resulted in the denial of mandatory reservation to any SC/ST candidate and that it would have served to exceed the total quota of reservations or it would have superceded any of the 'death' cases then under active consideration. In the absence of a specific

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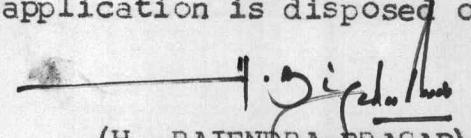
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statement in this regard, the unsubstantiated stance of the respondents cannot ~~not~~ be accepted as completely valid.

9. To conclude, it has to be held that letter No. A.11015/2/93-E.III dated 14.7.1993, is cryptic and does not reveal any reason(s) for the rejection of the applicant's request; and that the reasons adduced by the respondents in their counter-affidavit are found unacceptable for the reasons discussed in the preceding paras.

10. It is, therefore, directed that the case be reviewed and a suitable decision taken in the matter with reference to the relevant provisions in the rules, and a decision communicated to the applicant within (sixty) 60 days from the date of receipt of a copy of this order. In case the respondents eventually find it not possible to accept to the applicant's request, detailed reasons for such rejection, in consonance with rules and verified facts, shall have to be given. Liberty is given to the applicant to re-agitate his grievance, if any, and if so advised, thereafter.

11. Thus, the original application is disposed of.


(H. RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)

06 MAR 95

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