

3

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.726/94

Cuttack, this the 29th day of March, 1995


Dinabandhu Bhoi                      ... Applicant.

Vrs.

Union of India and 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 Tribunal or not? *no*

  
(D.P. HIEMATH)  
VICE - CHAIRMAN

6

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CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.726/94

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CORAM:

THE HONOURABLE MR.D.P.HIREMATH, VICE-CHAIRMAN

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Shri Dinabandhu Bhoi,  
aged about 24 years,  
son of late Narendra Prasad Bhoi,  
At/P.O-Kismat Krishnapur,  
Via-Basudevpur,  
District-Bhadrak ..... Applicant.

By the Advocates ... M/s Deepak Misra,  
R.N.Naik,  
A.Deo,  
B.S.Tripathy &  
P.K.Misra.

Vrs.

1. Union of India, represented through  
its Secretary in the Ministry of Communication,  
Department of Posts, Dak Bhawan, New Delhi.
2. Chief Post Master General,  
Orissa Circle,  
Bhubaneswar, District-Khurda.
3. Superintendent of Post Offices,  
Bhadrak Division, Bhadrak.
4. Asst.Superintendent of Post Offices,  
I/c. Bhadrak Central Sub-Division,  
Bhadrak ..... Respondents

By the Advocate ... Shri Ashok Misra,  
Sr.Standing Counsel.

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D.P.HIREMATH, VICE-CHAIRMAN

The applicant has sought compassionate appointment in the Postal Department as his father died on 22.1.1994, having still left <sup>behind</sup> nearly fourteen years of service before he reached the age of superannuation. He has left behind the applicant, an elder son and a widow. The applicant is a Matriculate and is qualified to be appointed as Extra Departmental Branch Post Master (in short, "E.D.B.P.M."). He is a permanent resident of Kismat Krishnapur in the district of Bhadrak, and necessary certificate in this behalf has also been filed. He has averred in the application that on the death of his father, he made a representation to the competent authority for compassionate appointment on rehabilitation assistance basis as the first son, i.e. his elder brother, was not interested in taking the appointment and not considered by the rest of the members of the family. Without assigning any reasons, his application came to be rejected and therefore, he approached this Tribunal. It is further alleged that the family is living <sup>in</sup> ~~with~~ distress, that the deceased was the only earning member, and that there is nobody in the family earning livelihood.

2. Inter alia, the respondents contended that the Circle Relaxation Committee, which met on 15.11.1994, considered the case of the applicant from all aspects and rejected his request, and the main consideration was that the elder son despite his qualification did not come forward seeking compassionate appointment. The Committee further observed that the family of the deceased was possessed of some agricultural landed property yielding annual income of Rs.10,000/-. Therefore, according to them, the family is not in indigent circumstances.

3. It is noteworthy that even in the counter the respondents have stated that after the death of the deceased, his widow sought appointment of the applicant, <sup>the</sup> ~~as~~ second son, as a Post Master in the Extra Departmental Branch, Kismat Krishnapur Branch Post Office on compassionate ground in relaxation <sup>of</sup> normal recruitment rules. At that time, when enquiry was made by the Department, it was revealed that the family has the annual income of Rs.10,000/- as per the certificate of the Revenue Officer. This, in my view, cannot be conclusively relied upon as no specific material or evidence is coming forth as to the source yielding annual income of Rs.10,000/-. Mere certificate of the

Revenue Officer is not adequate enough to reject the claim summarily.

4. The only other ground on which the Circle Relaxation Committee rejected the claim is spelt out in paragraph 2.3 of the counter. It is stated therein as follows :

"....The Circle Relaxation Committee considered the case from its all aspect and the CRC did not consider it as fit case for compassionate appointment. The CRC also observed that since the eldest son, despite qualification is not willing to work as ED BPM, it amounts to the fact that the economic condition of the family is not so bad. Thus the compassionate appointment of the applicant was rejected and such rejection was communicated to the applicant through Respondent No.3. "

It is noteworthy here that the Circle Relaxation Committee did not give a definite finding that the applicant's family was possessed of any property yielding income of Rs.10,000/- per year. What weighed with it was the indifference on the part of the applicant's elder brother to come forward seeking compassionate appointment. During arguments, Shri Tripathy appearing for the applicant tried to make out a case that the applicant's elder brother is not mentally sound though no such material in support of this contention is coming forth. Be that as it may,

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suffice it to note that the applicant's elder brother has not sought compassionate appointment, but that ~~view~~<sup>fact</sup> alone cannot be a guiding factor in rejecting the claim of the applicant. It may be that the applicant's brother does not want to work ~~and is~~<sup>easy</sup> ~~going~~<sup>or</sup> indifferent. That cannot be a criterion unless the departmental authorities are in a position to lay hands on certain alternative income which could ~~grow~~<sup>support</sup> the family. It is also necessary to note that even the widow of the deceased Narendra Prasad Bhoi sought compassionate appointment only for her second son (the applicant) and not the first son. That only shows that there are adequate reasons for the first son not coming forward to seek compassionate appointment when there is a right to make such a claim. In my view, therefore, the Circle Relaxation Committee's observation that because of the indifference of the first son, the second son is not entitled to compassionate appointment cannot be upheld. I am, therefore, of the considered view that the applicant richly deserves to be considered for compassionate appointment.

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5. The second point is whether I should make a direction for appointment straightaway or ask the Department to consider the claim of the applicant. When once the claim has been made and reasons have been assigned for rejecting the claim of the applicant, I do not think any useful purpose would be served in again calling upon the Department to reconsider the applicant's claim which in any view did not receive a favourable consideration from the Department and the indigent circumstances of the family would continue till the Circle Relaxation Committee gives a second look to the claim and the applicant will have to approach this Tribunal challenging the finding of the Circle Relaxation Committee. Though normally the Tribunal would be required to call upon the respondents to consider the claim of the applicant for compassionate appointment, in such circumstances it cannot be said that the Tribunal has no jurisdiction to make a direction to grant compassionate appointment. Keeping the circumstances of this case in view, I hereby direct that the respondents shall make appointment of the applicant as E.D.B.P.M. in the

vacancy where his father was serving, in the event <sup>of</sup> the post that has fallen vacant on the death of his father is still not filled up, without any delay and preferably within forty-five days from the date of receipt of this order. In the event of the said vacancy having been filled up by this time, he shall be given appointment in any other vacancy in the Division.

6. In the result, the original application is allowed.

  
(D.P. HIREMATH)  
VICE-CHAIRMAN

A.Nayak, P.S.