

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK**

ORIGINAL APPLICATION NO.327 OF 1995
Cuttack this the 23rd day of August, 2001

Smt.Purnima Nayak ... Applicant(s)

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Applicant(s)

-VERSUS-

Union of India & Others ... Respondent(s)

Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? 45.
2. Whether it be circulated to all the Benches of the ~~No.~~ Central Administrative Tribunal or not ?

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

(G. NARASIMHAM)
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL
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ORIGINAL APPLICATION NO. 327 OF 1995
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CORAM:

THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI G.NARASIMHAM, MEMBER (JUDICIAL)
...

Smt.Purnima Nayak, aged about 42 years
Daughter in law of Late Prabodha Kumar Nayak,
At/PO-Bhamanda, Via-Olaver, District-Kendrapara

... **Applicant**

By the Advocates

M/s.A.K.Mishra
S.K.Das
S.B.Jena
J.Sengupta

-VERSUS-

1. Union of India represented through its
Secretary-cum-Director General of Posts,
Dak Tar Bhawan, New Delhi
2. Chief Post Master General, Orissa Circle,
Bhubaneswar
3. Supdt.of Post Offices, Cuttack North Division,
Cuttack
4. Sub-Divisional Inspector of Posts,
Pattamundai Sub-Division, Pattamundai

... **Respondents**

By the Advocates

Mr.A.K.Bose,
Sr.St.Counsel (Central)

O R D E R

MR.G.NARASIMHAM, MEMBER (JUDICIAL): In this case for compassionate appointment as Extra Departmental Branch Post Master, applicant aged about 42 years is the daughter-in-law of Late Prabodh Kumar Nayak, who died on 13.1.1993, while serving as EDBPM, Bhamanda. She functioned as substitute during the leave period of her father-in-law from 9.1.1993 till his death. Thereafter she functioned in that post on provisional basis (Annexure-5). Her mother-in-law, i.e., widow of the deceased made an application for compassionate appointment for the applicant.

Even the applicant made an application for such appointment. But the Circle Relaxation Committee had turned down this request. This was communicated to the applicant in letter dated 2.6.1995 (Annexure-6). Hence this application on 22.6.1995.

2. The applicant's grievance is that she has been unjustly deprived of the appointment to that post on compassionate ground. Though the post had not been filled up and though she was continuing, the Overseer Mail had come to her on 19.6.1995 and asked her to handover charge by orally intimating that her services had been terminated. But as she was on leave from 17.6.1995 due to illness, she did not handover the charge.

3. On 23.6.1995, the then Member (Administrative) of this Bench passed the following order in the matter of stay.

" The selection process, if already initiated, may continue, but no appointment shall be made and the applicant shall not be disturbed from her appointment until the next hearing".

On 24.7.1995, i.e., the next date of hearing, this interim order was allowed to continue. This order is still continuing as the Department had not prayed for vacation even though the counter was filed on 16.10.1996 opposing the application tooth and nail by citing ^{even} ruling of the Apex Court.

4. Circle Relaxation Committee, according to the counter rejected the applicant's case for compassionate appointment for the following three reasons:

- i) Sons of the deceased are employed;
- ii) Family is not indigent; and
- iii) There is no provision for compassionate appointment to a daughter-in-law

The deceased left five sons, besides widow. One son is a Teacher drawing Rs.3000/- per month as salary. Another son is also drawing the same amount though as a Storekeeper.

Two other sons are also employed each drawing Rs.3500/- per month. The remaining one is an auditor and drawing salary Rs.2800/-. Besides the family possesses immovable property of 14 acres 4 decimals and 9 kadis in extent. The sons have not deserted their mother.

This in brief is the stand of the Department in the counter.

5. No rejoinder has been filed by the applicant.
6. Heard the learned counsels on record.
7. That the applicant is the wife of one of the sons of the deceased is borne out from her averment in para-4(2) of the O.A. that in order to look after her mother-in-law, she has through out remained in the village and not joined her husband who is continuing at Jajpur Road. It is also mentioned in that para that all the sons of the deceased are separate and independent. There is no denial to the averment in the counter that all the sons are in employment drawing salaries ranging from Rs.2800/- to Rs.3500/- per month. Thus it is clear that applicant's husband is in employment and is an earning member. It is not her case that husband had deserted her. This being so, she cannot be treated as family member of the deceased solely dependant on her to aspire appointment under compassionate appointment.
8. Moreover, under G.I. Department of Posts letter dated 16.12.1991 (Swamy's Manual on Establishment & Administration, 99th Edn., Pages 414-415) relating to compassionate appointment to the dependants of the deceased/invalidated E.D.As, means only widow/son/daughter and not daughter-in-law.

This apart the person aspiring for any post under

compassionate appointment scheme must be indigent, which means because of the death of the employee on whose earnings he/she was dependant, is unable to maintain himself/herself and other dependants, if any. It cannot be said that the applicant became indigent on her father-in-law's death, because her husband, who had not deserted her is an earning member and at that time was drawing at least Rs.2800/- per month, if not Rs.3500/- per month.

Of course in the O.A. it has been mentioned that she wants this post under compassionate appointment scheme in order to maintain her widow mother-in-law, who is not being looked after by her sons, who are separate and have their own independent earnings. But the specific averment in the counter in Para- 3 is that the family is in possession of immoveable property of 14acres and odd has not been denied. If the five sons are not ~~living~~ ^{decent} earning in the village and are separate having their own independent earnings through employments, then it can be presumed that the widow has her entire 14 acres and odd land at her disposal. Viewed from this angle it cannot be said that this widow is indigent.

Even otherwise all the five sons though in employment do not have ~~descent~~ earnings as mentioned above, there is no averment in the O.A. that there was partition by meatus and bounds between the deceased and his sons. The sons are residing separate because of their employment elsewhere. The Andhra Pradesh High Court in A.Seshagiri vs. L.I.C. of India reported in 1999 (Lab.IC) 3060 held that even if a member of a family in employment is separated from the family, appointment under compassionate appointment scheme cannot be made.

In view of our discussion above, we are of the view that

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no case for appointment under compassionate appointment has been made out. However, the learned counsel for the applicant, after conclusion of argument filed a Memo requesting this Bench to refer to the decision of this Bench in O.A.53/99, disposed of on 28.6.1999, so also the decision of the High Court of Orissa in the case of Ms.Kalpanamayee Dei vs. Indira Gandhi National Open University reported in 1994 CLT (Vol.78) 453. Accordingly we have gone through those two decisions. In O.A. 53/99 disposed of by this Bench on 28.6.1999 (Naba Kishore Das & Ors. vs. Union of India & Ors.) is in no way connected with appointment under compassionate appointment scheme. In that case a termination order passed on 11.2.1999 was under challenge. Similarly the decision in the case of Ms.Kalpanamayee (Supra) is in no way relevant to the issues involved in the instant case of compassionate appointment. That case is related to the extent of regularisation of service of the petitioner therein appointed on short-term basis for long periods. This has nothing to do with the issue/issues usually arise in a case of compassionate appointment. It is not understood as to why the learned counsel for the applicant took the pains to cite those two decisions.

10. In the result, O.A. is dismissed, but without any order as to costs. Order in other respects stands vacated.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
23.8.01

23.8.01
(G.NARASIMHAM)
MEMBER (JUDICIAL)

B.K.SAHOO//