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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 483 OF 1995
Cuttack, this the 9th day of August, 2001

Pradipta Kumar Jena

Applicant

Vrs.

Union of India and others

Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? Yes.
2. Whether it be circulated to all the Benches of the Central administrative Tribunal or not? No.

(G. NARASIMHA)
MEMBER (JUDICIAL)

(S. NATH SO.)
VICE-CHAIRMAN
9.8.2001

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CORAM:

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

.....
Sri Pradipta Kumar Jena (Postman), s/o Sri Makar Jena,
At/PO-Nayabazar, District-Cuttack-753004....Applicant

Advocates for applicant - M/s
S.N. Mohanty
P.K. Padhi

Vrs.

1. Union of India, through its Secretary, Ministry of Communication, Dak Bhawan, New Delhi-110 001.
2. Chief Postmaster General, Orissa Circle, Bhubaneswar-751 001.
3. Sr. Superintendent of Post Offices (City Division), At/PO/dist.Cuttack-751001.
4. Sub-Divisional Inspector (Postal), Cuttack North Sub-Division, Cuttack G.P.O. 753001.
5. Kumari Khyana Prava Nayak (Postal Assistant), D/o late Khageswar Nayak, Village-Andola, Post-Sridharpur, Dist.Cuttack.
6. Kumari Suravi Kar (Postal Assistant), D/o late Bhagyadhar Kar, VIM-114 Sailashree Vihar, Chandra Sekharpur, Bhubaneswar-751 016.
7. Miss. Champa Soren (Postal Assistant), D/o late Lalmohan Soren, At-Srichandanpur, PO-Patihinja, Via-Kulianana, Dist. Mayurbhanj

..... Respondents

Advocate for respondents- Mr.A.K.Bose
Sr.CGSC

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.....
SOMNATH SOM, VICE-CHAIRMAN

In this O.A. the petitioner has prayed for a direction to the respondents to appoint him as Postal Assistant.

2. The case of the petitioner is that his father was working as HSG-II Sorting Assistant and

retired on invalidation. His case for compassionate appointment was considered by the Circle Relaxation Committee who, in their order dated 23.11.1994 (Annexure-2) approved the applicant for compassionate appointment in Postman cadre. In this order at Annexure-2 the applicant's name appears against serial no.7. Names of private respondents K.P.Nayak (respondent no.5), Suravi Kar (respondent no.6) and Champa Soren (respondent no.7) appear against serial nos.4,2 and 15 in the same order approving them for compassionate appointment to Postman cadre. The applicant has stated that the Circle Relaxation Committee fixed the criteria of a candidate having secured 45% marks in aggregate in +2 Examination and approved the applicant and respondent nos. 5 to 7 to Postman cadre. The applicant underwent training as Postman at Cuttack G.P.O. along with respondent no.5. The certificate of successful completion of training by the applicant and respondent no.5 is at Annexure-3. After completion of training the applicant was posted as Postman in Nayabazar S.O. where he is continuing till date. The cases of respondent nos.5 to 7 were subsequently considered and they were again re-appointed in Postal Assistant cadre in order dated 5.6.1995 at Annexure-5. The applicant also applied on 13.6.1995 to consider him for giving appointment in Postal Assistant cadre, but the application was rejected on the ground that there is no provision for change of the cadre after acceptance of compassionate appointment. The applicant has stated that the Circle Relaxation Committee arbitrarily fixed cut-off marks of 45% and above for appointment to Postal Assistant Cadre which is against the instructions of the DG, P&T. He has also stated that

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he has been subjected to discriminatory treatment, and in the context of the above he has come up in this petition with the prayers referred to earlier.

3. Private respondent nos. 5 to 7 were issued with notices, but they did not appear or file counter.

4. Departmental respondents in their counter have taken the stand that the applicant got 36% marks in +2 Examination. They have also stated that his representation before Director General, P&T is pending and therefore, this application is premature. Their main objection to the prayer of the applicant is that once the applicant has accepted the job of Postman by way of compassionate appointment, rules do not provide for further consideration of his case for appointment in Postal Assistant cadre. They have further stated that private respondent nos. 5 to 7 were also ordered to be appointed as Postman on compassionate basis. But without joining they represented and on consideration of the representations, orders with regard to private respondent nos. 5 to 7 were changed and they were approved for appointment in Postal Assistant cadre and accordingly respondent nos. 5 to 7 have joined as Postal Assistants. It is stated that respondent nos. 5 to 7 did not accept the job offered as Postman and did not join as Postman and that is why their cases were considered for appointment in the Postal Assistant cadre. On the above grounds the departmental respondents have opposed the prayer of the applicant.

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5. We have heard Shri S.N.Mohanty, the learned counsel for the petitioner and Shri A.K.Bose, the learned Senior Standing Counsel for the respondents and have perused the records. After hearing the matter in part in our order dated 27.3.2001 the learned Senior Standing Counsel for the respondents was directed to file a verified memo specifically admitting or denying the averment of the applicant that respondent no.5 joined in the Postman cadre. In the verified memo the marks obtained by respondent nos.5,6 and 7 and the applicant in 10+2 Examination were also asked for. The departmental respondents were also directed to indicate if private respondent nos. 5. to 7 ever denied the offer of appointment in the Postman cadre. Thereafter five adjournments were given but the verified memo was not filed. In the order dated 17.7.2001, on request, time was allowed till 2.8.2001 to file the verified memo and it was indicated that no further time would be allowed. Accordingly, the hearing of the matter was concluded on 2.8.2001 even in the absence of the verified memo which we had directed the departmental respondents to file.

6. From the above recital of pleadings of the parties it is clear that the main facts of this case are not in dispute. From Annexure-2 it is clear that the applicant and private respondents 5 to 7 were approved for appointment in Postman cadre on compassionate grounds. It is also clear from annexure-3 that respondent no.5 successfully completed the Postman training along with the applicant. It further appears from the circular dated 24.4.1995 enclosed by the respondents themselves that there is no restriction of marks for appointment on compassionate ground in the

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Clerical cadre. The applicant has stated in his representation that the private respondents have also got like himself less than 45% marks. In any case there is no cut-off level of marks for appointment in the Postal Assistant cadre on compassionate ground. From the above it is clear that the cases of the applicant and private respondents are squarely on the same footing. It has been submitted by the learned Senior Standing Counsel that only point of difference is that the applicant accepted and joined the post of Postman whereas private respondents represented without joining. In course of hearing we had directed the departmental respondents to indicate if during the period of training the selected candidates are paid, but no clarification on this point was given. We had asked for the above information because we find from the order at Annexure-3 that respondent no.5 underwent training along with the applicant. In view of the above, we have no hesitation in holding that the applicant has been treated in a discriminatory fashion. The departmental respondents have indicated that the applicant got 36% marks in +2 Examination. We have already noted that there is no cut-off level of marks for being appointed to Postal Assistant cadre on compassionate ground. In spite of our direction the departmental respondents have not indicated the marks secured by private respondent nos. 5 to 7. It is no doubt true, as has been urged by the learned Senior Standing Counsel that the Hon'ble Supreme Court have laid down in many decisions that compassionate appointment is not a vested right. But even then while considering cases of compassionate appointment, the appointing authority

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cannot adopt a discriminatory approach which would be violative of Articles 14 and 16 of the Constitution. In this connection, the learned counsel for the petitioner has placed before us the decision of the Hon'ble Supreme Court in the case of Smt. Kamala Gaiind v. State of Punjab and others, 1992(5) SLR 864. In that case the husband of the appellant before the Hon'ble Supreme Court was working as Additional District Judge in Punjab Judicial Service and was holding the charge of a designated court when he was gunned down by the terrorists. Government of Punjab had apparently framed a Scheme to provide a job to one of the members of the family when public officers engaged on duty are killed by terrorists. The applicant's son was a Law Graduate and was offered Class II State service on Executive side while in similar situations the dependants of public servants killed by terrorists were given Class I posts. Taking into consideration the facts of that case, the Hon'ble Supreme Court observed as follows:

".....Even if it is compassion, unless there be some basis there is no justification for discriminatingly extending the treatment."

From this it is clear that the persons who approached the Department for job on compassionate ground cannot be treated in a discriminatory fashion. In consideration of the above, we allow the prayer of the applicant and direct respondent nos. 2 and 3 to appoint the applicant in the Postal Assistant cadre within a period of 90 (ninety) days from the date of receipt of copy of this order.

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7. In the result, the Original Application is allowed. No costs.

(G.NARASIMHAM)

MEMBER(JUDICIAL)

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(SOMNATH SOM)
9.8.2001
VICE-CHAIRMAN

CAT/Cutt.Bench/ 9th August, 2001/AN/PS