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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

Original Application No. 6 of 1995  
Cuttack this the 24<sup>th</sup> day of November, 1995.

BALARAM BARIK AND ANOTHER ....

APPLICANTS

VERSUS

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 Tribunals or not? No.

*Narasimha Sahu*  
( N. SAHU )  
MEMBER(ADMINISTRATIVE)

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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

Original Application No.6 OF 1995

Cuttack this the 24<sup>th</sup> day of November, 1995

CORAM:

THE HONOURABLE MR. N. SAHU, MEMBER ( ADMINISTRATIVE )

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1. Balaram Barik, aged about 54 years, son of late Panu Barik.
2. Hrushikesh Barik, aged about 26 years, son of Balaram Barik

(Both are of village Dasi, Po-Sahada, PS Chandipur, Dist-Balasore).

.... APPLICANTS

By the Advocate .... Mr. J.K. Mishra-2.

Versus

- 1) Union of India represented by Director General, E.M.E., M.G.O, Branch, Army Headquarters, DHQ(PO), New Delhi-110011.
- 2) Officer Commanding, Station Workshop, EME, Chandipur, Dist. Balasore;
- 3) Station Commandant, Station Headquarters, At/Po/PS Chandipur, Dist-Balasore.

.... RESPONDENTS

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

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ORDER

MR. N. SAHU, MEMBER (ADMN.).

The only claim in this application is

to direct the Respondents to absorb the applicant No.2 in any Group 'D' Post as a compassionate appointment.

2. The applicant no.1, Shri Balaram Barik was working as Civilian Chaukidar, Station Workshop, EME, Chandipur for the last 25 years. On 16.7. 1990, he submitted a representation for voluntary retirement on medical grounds and subsequently requested for a job to his son on compassionate ground (applicant no.2). Respondent no.2 Officer Commanding, Station Workshop, EME, Chandipur, District- Balasore directed a medical check-up by the Chief District Medical Officer, Balasore. On 22.10.1990, the Chief District Medical Officer issued a report at Annexure-3. He opined that the applicant is permanently and completely incapacitated in Government Service to which he belongs due to his suffering from Spondilitis with changes of both knees. Some relaxation was allowed to him in respect of duty hours and other working conditions. By Annexure-4, he was informed that his application for retirement would be sympathetically considered. He ultimately retired on 30.11.1991 from service and thereafter he approached the authority for compassionate appointment to applicant no.2.

3. Initially, he was asked to file an affidavit indicating his belongings just to establish whether his financial condition was such that his son deserved a compassionate appointment. This he had done. He again filed a representation on 29.2.1992. This was also followed by other representations from time to time and therefore, and without any response

he filed this petition on 5.1.1995.

4. The Respondents, however, vide their letter dated 6th March, 1992 showed that they were actively considering the claim of applicant no.2 for compassionate appointment which runs thus:

" XX XX XX.

2. You are requested to offer your comments to this HQ on his application. In case the individual deserves appointment on compassionate grounds, all required documents should be submitted to this Headquarters after obtaining the vacancy released from AG's Branch this HQ.".

The EME Officer (Civ.) in the field wrote to the headquarters Central Command. On 15th April, 1992 by Annexure-R/11, the Officer Commanding, Station Workshop, EME, Balasore gave his detailed comments. He submitted that applicant no.1 suffered from ailments like Hydrocile and artharitis for a long time and he was hospitalised on the ground of indifferent health. The period of absence though regularised by grant of entitled/extra ordinary leave, in had resulted/loss of pay and allowances. With a view to help the individual the then OC Major D. Munshi had allowed his son to do the duty in his place and so the earnings got stabilised with such an arrangement. This had prolonged for quite some time. The fact of this type of unconventional arrangement was brought to the notice of superior officers.

Supervisor

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The practice of permitting the son to do the work of the father was stopped. It is mentioned in the letter that the person is in indigence inasmuch as the loan drawn by him from Co-operative Society was not cleared even after retirement. It is also recommended that his son be offered compassionate appointment, as per the practice that is prevailing in the field in the Research Development Organisation. The only point is that the applicant was not discharged on the ground of invalidation though he possessed a medical documentation that he could/continue to serve due to his ailments. The Officer Commanding further mentioned that the applicant no.1 had nine years of service to his credit which he sacrificed by way of voluntary retirement. By Annexure-R/12, dated 3rd June, 1992, the Headquarters decided that the benefit of compassionate appointment may be extended to sons/daughters/near relatives of Government servants who retired on medical grounds under Rule-38 of C.C.S. (Pension)Rules, 1972 or corresponding provisions in the CCS Regulations before attaining the age of 55 years provided the family is undergoing financial hardship. The applicant no.1 was not covered by Section 38 of the CCS (Pension)Rules, 1972.

5. Section 38 of the CCS (Pension)Rules, 1972 runs thus;

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"38. Invalid Pension.

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(1) Invalid Pension may be granted if a Government servant retires from the service on account of any bodily or mental infirmity which permanently incapacitates him for the service.

(2) A Government servant applying for an invalid pension shall submit a medical certificate of incapacity from the following medical authority, namely :-

(a) a Medical Board in the case of a Gazetted Government servant and of a non-gazetted Government servant whose pay, as defined in Rule 9(21) of the Fundamental Rules, exceeds (two thousand and two hundred Rupees) per mensem;

(b) Civil Surgeon or a District Medical Officer or Medical Officer of equivalent status in other cases.

NOTE 1.- No medical certificate of incapacity for service may be granted unless the applicant produces a letter to show that the Head of his Office or Department is aware of the intention of the applicant to appear before the medical authority. The medical authority shall also be supplied by the Head of the Office or Department in which the applicant is employed with a statement of what appears from official records to be the age of the applicant. If a service book is being maintained for the applicant, the age recorded therein should be reported.

NOTE.2 - A lady doctor shall be included as a member of the Medical Board when a woman candidate is to be examined.

(3) The form of the Medical Certificate to be granted by the medical authority specified in sub-rule(2) shall be as in Form 23.

(4) Where the medical authority referred to the sub-rule(2) has declared a Government servant fit for further service of less laborious character than that which he had been doing, he should, provided he is willing to be so employed, be employed on lower post and if there be no means of employing him even on a lower post, he may be admitted to invalid pension".

6. I am satisfied that all the conditions in Rule-

fulfilled because a reference was made to the Chief District Medical Officer who after proper examination certified that the applicant was permanently and completely incapacitated from Government Service. There is a detailed medical examination report. This was duly accepted by the Respondents. They have shown consideration for his health and allowed him to continue to render service of less laborious character as per Rule 38(4) of the CCS (Pension) Rules, 1972 and ultimately they found that the physical condition of the petitioner was such that he could not have continued any further. Since bodily infirmity was noticed, by his superior authority and officially made a reference to the prescribed medical authority. The Chief District Medical Officer declared him to be permanently and completely incapacitated. I am, therefore, of the opinion that the ground on which they turned down the applicant's case for compassionate appointment is invalid. The various representations show that the applicant no.2's claim was processed. The authorities were satisfied that he was in indigence. There is no question of volition on the part of the applicant no.1 to go on voluntary retirement. If he was not retired on <sup>mathis</sup> invalidation, it was fault. The respondents should not have ignored the medical report and allowed the petitioner to continue in service having taken the initiative to obtain one. In fact the representation of the applicant no.1 dated 31.8.91 was a plea to the respondents to retire him on medical invalidation grounds. That apart, from the

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correspondence, it appears to me that the authority had informed him that after clearance from the higher authority, his son would get a compassionate appointment. There was, therefore, sympathy all around.

7. I am satisfied that the conditions prescribed for compassionate appointment in Para-6 of the Ministry of Home Affairs, Department of Personnel and Training Office Memorandum No.14014/1/77-Estt. dated 25.11.1978 is wholly fulfilled. Since the only perceived hindrance to the compassionate appointment namely Rule-38 is not valid and since all prescribed conditions are satisfied, I direct respondent no.1 to issue an order of appointment on compassionate grounds to a suitable Group 'D' Post to the applicant no.2 within a period of sixty days from the date of receipt of a copy of this order. In the result, the application is allowed and in the circumstances of the case, there would be no order as to costs.

*N. SAHU*  
( N. SAHU ) 24.11.95  
MEMBER ( ADMINISTRATIVE )

KNMohanty.