

CENTRAL ADMINISTRATIVE TRIBUNAL : CUTTACK BENCH : CUTTACK.

ORIGINAL APPLICATION NO.703 OF 1995.

Cuttack this the 4th day of October, 1996.

Deshraj Singh Applicant

Versus.

Union of India and others. Respondents

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not? *Y*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? *N*

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(N. SAHU)
MEMBER (ADMINISTRATIVE). *4-X-96*

CENTRAL ADMINISTRATIVE TRIBUNAL: CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.703 OF 1995.

Cuttack this the 4th day of October, 1996.

C O R A M :

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

Deshraj Singh, aged about 22 years,
Son of late Surath Ch. Singh,
At- Kaduani, P.O. San-Purunapani,
Via- Bishoi, District Mayurbhanj.
Now working as Postman in
Baripada Head Post Office,
At/P.O. Baripada, District Mayurbhanj.

.... APPLICANT

By the Advocates : M/s. Pradipta Mohanty,
D.N.Mohapatra &
Ganeswar Sahoo.

Versus.

1. Union of India, represented by
the Director General (Posts),
Dak Bhawan, New Delhi-110 001.
2. Chief Post Master General, Orissa
Circle, Bhubaneswar, Dist-Khurda.
3. Superintendent of Post Offices,
Mayurbhanj Division,
At/P.O. Baripada, Dist-Mayurbhanj.

.... RESPONDENTS

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

O R D E R.

N. SAHU, MEMBER (ADMINISTRATIVE) : The applicant's father Surath Chandra
Singh worked as Postal Assistant in Rairangpur Postoffice

under the control of Respondent No.3 Superintendent of Post Offices, Mayurbhanj Division, Baripada. He died on 7.5.1989, eight years before his due date of retirement leaving behind him his family in distress without any earning member. The Department processed his application for rehabilitation assistance. The matter was referred to the Circle Relaxation Committee. This High Power Committee by its proceedings dated 20.3.1993 agreed to appoint the applicant Shri Deshraj Singh in the cadre of Postman in relaxation of normal recruitment rules. He was allotted to the Baripada Division subject to the minimum educational qualification prescribed for the post. It is also stipulated that the appointment would be given whenever vacancy in the cadre would arise. After necessary inquiry and on considering the application submitted by the applicant in the prescribed manner, the C.P.M.G., Respondent No.2, by his office letter dated 20.3.1993 intimated to Respondent No.3 Superintendent of Post Offices, Mayurbhanj Division, for giving appointment as a special case to the applicant in the cadre of Postman in relaxation of normal recruitment rules. The applicant fulfilled the conditions and furnished a declaration that on being appointed, he would take care of the family members. When the vacancy arose, after the direction of the C.P.M.G. Respondent No.3 in a Memo. dated 3.4.1995 appointed the applicant in the cadre of Postman in the Baripada Post office in relaxation of the

normal recruitment rules and also directed to adjust him as against the vacant post and accordingly intimated the Postmaster, Baripada Head Post office. When the application before the Tribunal was pending, the applicant had been disengaged on 5.12.1995 and was not assigned any duty. He was not given any termination order. He was told by Respondent No.3 that the Postmaster, Baripada Post office had posted a new incumbent. The applicant was on leave for 5 days on 17.11.1995 and when he wanted to assume duties on 22.11.1995, he was not allowed to join. In this view of the matter, the applicant in an amendment petition prayed that the respondents may be directed to give him a compassionate appointment forthwith on permanent regular basis in the cadre of Postman either against any vacant post or by creating any supernumerary post befitting to his qualification.

2. A similar matter came up before this Bench in O.A.No.704 of 1995 disposed of on 3.10.1996. The various issues arising out of this claim are discussed at length in the order dated 3.10.1996 disposing of the said Original Application.

3. The applicant submitted in the amendment petition that there are two vacancies available in the cadre of Postman. One such post is in Baripada Head Post office held by one Santosh Patra which has fallen

vacant on his becoming Postal Assistant on promotion and another post of Postman is also lying vacant in Bhanjpur Sub-office after the death of the incumbent of the said post, namely, Rama Chandra Nayak, with effect from 31.1.1996. Another post in the said Bhanjpur Sub-office is also likely to be vacant since one Lalmohan Nayak, an incumbent of the said post has been selected for the post of Overseer.

4. For the reasons mentioned in the order dated 3.10.1996 passed in O.A.No.704 of 1995, I hold that a separate reservation quota for compassionate appointment is per se invalid as it is violative of the law laid down by the Supreme Court in this behalf. Such a quota for compassionate appointment presumes the existence of posts in the same way as posts are filled up by way of normal appointments. Such a reservation is constitutional only as far as certain specified categories of persons like S.C. or S.T. etc. There is no group or category for compassionate appointment. There is no visible nexus of identity of such a group. There may be a case of compassionate appointment for one year, but there may not be a case of such appointment for several years. Such a group is only imaginary conjecture. There is no reality for such a group. As the Supreme Court held in several cases, there is no vested right of compassionate appointment. If that be the case, how can a quota for such appointments be framed? Therefore, the concept of

compassionate quota is hereby declared as violative of the law laid down by the Supreme Court and as unconstitutional. The respondents shall provide employment to a deserving candidate on compassionate ground or by way of rehabilitation assistance after they are satisfied that the candidate fulfils the conditions of penury or indigence and he fulfils the other conditions as laid down by the Supreme Court in this regard. But once a decision is taken as in this case by the respondents, Postal Department, by a High Power Committee after thorough investigation to give appointment to a person on compassionate grounds, there should be no delay in providing employment. In this case, the decision has been taken by the High Power Committee in 1993 and the appointment has been given in 1995, that too, for a precarious tenure. This certainly is not in conformity with the law laid down by the Supreme Court. After giving such an appointment the applicant was threatened with disengagement and he was mercilessly removed. This is improper. Any compassionate appointment is against a permanent post. The respondents, therefore, shall appoint the applicant only against a permanent post. Whether the post belongs to outsider quota or the departmental quota or whatever vacancy they can think of, this Court is not concerned with it. Any vacancy that immediately arises on receipt of this order in Mayurbhanj Division in the cadre of

Postman shall be filled up by appointing the applicant. They should consider the identified vacancies mentioned by the applicant in the amended petition and if the applicant's submissions are true and correct, the respondents shall consider the appointment of the applicant in the identified posts. If those posts are not available or even if available, the applicant is not legally eligible for the same, the respondents shall consider the appointment of the applicant in the cadre of Postman in any other vacancy in the Mayurbhanj Division or in any other neighbouring Division. If no vacancy exists either in Mayurbhanj Division or in any other neighbouring Division, they shall consider the vacancy in any other Division in North Orissa. If the appointment requires the approval of the C.P.M.G., then respondent No.3 shall send a proposal to respondent No.2 in this regard. The whole exercise of identifying vacancies and conveying the appointment order shall be completed within a period of two months from the date of receipt of a copy of this order.

5. The Original Application is allowed. In view of the fact that this is a case of compassionate appointment and in view of the arbitrary action of the respondents in conveying the order of appointment initially and terminating the same thereafter, I award Rs.500/- by way of costs to the applicant.

Naresh Kumar 4.X.96
 (N. SAHU)
 MEMBER (ADMINISTRATIVE).