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CENTRAL ADMINISTRATIVE TRIBUNAL: CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.704 OF 1995.

Cuttack this the 3rd day of October, 1996.

Rabindranath Soren Applicant

Versus.

Union of India and others. Respondents

(FOR INSTRUCTIONS)

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

N. SAHU
(N. SAHU) 3. x. 96
MEMBER (ADMINISTRATIVE).

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ORIGINAL APPLICATION NO.704 OF 1995.

Cuttack this the 3rd day of October, 1996.

C O R A M :

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

Rabindranath Soren, aged about 30 years,
Son of Purna Chandra Soren @ Majhi,
At- Dhadichua, P.O.Jhipabandha,
P.S. Badampahar, 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 and
Ganeswar Sahoo.

Versus.

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

... Respondents

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

O R D E R.

N.SAHU, MEMBER (ADMINISTRATIVE) : The relief prayed for as per the
Memo. of amendment dated 20.8.96 is "to direct the respondents
to provide compassionate appointment to the applicant forthwith
on permanent/regular basis in the cadre of Postman either

against any vacant post or creating any supernumerary post befitting his qualification and eligibility in relaxation of normal recruitment rules".

2. The applicant's father Purna Chandra Soren died in harness while working as Overseer Mail in Karanjia Post office under the administrative control of the Superintendent of Post offices, Mayurbhanj Division, Baripada. Eight years prior to his retirement, he died on 24.4.1990 leaving behind him his distressed family. The applicant passed I.Com. and applied for a compassionate appointment. The Circle Relaxation Committee approved his case for appointment on compassionate ground to the cadre of Postman in relaxation of normal recruitment rules vide CPMG letter No.RE/17-63/90 dated 2.4.1991. Finding no vacancy, the Superintendent of Post offices, Mayurbhanj Division, sought instructions from the Circle office. He was informed that such candidates approved for appointment on the compassionate ground could be employed against leave vacancy pending final employment. This clarification came on 27.7.1992. There was a search for leave vacancy. The instructions came that the applicant could be absorbed in future vacancies by a communication dated 22.3.1994 Annexure-R/5. He was given necessary training and after completion of training he was allotted to the unit of Postmaster, Baripada Head Post Office, who formally appointed him by his communication dated 2.9.1994 Annexure-7. In para-6 of the counter

affidavit, it is reiterated that the applicant was allotted to the unit of Postmaster, Baripada Head Post Office for appointment in the Postman cadre against the vacant post. The submission at the time of hearing was that the applicant's vacancy against the outsider quota was not available for a long time and a recruitment examination was held on 9.7.1995 to fill up the vacancy against the outsider quota. There was no vacancy against the compassionate appointment quota. It is vehemently contended by Shri Ashok Mishra, learned Senior Counsel that the applicant's appointment was clearly and purely temporary and he was also informed that it was liable for termination at any time without assigning any reason vide Annexure-R/7. In the absence of vacancy against the compassionate appointment quota, the applicant was not absorbed. "That the said vacancy was decided to be filled up by one outsider candidate, arrangement was made to appoint the applicant against leave vacancy vide this Office Memo No.B2-18 dated 14.11.1995 (Annexure-R/11). Strict watch has also been kept to absorb the applicant in future vacancy of compassionate quota."

3. When the Original Application was filed on 20.11.1995 the applicant submitted that he was always threatened with disengagement as and when a new incumbent is selected on regular basis, because his appointment was temporary. He prayed for a direction for confirmation of his appointment. While the matter was pending, the applicant was disengaged. When he went on leave from 17.11.1995 he was not allowed to assume duties after the expiry of his

leave on 22.11.1995. He was not handed over any termination order but was told by the Postmaster, Baripada Head Post Office that on the posting of a new incumbent his engagement was automatically terminated. This action has been assailed by Shri Pradipta Mohanty, learned counsel for the applicant as highly arbitrary and violative of the very objective of the Rehabilitation Assistance Scheme. At para-6 of M.A. No.252 of 1996 he submits that there were two other vacancies available in the cadre of Postman; the post of one Santosh Patra on his becoming Postal Assistant and another post has fallen vacant in Bhanjapur Sub-office after the death of one Ramachandra Naik with effect from 31.1.1996. Another post of Postman in Bhanjapur Sub-office is also likely to be vacant since one Lalmohan Naik, the present incumbent has been selected for the post of Overseer. The learned counsel has drawn my attention to the celebrated decisions of the Supreme Court, namely, Sushama Gossain and others v. Union of India and others AIR 1989 SC 1976, and Smt. Phoolwati v. Union of India and others AIR 1991 SC 469. These decisions laid down the proposition that in order to provide livelihood to the distressed family of the deceased employee who died in harness, immediate steps should be taken to provide employment to one of the family members befitting his qualification and eligibility and to enable him to be a bread earner for the family. Shri Mohanty has also drawn my attention to the Government Order O.M.No.14014/20/90-Estt.(D) dated 9.12.1993 from the Ministry of Personnel, P.G. & Pensions (Department of Personnel & Training) and O.M.No.14010/6/86-Estt.(D) dated

30.6.1987 (Annexure-4 series).

4. I have carefully considered the submissions of the rival counsels. I am of the view that the termination of the applicant was improper and that such a step is contrary to all the known principles for providing compassionate appointment as laid down in a recent decision of the Supreme Court in the case of Umesh Kumar Nagpal SLP(C) No.10504 of 1993 date of judgment- 4.5.1994. This decision sums up the law laid down by the Supreme Court on the question of compassionate appointment: Normally all public appointments should be done on the basis of open invitation and merit. One exception carved out is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. A provision is made in the rules to provide gainful employment to one of the dependants of the deceased under such circumstances. The Government is to examine the financial condition of the family of the deceased and only in case of utter penury that an appointment is considered to be given either in Class III or Class IV to relieve the family from financial destitution and help to get over the emergency. " This exception to the rule is made in favour of the family of the deceased employee in consideration of the services rendered by him and the legitimate expectations and the change in the status and affairs of the family engendered by the erstwhile employment which is suddenly upturned."

5. The Supreme Court clearly laid down further that compassionate employment cannot be granted after a

lapse of reasonable period and such employment is not a vested right. It is finally laid down that the provisions for compassionate employment have necessarily to be made in accordance with the rules or by the executive instructions issued by the Government or the Public authority concerned. The most important rule is " the employment cannot be offered by an individual functionary on an ad hoc basis." The action of the respondents clearly militated against the canons laid down by the Supreme Court. The respondents have decided to give the employment after thorough investigation by a High Power Committee within one year of the death of the deceased. The High Power Committee was satisfied about the financial destitution and after proper deliberation, issued the order on 2.4.1991. The applicant had to wait for 3½ years to get a job on 2.9.1994. This delay in providing the appointment is a clear violation of the law laid down by the Supreme Court. The reason is to be found in Annexure-R/1 dated 25.6.1991 written by the Superintendent of Post Offices, Mayurbhanj Division to Shri B.K.Das, Assistant Director. The question was whether the appointment should be made when a vacancy to the cadre would arise as per the prescribed formulas under the compassionate quota in future. It was further stated that in that Division there was a vacancy in the Postman cadre and as per the point, the vacancy belonged to O.C. (Other categories). The candidate ordered for appointment belonged to S.T. category. He sought instructions

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whether the applicant should wait for a vacancy under compassionate quota in future or he should be appointed against the available vacancy for O.C. category. There was dithering and delay.

6. I hold that the principle of reservation of a quota for compassionate appointment is violative of the law laid down by the Supreme Court and deserves to be struck down. The question is not one of the reservation for a candidate who is considered fit for compassionate appointment. The basic requirement is only a finding whether a particular candidate deserves a compassionate appointment on account of the penury or destitution of the bereaved family. If there is such a finding, the appointment should be immediate. There is no point in waiting for a long time for a vacancy to arise. Because of the delay the very object of compassionate appointment gets defeated and the family will die of starvation. The applicant was kept waiting for a period of 3½ years after selection and intimation to that effect was sent nearly four years after the death of the deceased. Even after such long delay, the applicant was appointed against a leave vacancy. It was a precarious tenure against a leave vacancy. This is not as per the law laid down by the Supreme Court. To earmark a quota for compassionate appointment is, to begin with, unconstitutional. The Supreme Court held that compassionate appointment is not a gateway to get into Government jobs. It is a

departure from all normal rules of public appointment. Several tests have been laid down for this purpose in Nagpal's case. In extreme cases of dire penury, this appointment should be given. Secondly, there may not be a need for such an appointment for years together, because if the guidelines laid down in Umesh Kumar Nagpal's case have to be followed, there should be absolute evidence of dire financial strain and visible penury, a finding should be given to this effect after proper investigation. But once a finding is given and the applicant is considered for appointment by an expert committee and a communication is made to him in this regard, there is absolutely no justification to keep him waiting for years together and thereafter to provide him with an appointment which is again precarious as they have done in this case. The whole action of the respondents is not based on any foundation either in law or in equity.

7. It may not be possible to create supernumerary posts always. It may not be always desirable also. The need of the hour is economy in Government expenditure. But then, the remedy is not in issuing intimation of appointment under the "Rehabilitation Assistance Scheme" thereby creating a legitimate expectation in the minds of the applicants and then asking them to wait endlessly for years together. It is suggested that before issuing an intimation of selection, the respondents should be certain of the vacancy. All the vacancies in a particular zone or State

should be pooled for the purpose, so that intimation of appointment is promptly done without a time-lag. This way distress of the family is relieved. Secondly, a compassionate appointment is not an ad hoc appointment terminable on notice. It is supposed to be a regular appointment, subject to eligibility, training, efficiency etc. Thus the conduct of the respondents in this case of selecting a candidate on the basis of a High Power Committee's recommendation and after keeping him waiting for 3½ years and then training him for the job only to give him a leave reserve vacancy ~~at will~~ terminable is not in accordance with the spirit of the rules and decisions of the Supreme Court on compassionate appointment.

8. The crux of the stand taken by the respondents is reflected in paras-7 and 8 of the counter affidavit which are extracted as under :

"7. The facts stated in para 4(ix) of the application are not fully correct. There was no vacancy in compassionate quota in the division and in order to provide livelihood to the distressed family of the deceased employee, the applicant was appointed on temporary basis. When the time came for filling up the vacancy against outsider quota a recruitment examination was held on 9.7.95 to fill up the vacancies against the outsider quota vide letter No.B2-14/Ch.III/94 dated 19.6.95 (Annexure R-8). By the time the recruitment examination was held there were only 3(three) vacancies in Postman cadre in the entire division i.e. Departmental : S.C.-1; Outsider : O.C.-1 and S.T.-1 as per Annexure-9 and there was no vacancy against compassionate quota, the proportion being less than 14½% as per Annexure R-10.

8. The facts stated in para 4(x) of the application are not correct. As stated in para 4(ix) above it is submitted that there was no vacancy against compassionate quota for appointment of the applicant and in order to

provide livelihood to the distressed family of the deceased employee the applicant was appointed against one of the vacancy for outsider quota and it was also communicated to him that his appointment was purely temporary and liable to be terminated at any time without assigning any reason(Annexure- R-7)."

The general instruction is for the appointing authorities to ensure that total reservation for the Scheduled Caste, Scheduled Tribe, Physically handicapped persons and ex-Service men should not exceed 50% of the vacancies available against the outsider quota on a particular occasion during the year of recruitment. There is a 15% and 7½% reservation respectively for the S.C. and S.T.. Giving berth to other reservations, the respondents have conceived of 14½% reservation for the Group 'C' of compassionate appointment and 4½% reservation for the Group 'D'. Sometimes when the appointments are approved, vacancies for compassionate appointment are not known. The point is that any reservation for compassionate appointment is unjustified. This appointment can be made either from promotee quota or from outsider quota. For S.C., S.T. or for OBC, destitution or penury does or community not choose a particular class/ or a particular category of employee. It is not for me to suggest how the department should organise the mechanism of knowing the vacancies at a particular time, but to say that there is a vacancy in O.C.(other category) quota so that this has to be filled up only through competitive examination and should not go to a candidate by compassionate appointment is not correct. As has been made clear by the Supreme Court

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that this compassionate appointment is an exception to the general rule and as such should be carefully considered before an appointment is given. But once the selection is made, such an appointment cannot again be sieved through quota compartments, only to say that there is no post available for compassionate quota. While I declare that such reservation for compassionate quota is unconstitutional and is not in conformity with the spirit of the Supreme Court judgments, I would leave it to the respondents to devise a method by which the delay in giving an appointment order is totally eliminated and before the appointment order is given, vacancy of a post is ensured.

9. In the amended relief prayed for the applicant has pointed out the vacancies at Bhanjapur Sub-office and Baripada Head Post Office in the category of Postman. If the respondents are satisfied that such a vacancy exists, they shall consider the applicant for the appointment immediately. If no vacancy exists at the identified places, then they have to search for a vacancy at any other Post office in Mayurbhanj Division and thereafter for a vacancy in any other neighbouring Division. After identifying such a vacancy, they can formulate a proposal and process the same for appointment against a permanent post in that vacancy. They should in the last analysis consider

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the vacancy in any Post office in the North Orissa for this purpose and after identifying the said vacancy, send the applicant's proposal for appointment to Respondent No.2 C.P.M.G. Orissa Circle, for his regular appointment against a permanent post within a period of two months from the date of receipt of a copy of this order.

10. 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.

Naveen Kumar
(N. SAHU) 3. x. 96
MEMBER (ADMINISTRATIVE).

DJena/ 3.10.96.