

CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 25 OF 1996

Cuttack, this the 25<sup>th</sup> day of January '99

Sri Subal Naik ..... Applicant

Vrs.

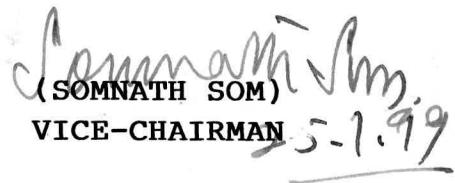
Union of India and others .... Respondents

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.

  
(S.K.AGRAWAL)

MEMBER (JUDICIAL)

  
(SOMNATH SOM)

VICE-CHAIRMAN

5.1.99

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CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 25 OF 1996  
Cuttack, this the 25<sup>th</sup> day of January 1999

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN  
AND  
HON'BLE SHRI S.K.AGRAWAL, MEMBER(JUDICIAL)

.....  
Sri Subal Naik, aged about 61 years  
son of late Bhramar Naik of  
At/PO/PS-Badagada,  
Bhubaneswar-18, Dist.Khurda ..... Applicant

By the Advocates - M/s D.Chakraborty  
S.S.Mohapatra &  
S.Palit.

Vrs.

1. Union of India, represented by  
Accountant General,  
Orissa, Bhubaneswar.
2. Deputy Accountant General (Admn.),  
Office of the Accountant General, Orissa,  
Bhubaneswar.
3. Senior Accounts Officer (Admn-I),  
Office of the Accountant General,  
Orissa, Bhubaneswar, District-Khurda..... Respondents

By the Advocate - Mr.Ashok Mohanty,  
Sr.C.G.S.C.

O R D E R

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SOMNATH SOM, VICE-CHAIRMAN

In this application under Section 19 of  
Administrative Tribunals Act, 1985, the petitioner has  
prayed for a direction to the respondents to employ  
his son on compassionate ground retrospectively from the  
date of retirement of the petitioner on invalidation  
ground and for payment of arrears.

2. The facts of this case, according to the  
petitioner, are that he was working as  
Sweeper-cum-Safaiwala under Accountant General,

Orissa (respondent no.1). In the year 1991 the applicant got reduced vision and heart trouble, and he applied on 10.9.1991 and 1.10.1991 for invalidation retirement. The letter dated 1.10.1991 is at Annexure-1. The applicant was asked to produce documents in support of his illness. In his letter dated 25.11.1991 (Annexure-2) he produced the necessary documents. He was asked to appear before Deputy Director, C.G.H.S. and before Chief Medical Officer, Bhubaneswar. The Chief Medical Officer, Bhubaneswar, in his letter dated 8.6.1992 (Annexure-3) recommended that the applicant should be invalidated from service. Thereafter Senior Deputy Accountant General in his letter dated 11.12.1992 issued notice to the petitioner stating that it was proposed to retire him from Government service on invalidation after one month of the date of issue of this notice. Ultimately, he was retired from service on invalidation one month after issue of the letter under Annexure-4. The petitioner made an application on 9.6.1993 for giving compassionate appointment to his son, but the same was rejected. In spite of applicant's personal approach on several occasions, no favourable order was passed. The applicant has eight members in his family as has been mentioned in Annexure-1 and the family is in indigent condition and as his prayer for compassionate appointment to his son has not been acceded to, he has come up in this O.A. with the aforesaid prayers.

3. The respondents in their counter have indicated that the prayer of the applicant to give compassionate appointment to his son was rejected in order dated 4.3.1994 at Annexure-6. The respondents have denied that the petitioner submitted any application on 10.9.1991 for retirement on invalidation. It is further stated that

the applicant submitted xerox copy of his prescription, etc., on 25.11.1991 (Annexure-2). He was advised to appear before Chief Medical Officer for examination. Deputy Director, C.G.H.S. referred his case to Ophthalmic Specialist in Capital Hospital. The applicant instead of getting certificate from Government Eye Specialist, obtained a certificate from Dr.Biswanath Patnaik, Surgeon of Capital Hospital. Thus, for the delay in his medical examination, the applicant is responsible. He was finally retired on 14.1.1993. The respondents have further stated that the main consideration for giving compassionate appointment is indigent circumstance in the family. In the present case, the applicant retired on attaining the age of 57 years. He is getting his regular pension and all his retirement dues have been paid to him. According to the rules of compassionate appointment, his case cannot be considered and accordingly, this has been rejected in order dated 4.3.1994 at Annexure-6. The petitioner has not come to the Tribunal within one year of that order and therefore, the application is barred by limitation. On the above grounds, the respondents have opposed the prayer of the applicant.

4. The applicant in his rejoinder has reiterated that he had made several representations for retirement on invalidation and the respondents have delayed this. He has also stated that his family is in indigent condition and on that ground, he has reiterated his prayer.

5. We have heard Shri S.Palit, the learned counsel for the petitioner and Shri Ashok Mohanty, the learned Senior Standing Counsel appearing for the respondents, and have also perused the records. The learned counsel for the petitioner has submitted written

note of argument along with certain citations and also a date-chart which have been taken note of.

6. The applicant was born in February 1935 and his date of retirement on superannuation was February 1995. He was actually retired on 14.1.1993. At that time his age was 57 years, nine months and a few days. In the instructions relating to compassionate appointment of wards of Government servants who have retired on invalidation it has been laid down that in case of Group D employees whose normal age of superannuation is 60 years compassionate appointment may be considered where they are retired on medical grounds before attaining the age of 57 years. In this case, at the time of retirement, the applicant's age was 57 years and 9 months and therefore, he had not another three years of service. Strictly in terms of the circular dated 30.6.1987 of Department of Personnel & Training the applicant cannot claim compassionate appointment for his son. Learned counsel for the petitioner has stated that the petitioner made an application for reitrement on invalidation grounds on 10.9.1991 and followed it up on 1.10.1991. In spite of his pursuing the matter with the authorities, the matter was delayed bythe respondents and he was retired only on 14.1.1993. Had the applicant been retired immediately after he had submitted his application for retirement on invalidation grounds, he would have foregone three years of services and his son would have been entitled to be considered for compassionate appointment. It has been submitted by the learned counsel for the petitioner that for this delay in accepting his retirement on invalidation the respondents are responsible and therefore, in equity he has a case for his son being considered for compassionate appointment. Learned counsel for the

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petitioner has also submitted that cases of compassionate appointment are to be decided expeditiously as the purpose is to rehabilitate an impoverished family. The learned counsel for the petitioner has also instructed us extensively on the point of equity. He has stated that equitable considerations are to be taken into account for the purpose of doing justice. In this case, according to him, on equitable considerations, the applicant is entitled to get the relief prayed for. The respondents in their counter have denied that any application was made by the petitioner on 10.9.1991 for retirement on invalidation. They have not mentioned anything about the petitioner's submission that he had applied for retirement on invalidation in his letter dated 1.10.1991 which is at Annexure-1. They have merely stated that the applicant submitted the xerox copy of the prescription in support of his illness on 25.11.1991 (Annexure-2). From this letter of the petitioner at Annexure-2 it is seen that this letter ~~from the letter~~ is in response to a letter dated 30.10.1991 of the respondents addressed to him. This letter dated 30.10.1991 has not been produced by the respondents or the applicant. From Annexure-2 it is clear that the respondents had directed the applicant in their letter dated 30.10.1991 to produce the documents in support of his illness. Accordingly, in this letter at Annexure-2 the applicant had submitted the Capital Hospital Cardiology Card, Cardiograph and the prescriptions for a number of days from 20.6.1991 to 16.11.1991. The fact that the respondents had written to the applicant in their letter dated 30.10.1991 requiring him to submit documents in support of his prolonged illness leads us to hold that the applicant did apply on

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1.10.1991 vide Annexure-1 for his retirement on invalidation and also for absorbing his son in a job. It is also to be noted that the respondents in their counter have not denied that the petitioner gave an application on 1.10.1991 for retirement on invalidation ground. Thus, it is seen that even though the petitioner applied on 1.10.1991 for retirement on invalidation, he was actually retired on invalidation on 14.1.1993, i.e., after a passage of fourteen months. The respondents have stated in paragraph 7 of the counter that for this delay the applicant was responsible. It is stated by the respondents that he appeared before Deputy Director, C.G.H.S. who referred him to Ophthalmic Specialist of Capital Hospital to give his report. The applicant instead of getting a certificate from the Eye Specialist of a Government Hospital, obtained a certificate from Dr.Biswanath Patnaik, Surgeon of Capital Hospital. Initially the applicant was advised to appear before Chief Medical Officer whose report of medical examination is at Annexure-3. Thus, the respondents have tried to make the point that even though the applicant was advised to appear before Ophthalmic Specialist of Capital Hospital, he obtained a certificate from some doctor and that is how the matter was delayed. This contention is not acceptable for the reason that the medical certificate given by Chief Medical Officer at Annexure-3 on the basis of which the applicant was retired on invalidation speaks only of Hypertension and Chronic Stable Angina, and it is stated in this certificate that in view of the applicant's prolonged illness and present state of health he is unlikely to improve completely and he may be invalidated out from service. From this it is clear that the

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applicant was not invalidated because of his failing eye sight but because of his heart problem. Therefore, his failure to obtain a certificate from Eye Specialist of Capital Hospital has no bearing on his retirement on invalidation. It is also to be noted that the certificate of Chief Medical Officer was given on 8.6.1992 and the respondents have taken another eight months for retiring him on 14.1.1993. Thus, it cannot be said that for the delay in retiring the applicant which has resulted in his case not coming under the circular for compassionate appointment of wards of Government servants retired on invalidation is entirely attributable to the applicant himself. The respondents are also responsible for the delay which has prejudiced the case of the applicant.

7. The next aspect is that the applicant was working as a Sweeper-cum-Safaiwala under respondent no.1. In his representation dated 9.6.1993 the petitioner has prayed that his son Ramakanta Naik should be given the job held by him. In other words, he has prayed that his son, who is a Matriculate, should be appointed as a Sweeper-cum-Safaiwala in his place. This representation was rejected in order dated 4.3.1994 which states that the case of appointment of his son Ramakanta Naik was considered under the Rules and the request for appointment of his son was not acceded to. This order does not indicate any reason as to why his prayer was rejected. The respondents in their counter have stated that the applicant retired at the age of 57 years and is in receipt of pension and this is not a case for compassionate appointment. The fact that the applicant is getting pension is not relevant at all because in case of invalidation of a Government servant he will in any case be entitled to regular pension or invalidation pension.

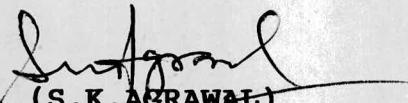
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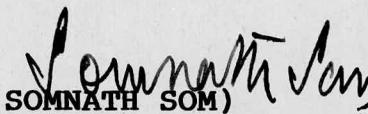
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But the Rules provide that in such case compassionate appointment can be considered if the family is in indigent condition. In the instant case, the petitioner has mentioned that he has a family of eight persons and his assertion that he is in indigent condition has not been denied by the respondents. It is also to be noted that the petitioner retired as a Sweeper in the office of respondent no.1 and therefore, with his family of eight persons, it can be reasonably held that he is in indigent condition. The only difficulty in this case is that he has been retired on 14.1.1993 and he has foregone two years and one month of service as he would have retired on superannuation in February 1995. He has not thus foregone three years of service which is a condition for giving compassionate appointment to his son. It is also to be noted here that the petitioner's son is a matriculate, but the petitioner in his representation dated 9.6.1993 has prayed for giving him the job from which the petitioner has retired. In other words, he has prayed for a job of Sweeper-cum-Safaiwala for his son. In consideration of all the above and especially because of the delay in accepting his retirement on invalidation, we direct the respondents that the case of the son of the petitioner, Ramakanta Naik should be considered for a post of Sweeper in the office of respondent no.1. This will not be a case of compassionate appointment, but in the next vacancy coming up in the post of Sweeper the case of the petitioner's son Ramakanta Naik should be considered along with other candidates taking into account the facts in his favour as have been mentioned in this order.

8. With the above direction, the Original

Application is disposed of but without any order as to costs.

  
(S.K.AGRAWAL)  
MEMBER (JUDICIAL)

  
(SOMNATH SOM)  
VICE-CHAIRMAN 25.1.19

AN/PS