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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 623 OF 1996
Cuttack, this the 29th day of April, 1997

Sri Surendranath Ray and others Applicants.

Vrs.

The Chief General Manager, Telecom,
Orissa Circle, 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. Som
(S. SOM)
VICE-CHAIRMAN
29.4.97

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 623 OF 1996
Cuttack, this the 29th day of April, 1997

CORAM:

HONOURABLE SRI S.SOM, VICE-CHAIRMAN.

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1. Sri Surendranath Ray, aged about 58 years,
(Ex-Duftry) S/o Padma Charan Ray,
At/PO-Madhusudanpur Sasan,
District-Jagatsinghpur.
2. Sukumar Kumar Ray, aged about 33 years
3. Santosh Kumar Ray, aged about 23 years
(Applicant nos. 2 and 3 are both sons of -
Sri Surendra Nath Ray, At/P.O-Madhusudanpur Sasan,
District-Jagatsinghpur)

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Applicants.

-versus-

1. The Chief General Manager, Telecom,
Orissa Circle, Bhubaneswar-751 001,
District-Khurda, Orissa.
2. The Telecom District Manager, Telecom District,
Cantonment Road, Cuttack-753 001
Cuttack
3. Director (H/Q),
Office of the Chief General Manager, Telecom,
Orissa, Bhubaneswar, Dist-Khurda PIN-751 001
4. Assistant Director of Telecom (HRD),
Office of the Chief General Manager (Telecom),
Orissa, Bhubaneswar, Dist-Khurda, PIN-751 001

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Respondents.

Advocates for applicants - M/s R.K.Pattnaik & MBK Rao.

Advocate for respondents - Mr. Ashok Mohanty.

Sonu Nath J.M.
29.4.97.

ORDER

OM, VICE-CHAIRMAN The first applicant in this case was Duftary in the office of Telecom District Manager, Cuttack, and applicant nos. 2 and 3 are his sons. According to the application, applicant no.1 suffered from Tuberculosis while he was working as Duftary. Even after prolonged treatment, he was not able to lead a normal life. The Chief District Medical Officer, Cuttack, in his memo No.2383 dated 7.3.1995 and its enclosure (Annexure-1) declared him completely and permanently incapable for further service due to Tuberculosis of lungs with aster Arthritic knees. Accordingly, he retired from the service on invalidation ground and made several representations (Annexures 3 series) to the departmental authorities to give compassionate appointment to one of his sons. His case was rejected by the Circle High Power Committee on the ground that the financial condition of the family is not indigent. This order of the Circle High Power Committee is at Annexure-4. In view of this, the applicants have come up with the prayer for setting aside Annexure-4 referred to earlier and for a direction to the respondents to consider the cases of applicant nos. 2 and 3 for giving them compassionate appointment in any suitable posts commensurate with their educational qualification.

*Vijayalakshmi S/O
09.4.97*

2. The respondents in their counter have pointed out that according to the income certificate given by the Additional Tahasildar, Jagatsinghpur, which has been produced by applicant no.1, the annual income of applicant no.1 is Rs.7000/- and that applicant no.1 is in receipt of monthly pension of Rs.1100/-. In view of this,

the Circle High Power Committee, according to the counter, has been right in rejecting the prayer for compassionate appointment.

3. I have heard the learned lawyer for the applicants and the learned Senior Standing Counsel appearing on behalf of the respondents. It has been submitted by the learned lawyer for the applicants that indigent condition is a relative term. Applicant no.1 has got seven children and even with pension of Rs.1100/- per month and the income from agricultural land, he should be taken as a person in indigent circumstance. Further, it has been asserted that the income certificate given by the Additional Tahasildar, Jagatsinghpur, is defective in the sense that besides Rs.2500/- from agricultural land, another Rs.4500/- has been shown as his annual income from "any other sources to be specified". But no source has been specified. As such, his income, besides the pension, should not be taken as Rs.7000/-per year. I have carefully considered the contentions of the learned lawyer for the applicant. It is no doubt true that indigent condition is a relative concept, but while considering the cases of compassionate appointment, the Circle High Power Committee have to adopt some sort of standard of relative uniformity, not absolute mathematical uniformity, in all the cases which are coming before them. Judging by this and taking into consideration his monthly pension of Rs.1100/- and other annual income of Rs.7000/-, according to the certificate produced by him, the Circle High Power Committee have not considered the family to be in indigent condition. It will not be proper for the Court to hold otherwise.

*Om Nath J.M
29.4.91*

4. Besides the above consideration, the case of the applicants fails on another ground also. According to the Office Memorandum No.14014/6/86-Estt.(D), dated 30.6.1987, of the Department of Personnel & Training, on compassionate appointment of son/daughter/near relative of deceased Government servant, normally such appointment can be given to a dependant of a Government servant who dies in harness leaving his family in immediate need of assistance when there is no other earning member in the family. This is the general rule. Only in exceptional cases the benefit of compassionate appointment may be extended to a dependant of a Government servant who has retired on medical grounds, but in such cases the retirement has to be before the Government servant attains the age of 55 years. In cases of Group 'D' employees, whose normal age of superannuation is 60 years, compassionate appointment may be considered when they retire on medical grounds before attaining the age of 57 years. Applicant no.1 was a Group 'D' employee. His date of birth is 8.2.1938. He retired on medical grounds on 4.3.1995, i.e., after attaining the age of 57 years and 23 days. As such the Office Memorandum referred to earlier is not strictly applicable to him. It is no doubt true that applicant no.1 misses the benefit of the Office Memorandum only by a short period of twenty-three days. Question for determination is whether it is possible to relax this condition of retirement on medical grounds before attaining the age of 57 years in case of applicant no.1 and his sons. Normal date of retirement of applicant no.1 is 28.2.1998. The provision contained in

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the Office Memorandum that benefit of compassionate appointment may be extended to a dependant of a Government servant who retired on medical grounds before attaining the age of 55 years and in case of Group 'D' employees before attaining the age of 57 years is based on sound consideration. This is because a Government servant cannot be permitted to retire on medical grounds before some months of his actual date of normal superannuation and thereby to set up a claim for compassionate appointment of his dependent son or daughter. If the consideration of 57 years in case of applicant no.1 and 55 years in cases of other Government servants is relaxed, it would be a thin end of the wedge. Moreover, as has been laid down by the Hon'ble Supreme Court in the case of Umesh Kumar Nagpal v. State of Haryana and others, (1994) 4 SCC 138 consideration for compassionate appointment is not a vested right. Therefore, no enforceable claim can be set up on the plea of compassionate appointment. As in this case, the applicants' case does not come within the benefit of the Office Memorandum dated 30.6.1987 referred to earlier, I hold that the application is without any merit and the same is rejected. There shall be no order as to costs.

Somnath Sam.
(S.SOM)
VICE-CHAIRMAN
29.4.97