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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 655 OF 1996.

Cuttack, this the 18th day of February, 2000.

SHRI BIDYADHAR PRADHAN.

....

APPLICANT.

VRS.

UNION OF INDIA & ORS.

....

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

SOMNATH SARKAR
VICE-CHAIRMAN
18/2/2000

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 655 OF 1996
Cuttack, this the 18th day of February, 2000.

CORAM:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN

...

BIDYADHAR PRADHAN,
S/o. Karunakar Pradhan,
At-Keshpur, PO.CRRI,
Dist.Cuttack-6. ... Applicant.

By legal practitioner: M/s. G.N.Mishra,
B.N.Samantray,
Advocates.

- Versus -

1. Union of India represented through
Secretary, Agriculture, ICAR,
Krushi Bhawan, New Delhi.
2. Central Rice Research Institute,
represented through its Director,
At.Bidyadharpur, PO/PS.Bidyadharpur,
Dist.Cuttack.

.. Respondents.

By legal Practitioner: Mr. Ashok Mishra,
Senior Special Counsel.

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ORDER

MR. SOMNATH SOM, VICE-CHAIRMAN:

In this Original Application u/s. 19 of the Administrative Tribunals Act, the applicant has prayed for a direction to the Respondents to provide compassionate appointment to the applicant or any one of his family members in any post. By way of interim relief, he has prayed that Respondents be directed to provide engagement to applicant or any member of his family on daily wage basis.

2. Applicant's case is that his father, Karunakar Pradhan, retired from the post of S.S., Gr.III under the Respondent No. 3 on 17.8.92 on permanent invalidation ground when he had more than five years left for his superannuation. Applicant's father made a petition to the authorities to provide his son the present applicant before me an appointment under compassionate ground. As no order was received, applicant made a representation on 20.11.1992 for early consideration of his case. This representation is at Annexure-3. On 19.12.92 the Senior Administrative Officer, wrote to the applicant asking him to furnish an undertaking

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in the prescribed form that he would take care of the family of the retired employee and he should exercise his willingness for appointment as SS Gr.I as no post of Farm Mechanic/Jr.Clerk is lying vacant for the present. He was also informed that once he exercises his option for the post of SS, Gr.I, his case for future appointment in higher grade can not be considered and he will be only eligible for promotion as per his seniority in service. Thereafter, applicant in his letter dated 21.12.1992 stated that he is prepared to join as Farm Mechanic/Jr. Clerk or any other T-I post at any sub-station under CRRI. Applicant has stated that the statement at Annexure-4 that at that time there was no vacant post of Farm Mechanic/Jr.Clerk was incorrect because by that time, Res.No.2 had called for names from the Employment Exchange for the post of Farm Technician directing them to appear at an interview on 29.4.1993. These facts were also brought to the notice of the Respondents by filing subsequent representations. According to applicant, Respondents did not consider his case under the scheme of compassionate appointment and there were further correspondence. Subsequently,

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he received a letter on 1.12.1993 from Respondent No. 2, at Annexure-9 in which it was mentioned that the case of applicant will be considered only after the cases received prior to his case, have been provided with compassionate appointment. While the matter stood as such, Respondent No. 2 issued the letter under Annexure-2 on the basis of the letter at Annexure-1, rejecting the application of applicant for compassionate appointment on the ground that proposal of age relaxation was not agreed to by the council. On the above grounds, applicant has come up in this Original Application with the prayers referred to earlier.

3. Respondents, in their counter have opposed the prayer of applicant. They have stated that applicant was asked to give an undertaking that he will maintain his parents ^{to} and is willing to accept the SS Grade I post which was vacant at that time and against which his appointment can be considered. They have also mentioned that once a person accepts a particular post on compassionate ground, he can not make claim for a higher post on the same ground. It is further stated that under the rules compassionate appointment

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can be made only for SS,Gr.I (Group-V) and Jr. Clerk (Class-III) posts and not against any other posts. Even though there was vacancy in T-I (Farm Mechanic), the case of the applicant could not be considered against the said post because of the above stipulation of confining compassionate appointment to the post of SS,Gr.I and Jr.Clerk. Respondents have stated that according to instructions, only 5% of the total vacancies in a year are reserved for compassionate appointment. It is stated that applicant kept on insisting for Class III post but at that time the vacancy of Jr.Clerk arose, the applicant had crossed the maximum age limit for appointment and since the Res. No.2 did not have the power to relax the upper age, the entire matter was referred to the Res. No.1 for consideration. Respondent No.1, after perusal of all relevant records, did not agree for age relaxation. Respondents have further stated that compassionate appointment is provided to give immediate relief to the family in distress. Applicant's non-acceptance the post of SS,Gr.I shows that the applicant was not in dire need of any relief. They have further stated

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that for the delay in offering appointment to applicant, the applicant alone is responsible and on the above grounds, Respondents have opposed the prayers of applicant.

4. Applicant, in his rejoinder, has stated that his prayer for compassionate appointment has been turned down on the ground that he has become over-aged and the proposal of age-relaxation was not agreed to by the Respondent No.1. Applicant has further stated that from the letter, at Annexure-9, it is clear that all formalities were over by December, 1993 and he was empanelled for compassionate appointment awaiting his turn. He was also prohibited from making any further correspondence. In view of this, Respondents are estopped from refusing to give compassionate appointment to him.

5. I have heard Mr. B. N. Samantray, learned Counsel for the Applicant and Mr. Ashok Mishra, learned Special Counsel appearing for the Respondents and have also perused the records.

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6. Facts admitted between the parties are that applicant's father retired on invalidation when he had more than five years of service left

for superannuation and the case of the applicant was taken up for consideration under compassionate grounds. He was also asked to give his willingness to join in the post of SS, Grade-I. But the applicant wanted a Gr.III post and asked for the same by filing further representations. From the letter at Annexure-9 to the Original Application which is issued by the Senior Administrative Officer to the father of the applicant on 1.12.93 it appears that the father of applicant was informed that the case of his son for appointment on compassionate ground can only be considered as soon as other cases received earlier are cleared subject to availability of vacancy. It was also mentioned that no further correspondence in this matter will be entertained. From this it is clear that Respondents have decided to offer compassionate appointment to the present applicant in ~~his~~ ^{of} ~~his~~ ^{John} turn but this appointment as earlier noted was for Gr.D post, SS, Gr.I. Respondents have stated in their counter that applicant did not provide willingness to join the post of SS, Gr.I but asked for a higher post. From the letter at Annexure-11 of the application it appears that the applicant wrote to the Director, Central Rice Research Institute on

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13.9.1996 stating that earlier he had prayed for appointment in the post of T.I taking his educational qualification but in the Institute's letter dated 11.3.96 this has not been agreed to. Applicant has stated that in view of this, he is now exercising his willingness for appointment in the post of SS, GR.I. This letter has been issued by the applicant on 13.3.96 with reference to the letter dated 11.3.1996 in which the applicant's prayer for a higher post has been rejected. As the Respondents have rejected the applicant's prayer for a higher post only in letter dated 11.3.1996 and within two days thereafter, applicant has given his willingness to accept the lower post of SS, Gr.I, it is held that on the ground of non-acceptance of the lower post, applicant's case for compassionate appointment can not be rejected.

7. Applicant has stated and filed orders showing that his case for compassionate appointment has been rejected on the ground of he is being over-aged. Normally in case of compassionate appointment age relaxation is given as a matter of course. The most common occurrence is that on the death of a Govt. employee, his widow is given appointment. In such cases age relaxation is given as a matter of course. In the instant case

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I find that applicant applied for compassionate appointment in 1992 and his prayer for higher post was finally rejected in 1996 whereupon, he gave his willingness for the lower post. Therefore, for this period of passage of four years, the petitioner alone is not responsible. On the above grounds, I hold that there is a good case for relaxation of the age for the purpose of considering his case for compassionate appointment. In view of this, Respondent No.1 is directed to reconsider the question of giving age relaxation to the applicant. Respondents have pointed out which has also been mentioned at Annexure-9 that the case of applicant will be taken up in its turn. Respondents have stated that there are large number of pending cases of compassionate appointment and those cases having arisen prior to the case of applicant, necessarily have to be dealt with first on the basis of vacancies coming up. In view of this for getting an actual appointment, the applicant must wait for his turn.

8. With the above observations and directions, the Original Application is allowed but in the circumstances, without any order as to costs.

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VICE-CHAIRMAN
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