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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.735 OF 1996
Cuttack, this the 28th day of November, 1997

Krushna Chandra Mallick 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.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN 28.11.97

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.735 OF 1996

Cuttack, this the 28th day of November, 1997

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN

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Krushna Chandra Mallick, aged about 23 years,
son of late Prabhakar Mallick,
Vill/PO-Gatanai, Via-Kujanga,
dist.Jagatsinghpur Applicant.

Vrs.

1. Union of India, represented by
Director General(Posts), Dak Bhawan,
Ashoka Road,
New Delhi-110 001.
2. Chief Post Master General, Orissa Circle,
Bhubaneswar, At/PO-Bhubaneswar,
Dist. Khurda.
3. Superintendent of Post Offices, Cuttack South Division,
At/PO/Dist. Cuttack-1.
4. Sub-Divisional Inspector (Postal),
Kujang, At/PO-Kujanga,
Dist. Jagatsinghpur.
5. Prasanna Kumar Pradhan,
S/o Doli Pradhan,
Vill/PO-Gatanai,
Via-Kujanga, Dist.Kendrapara Respondents.
(Jagatsinghpur)

Advocates for applicant - M/s Pradipta Mohanty,
D.N.Mohapatra &
G.S.Sahoo
and Smt.J.Mohanty.

Advocates for respondents - MrU .B.Mohapatra
(For Respondents 1 to 4)
and
M/s J.N.Jethi & S.K.Dash
(for Respondent 5)

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Somnath Som
28.11.97

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O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this application under Section 19 of Administrative Tribunals Act, 1985, the applicant has prayed for quashing the order dated 1.12.1994 (Annexure-6) rejecting his prayer for compassionate appointment also the order dated 24.3.1995 (Annexure-7) intimating him that his case was considered along with others for appointment to the post of Extra-Departmental Mail Carrier, but he was not selected. The applicant has also prayed for quashing the appointment of respondent no.5 to the post of Extra-Departmental Mail Carrier, Gatanai B.O.. His last prayer is for a direction to respondent nos. 1 to 4 to give him appointment on compassionate ground in the post of E.D.M.C. or in any other post in the vicinity befitting his eligibility in relaxation of normal recruitment rules within a specific time period.

2. Before proceeding further in the matter, it is to be noted that at the time of hearing, the learned lawyer for the applicant submitted that he does not press the prayer for quashing the appointment of respondent no.5 to the post of E.D.M.C., Gatanai B.O. and his prayer is limited to his appointment to any E.D. post on compassionate ground. In consideration of the above changed stand, the learned lawyer for respondent no.5 stated that he had no submissions to make.

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3. Facts of this case are that father of the applicant, Prabhakar Mallick was E.D.M.C., Gatanai B.O. He passed away while in service on 4.2.1994, his date of superannuation being 30.6.1996. The applicant's father left behind his widow and three sons of which the present applicant is the youngest. The first two sons were married and separated from the family during the life time of the father. The applicant and his mother were dependent on the deceased E.D.employee, after whose death their financial condition became precarious. The applicant, therefore, prayed for compassionate appointment and his two elder brothers and the mother (widow of the deceased employee) gave their no objection in support of the appointment of the applicant under the rehabilitation scheme. All relevant materials were collected by the departmental authorities and pending consideration of the applicant's case for compassionate appointment, the applicant was provisionally appointed against the vacant post of E.D.M.C. on 2.5.1994. The joining report of the applicant as E.D.M.C.,Gatanai B.O. on 2.5.1994 is at Annexure-2. The applicant continued as provisional E.D.M.C. till 3.12.1994 when he took leave on medical ground giving his brother one Keshab Chandra Mallick as substitute. During his period of leave, according to him, the B.P.M. of Gatanai B.O. influenced respondent no.4 to oust Keshab Chandra Mallick and

*John Math Jm
28.11.97*

at the instance of the Branch Post Master, two of his relations Kartik Chandra Mahali and Purna Chandra Mohapatra worked as E.D.M.C. for some time. When the applicant turned up on 10.2.1995 to join his provisional post of E.D.M.C., he was not allowed to join and as an interim arrangement the existing E.D.D.A. was entrusted ^{with} the work of E.D.M.C. in addition to his work as E.D.D.A. It is further submitted that while his case for compassionate appointment was pending, respondent no.4, Sub-Divisional Inspector (Postal), Kujang, demanded illegal gratification from him, but it was not possible for him to pay illegal gratification to the extent demanded by respondent no.3. In the meantime, the departmental authorities called for names from the Employment Exchange and after getting the name and going through the process of selection, respondent no.5 was appointed as E.D.M.C. The case of the applicant was considered by the Circle Relaxation Committee, but the same was rejected and the decision of the Circle Relaxation Committee was communicated to the applicant in the impugned order at Annexure-6. The applicant came up before this Tribunal in O.A.No.130 of 1995 which was disposed of in order dated 1.3.1995. In course of hearing of that O.A., the applicant submitted that pursuant to the demand of illegal gratification, the applicant gave some illegal gratification to respondent no.4 and was promised offer of appointment. The

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The applicant was informed of the decision in letter dated 1.12.1994. But instead of handing over charge, he went away on medical leave on 3.12.1994 giving his brother as substitute. He also came up before the Tribunal in O.A.No.130/95 and the order of the Tribunal has already been referred to. It also appears that when the departmental authorities called for names from Employment Exchange, the latter forwarded the name of the applicant and the applicant was asked to submit his application along with connected papers but the applicant did not do so. Notwithstanding this, in pursuance of the order dated 1.3.1995 of the Tribunal in O.A.No.130/95 the applicant's case was considered, but he was not selected and respondent no.5 who was better qualified was appointed as E.D.M.C. The respondents have opposed the prayer of the applicant on the ground that the family is not in indigent condition and the Circle Relaxation Committee have rightly rejected the prayer for compassionate appointment.

4. I have heard the learned lawyer for the applicant as also the learned Additional Standing Counsel, Shri U.B.Mohapatra appearing on behalf of the respondents. As already mentioned, learned lawyer for respondent no.5 did not have any submissions to make in view of the fact that the applicant did not press for quashing the appointment order of respondent no.5 as E.D.M.C., Gatanai B.O. I have also perused the records.

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5. The sole question for consideration is whether Circle Relaxation Committee was correct in taking the view that the family is not in indigent condition. The departmental respondents in paragraph 3(b) of the counter have pointed out that Circle Relaxation Committee took the view that since all the sons of the deceased E.D.official are major, they must be earning. Learned lawyer for the petitioner has pointed out that this finding is vague and hypothetical and there is no clear finding that all the sons are earning enough so that the family cannot be held to be in indigent condition. Moreover, it is submitted that the Circle Relaxation Committee took note of the fact that the eldest son is married and separated and is living in Calcutta. The second son is doing Bhagchias. Learned lawyer for the petitioner has drawn my attention to the decision of the Tribunal in O.A.No.27 of 1996 (decided on 8th March,1996) (Smt.Labanya Bhoi and another v. Union of India and others) in which a similar finding of the Circle Relaxation Committee on the presumption that sons might be earning was not upheld by the Tribunal. The relevant portion of the order of the Tribunal in O.A.No.27 of 1996 is quoted below:

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"3.What strikes me at first sight is that the finding is vague. A fact finding body like the Circle Relaxation Committee cannot presume "other major sons might be earning". There is no basis for such a presumption when the income certificate clearly stated that the eldest son's

annual income of Rs.9,000/- referred to monthly wages of Rs.1000/-. There is no justification in saying that the widow is also earning wages....."

I am inclined to go by the above line of logic adopted by Tribunal in O.A.No.27 of 1996. The instructions provide for appointment on compassionate ground to a member of the family of a deceased employee who passes ^{away} in harness when the family is in indigent condition. Before rejecting a prayer for compassionate appointment, Circle Relaxation Committee should come to a definite finding regarding the income of the family so far it is possible to ascertain that and come to a finding that the family is not in indigent condition and then only a prayer for compassionate appointment can be rejected. In this case, it appears that necessary enquiry has been made, but in the counter the respondents have not mentioned anything as to what was the finding and the recommendation in the enquiry. In view of this, the presumption of Circle Relaxation Committee that since sons are major, they must be earning cannot be sustained. In consideration of the above, the decision of the Circle Relaxation Committee rejecting the prayer of the applicant for compassionate appointment is quashed along with Annexure-6 intimating the decision to the applicant. The departmental authorities are directed to consider afresh the prayer of the applicant for compassionate appointment after ascertaining the financial condition of the

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family and thereafter take a view in the matter. It is seen that in OA No.130/95 as also in the present O.A., the applicant has made allegation of demand and receipt of illegal gratification by respondent no.4. That must have been a subject of enquiry by the departmental authorities in pursuance of the order dated 1.3.1995 in O.A.No.130/95. But as the Tribunal has mentioned in that order, that enquiry is distinct and separate from the issue of compassionate appointment and while deciding the prayer for compassionate appointment, the departmental respondents should not take into account the result of the enquiry into the allegation made by the applicant.

6. In the result, therefore, the application is allowed in terms of the observation and direction contained in paragraph 5 of this order. No costs.

Somnath Som
(SOMNATH SOM)
28.11.97
VICE-CHAIRMAN

AN/PS