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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 771 OF 1996
Cuttack this the 28th day of June/2000

Dillip Kr. Nayak

...

Applicant(s)

-VERSUS-

Union of India & Others

...

Respondent(s)

(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 ? NO

(G. NARASIMHAM)
MEMBER (JUDICIAL)

(SOMNATH SOM)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH CUTTACK

ORIGINAL APPLICATION NO. 771 OF 1996
Cuttack this the 28th day of June/2000

CORAM:

THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND

THE HON'BLE SHRI G. NARASIMHAM, MEMBER (JUDICIAL)

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Dilip Kumar Nayak
aged about 31 years,
S/o. Late Braja Kishore Nayak
at present residing at Village-Pitapura
PO: Krushnaprasad, Via/PS: Niali
District - Cuttack

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Applicant

By the Advocates

M/s. B.S. Tripathy
M.K. Rath

-VERSUS-

1. Union of India represented by it's
Director General, Department of Posts
Deek Bhawan, New Delhi-110001
2. Chief Post Master General, Orissa
Circle, Bhubaneswar, Dist: Khurda
3. Senior Superintendent of Post Offices,
Cuttack City Division, Cuttack-753001

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Respondents

By the Advocates

Mr. A.K. Bose,
Sr. Standing Counsel
(Central)

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MR. SOMNATH SOM, VICE-CHAIRMAN: In this Application under Section 19 of the Administrative Tribunals Act, 1985, petitioner has prayed for a direction to respondents to give him compassionate appointment commensurate with his educational qualifications. Respondents have filed their counter opposing the prayer of the applicant. Applicant has also filed a rejoinder to the counter.

2. For the purpose of considering this Application it is not necessary to go into too many facts of this case. The various averments made by the parties will be referred to at the time of considering the submissions made by the learned counsel for both sides.

3. We have heard Shri T.Rath, learned counsel for the petitioner and Shri A.K.Bose, learned Senior Standing Counsel for the respondents and also perused the records.

4. The admitted position is that applicant's father while working as Postal Assistant in H.S.G. cadre in Cuttack G.P.O. died on 4.5.1995 leaving behind seven children including applicant and three unmarried daughters. The petitioner, second son of the deceased postal employee applied for compassionate appointment. The departmental authorities in their order dated 4.12.1995 vide Annexure-4 rejected the prayer for compassionate appointment on the ground that Circle Relaxation Committee have held that there was no indigent circumstances requiring compassionate appointment. It has been submitted by Shri T.Rath, learned counsel for the petitioner that after the case was rejected he had gone to the Office of the Departmental authorities and learnt that his case has been rejected because his elder brother is working under the Railways. It has been submitted by the petitioner that the elder brother has been separated from the family long ago during the

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life time of the deceased postal employee and to that effect he has filed Annexure-2, an affidavit from the widow and Annexure-3, an affidavit from the son, who is said to have been separated as also Annexure-11 which is an unregistered Panchayatnama bearing the signature of the deceased employee and son making an averment regarding separation of the first son from the family. It is submitted by the petitioner that there is sufficient material on record to prove that the first son of the deceased employee had been separated from the family during life time of the father and this circumstance has been arbitrarily ignored by the departmental authorities, particularly the Circle Relaxation Committee while rejecting the case of the applicant. It has been submitted by the respondents that Annexures 2 and 4 have been executed after the death of the deceased postal employee. Annexure-11 which has been purportedly executed on 5.8.1989 was in possession of the applicant, but he has not annexed the same with his Original Application while annexing Annexures 2 and 3. We have considered the above submissions of the learned counsel for both sides. We find that on the death of the deceased postal employee, widow was sanctioned gratuity amounting to Rs.83,000/- and some odd and she is also getting pension of Rs.900/- per month in addition to usual allowances. Besides it has been stated that the widow has annual income of Rs.2000.00 from agricultural land. Lastly it has been stated that the first son of the deceased postal employee is employed under the Railways and is getting a salary of Rs.3670.00 per month. On the above grounds it is stated that the family is not indigent. As earlier noted, the thrust of the of the petitioner is that the elder brother has been separated from the family and because elder brother is employed compassionate

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should not have been denied to the petitioner.

5. We find that both Annexures-2 and 3 have been sworn in 1995 by the widow and the elder brother after the death of the deceased postal employee. From this it appears that these have been executed for the purpose of procuring compassionate appointment in favour of the applicant. Applicant has also not given any reasonable explanation as to why Annexure-11, which was in his possession was not produced by him at the first instance along with his Original Application. From these three documents it appears that the case of the applicant that his father, deceased postal employee ousted the eldest brother from his home and also from the share of his property and this was accepted by the first son in the Panchayatnama (Annexure-11). As this Panchayatnama is an unregistered document it cannot be held that the elder son has been divested from his share through this document. Moreover, as the elder brother is working under the Railways at Mancheswar, it is only natural that he is staying at Mancheswar with his family. From this it does not follow that he has been separated from the family. So we find that the departmental authorities have reasonable ground for holding that elder brother has not been separated from the family of the deceased postal employee. Whether separation has actually taken place or not is a matter to be decided by the Civil Court and not by this forum. Even granting for argument sake that elder brother has actually been separated from the family that itself would not justify a claim for compassionate appointment. In a case before the Hon'ble A.P. High Court (A. Seshagiri v. Sr. Divisional Manager, LIC reported in 1999 (Labour & Industrial cases) 3060, the Hon'ble High Court of Andhra Pradesh after examining a large number of previous decisions of the Hon'ble Supreme Court

held in Para-17 of the order that even if it is assumed that the petitioner's first elder brother was separated from the family, appointment on compassionate ground cannot be given even assuming that second elder brother, who is gainfully employed was separated from the family. In Para-10 it has also been mentioned that Hon'ble Supreme Court in the case of Auditor General of India v. G. Ananta Rajeswar Rao, 1994 Lab IC 754 have held that whenever rules made by the Governments or authorities transgress the object of compassionate appointment and seek to provide employment to a son/daughter or relative of the deceased even in case where there is an earning member of the family the rule to that extent is unconstitutional. In view of this it must be held that as the applicant's elder brother is working under the Railways and as the Railways have sufficient ground of holding that the separation has not been proved rejection of prayer of the applicant for compassionate appointment in his favour cannot be ^{found} faulted with. As we have already noted even assuming that elder brother has been separated from the family that by itself would not justify the claim for compassionate appointment. Moreover the departmental authorities have come to the conclusion that the family is not indigent. In view of the above we hold that the applicant is not entitled to any of the relief claimed by him in this O.A. The Original Application is held to be without any merit and the same is rejected, but without any order as to costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

B.K. SAHOO//

Somnath
(SOMNATH S. CH.)
VICE CHAIRMAN