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CENTRAL ADMINISTRATIVE TRIBUNAL: CUTTACK BENCH:
C U T T A C K .

ORDER DICTATED IN OPEN COURT.

ORIGINAL APPLICATION No.847 of 1996.

Cuttack this the 3rd day of January, 1997.

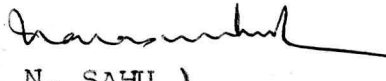
Santosh Kumar Bhoi ... Applicant

Versus.

Union of India and others Respondents

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? No
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? No.


(N. SAHU)
MEMBER (ADMINISTRATIVE).

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CENTRAL ADMINISTRATIVE TRIBUNAL: CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.847 OF 1996.

Cuttack this the 3rd day of January, 1996.

CORAM :

THE HONOURABLE MR. N. SAHU, MEMBER (ADMINISTRATIVE).

...

Santosh Kumar Bhoi, aged about 18 years,
Son of late Dhadi Bhoi, at present
Village-Batimira, P.O.Biridi Road,
District- Jagatsinghpur.

... Applicant.

By the Advocate :

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

Versus.

1. Union of India, represented by
its Director General, I.C.A.R.,
Rajendra Prasad Road, New Delhi.
2. Director, Central Rice Research Institute,
At/P.O. Bidyadharpur, Town/Dist-Cuttack-753006.
3. Senior Administrative Officer,
Central Rice Research Institute
At/P.O.Bidyadharpur, Town/Dist-Cuttack-753006.

.... Respondents.

By the Advocate :

Mr. Ashok Mishra,
Senior Counsel (Central).

....

O R D E R.

N. SAHU, MEMBER (ADMINISTRATIVE):

Heard Sri B.S.Tripathy, Counsel for the applicant
and Sri Ashok Mishra, Senior Counsel for the respondents.

In this case, the applicant's grievance is that he filed
a petition for a compassionate appointment in early 1993

on the death of his father Dhadi Bhoi who worked as Laboratory Attendant in Bio-Chemistry Department under respondent No.2. His father died leaving behind his widow, Sulochana Bhoi, the applicant; his brother and two daughters. There are thus 5 persons in the family as per the legal heir certificate dated 5.11.96. The brief point here is that the respondents do not dispute that the applicant is a fit person for consideration for compassionate appointment. In fact, by Annexure-5 they have listed 7 persons' applications pending for compassionate appointment. Annexure-5 is dated 18.6.96. The grievance of the applicant is that he applied immediately after the death of his father in 1993 and no consideration has been shown and because of delay, ~~there were~~ ^{there are} other applicants *joined the Queue.* The prayer of the applicant in this O.A. is for a direction to give him appointment on compassionate ground.

2. Learned counsel for the respondents Sri Ashok Mishra stated that the CRRI decided on 6.12.96 to take into account the income from various sources available to the family of the deceased Government employees for determining their suitability for compassionate appointment. They have also held that "since the compassionate appointment is for providing immediate assistance to the family of the deceased employee, no seniority list will be carried over from one year to the next." Now they have drawn up a list of

7 persons and according to the list, the person with the least total income is Sri Pramod Kumar Sahu. The death of the bread earner in this case occurred on 1.10.94. His total income is Rs.12,416/-; the second person is Harmohan Singh whose father died on 28.8.95 and his total income is Rs.14,800/- and the third person is the applicant, Santosh Kumar Bhoi whose father died on 17.2.93 and his total income is Rs.17,484/-. Sri Tripathy states that there is only one post reserved for compassionate appointment and that post has been filled up by appointing one Sri Pramod Kumar Sahu, the No.1 in the list. There is one person namely Bhajairam Majhi whose father died on 11.12.92 and his income from all sources is Rs.24,316/-. He is placed at Serial No.6 in the list.

It is for the employer to be satisfied about the indigence of the applicants. The only point to be noted is that the applicant's case should have been decided in the year 1993 itself. The respondents have not been fair to the applicant by postponing consideration of his case for over 3 years. The very object of rehabilitation assistance is defeated by postponing consideration. The pleadings show that otherwise the respondents did not have any reservation about considering the applicant's case for a compassionate appointment. This is very clear from the instructions

received by the learned Senior Counsel Sri Mishra from one Shri C.P.Thomas, Senior Administrative Officer dated 17.12.96 which is filed today in course of hearing. The very purpose of a compassionate appointment is defeated if the applicant has to wait for a period of 3 years. It has become a little unfair because in course of these 3 years, other applicants have also joined the queue. There is some sort of reservation for compassionate appointment upto a maximum of 5% of the vacancies falling which the same will be filled up by direct recruitment either to the post of Group 'C' or Group 'D'. This sort of reservation for compassionate appointment cannot be considered to be wholly in accordance with the law on the subject, but I will not comment on that aspect now.

3. It is true that the Department of Personnel and Training in O.M.No.14014/6/86-Estt(D) dt.30.6.87 laid down certain criteria for providing compassionate appointment and in doing so it is stated that the appointing authority has to ensure that compassionate appointments including reservation for S.C./S.T., Physically handicapped, Ex-servicemen do not exceed 50% of the vacancies available on any particular occasion. Presumably it is in accordance with this guideline that the respondents have fixed the quota of 5 %. It is not known from the letter dated 17.12.96 of the Senior Administrative Officer as to what was the quota available during February, 1993 when the applicant applied for compassionate appointment.

They may follow the guidelines of the Ministry of Personnel and Training and compute the posts in 1993 which they could fill on this basis. The injustice caused to the applicant is that they have kept him waiting for 3 years. It will be appropriate for this Court to direct the respondents to go back to 1993 and apply the principles laid down by them on 6.12.96. The Supreme Court had dealt with a similar case in *Sushma Gossain v. Union of India* (1989) 11 ATC 878 : (1989)4 SCC 468. The Supreme Court was dealing in that case with a matter where the respondents had kept a widow waiting for a compassionate appointment after she had been cleared in the Screening Test in 1983 for the post of L.D.C.. It was only later in 1985 that she was denied the appointment on the ground that the Government had imposed the ban on appointment of women in the Directorate General, Border Road Organisation *which was disapproved by the Apex Court.*

It is settled that the employer has to comply with the following :

(1) The family is in need of immediate assistance being in indigent circumstance with no earning member in the family; and (2) as held in *Sushma Gossain's* case that, " in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate grounds is to mitigate the hardship due to the death of the bread-earner in the family. Such appointment should,

therefore, be provided immediately to redeem the family in distress." In the note filed before me by the Senior Administrative Officer, there is no finding that the applicant was not indigent. The note shows that if 7 posts were available, they would have considered all the 7 candidates for appointment. Thus I am satisfied that the respondents have come to a finding that the applicant is deserving in view of his economic conditions. Injustice has been done to the applicant by delaying the decision on his claim. The criteria laid down by the respondents on 6.12.1996 should have guided them in 1993 itself when the applicant applied for rehabilitation assistance. By 1993 the instructions of the Central Government and decisions of the Courts have clearly laid down that the employer has to see the indigence of the family in case of compassionate appointments. As apparently the Respondents are satisfied about the indigence of the family, the only question that remains is whether there were any posts available for compassionate appointment in 1993. If no posts are available and no other candidate is provided with rehabilitation assistance in 1993, no Court can compel the respondents to appoint a candidate however deserving he may be. But what has bothered me is that there was no consideration of the applicant's case in 1993. I would, therefore, direct the respondents to consider the applicant's case in 1993 along with others who applied in that year. They

may work out the vacancy position as per the instructions given by the Department of Personnel and Training and consider the applicant's case for compassionate appointment along with others who applied in that year. If on reckoning even if one post can be hypothetically set apart for rehabilitation assistance, the applicant should be considered for that post. The decision taken on 6.12.1996 that there shall be no carry over of claims for compassionate appointment is valid and proper in view of the Apex Court's decision not to cause any delay in disposing of the claims. What I emphasize is that this consideration should have been shown even in 1993 when the law had fairly crystallised on the subject. Working back on their own logic if a post is available even hypothetically, the respondents shall fill that post from among candidates for rehabilitation assistance of that year. Otherwise it will amount to a case of glaring injustice to the applicant. Within two months from the date of receipt of a copy of this order, the respondents shall take the vacancy position as it existed in 1993 and consider the applicant's claim for compassionate appointment.

The Original Application is accordingly disposed of. No costs.

N. SAHU
(N. SAHU)
MEMBER (ADMINISTRATIVE)

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