

**CENTRAL ADMINISTRATIVE TRIBUNAL,**

**CUTTACK BENCH, CUTTACK.**

ORIGINAL APPLICATION NO. 945 OF 1996  
Cuttack, this the 22nd day of November, 2001

Anil Kumar Panda .... 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 (SOMNATH SOM) J. C.  
VICE-CHAIRMAN  
22.11.2011

CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 945 OF 1996  
Cuttack, this the 22nd day of November, 2001

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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN

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Anil Kumar Panda, aged about 20 years, son of late Prafulla Chandra Panda, At-Ramakrushna Nagar, 2nd Lane, P.O-Berhampur, Dist.Ganjam.... Applicant

Advocate for the applicant - Mr.H.P.Rath

Vrs.

1. Union of India, represented by its Secretary in the Department of Personnel & Training, New Delhi-110 003.
2. Comptroller & Auditor General of India, New Delhi, Bahadur Shah Zafar Marg, P.O-Bag No.7, Indraprastha Head Post Office, New Delhi-110 002.
3. Accountant General (A&E), Orissa, Bhubaneswar.

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Respondents

Advocate for the respondents - Mr.U.B.Mohapatra  
ACGSC

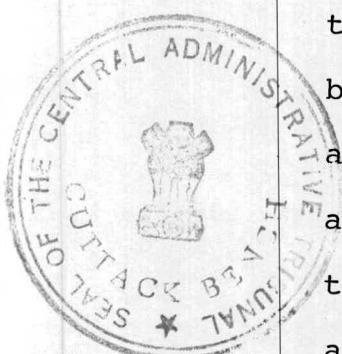
O R D E R

SOMNATH SOM, VICE-CHAIRMAN

*S. Som*  
In this O.A. the petitioner has prayed for quashing the order dated 15.5.1995 at Annexure-6 rejecting the representation of the applicant's mother for giving compassionate appointment to her son, the applicant, and the order dated 10.9.1996 (Annexure-9) informing the mother of the applicant that the request for compassionate appointment of the applicant has been rejected. The petitioner has also prayed for a direction to the

respondents to provide compassionate appointment to the applicant in any Class III post.

2. The case of the applicant is that his father passed away on 12.2.1984 while working as Accounts Officer in the office of Accountant General (A&E), Orissa, Bhubaneswar. The applicant's father left behind his widow, three unmarried daughters and two sons including the present applicant. All the children were minor at that time and the applicant was eight years old. The applicant attained majority on 13.7.1993 and applied for compassionate appointment in terms of the circular dated 27.12.1993 of the Department of Personnel & Training which is at Annexure-1. The applicant has stated that according to the circular, when an employee dies in harness leaving behind a ward below eighteen years of age and who alone is available for employment, such ward should apply for a job as soon as he attains the age of 18 years. It is stated that the petitioner made an application for compassionate appointment on 1.7.1994 (Annexure-2). In the letter at Annexure-3 the applicant's mother was directed to clarify the reasons for requesting for compassionate appointment bypassing her elder daughters. She was also asked to furnish income certificate issued by the revenue authority in respect of the land of the family at Berhampur. The applicant has stated that the first two daughters were at marriageable age and that is why they were unable to accept any employment. The daughters also indicated that they have no objection if the applicant is provided with compassionate appointment. The Income Certificate of the Tahasildar showed that the income of the family from the landed property is Rs.400/- per annum. Thereafter in the



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impugned order dated 15.5.1995 (Annexure-6) the prayer for compassionate appointment was rejected. The petitioner approached the Tribunal in OA No.442 of 1995 which was disposed of in order dated 17.5.1996 (Annexure-8). The petitioner has stated that in OA No.442 of 1995 the respondents stated in their counter that the application was premature in view of the fact that the applicant's case was re-opened as per orders of the Comptroller & Auditor General who has sought for certain informations after receipt of appeal from the applicant's mother. The case is under process and final action has not yet been communicated to the applicant. The Tribunal in their order dated 17.5.1996 took note of the above averment and held that the application is premature. It was also directed that the applicant should await the orders of the Comptroller & Auditor General of India and if he is aggrieved by the order he will be free to approach the Tribunal. Accordingly, the application was dismissed and respondent no.2 was directed to dispose of the representation of the applicant within two months from the date of receipt of copy of that order. Accordingly, in order dated 10.9.1996 the Comptroller & Auditor General considered and rejected the prayer for compassionate appointment. In the context of the above facts, the applicant has come up in this petition with the prayers referred to earlier.

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3. Respondents in their counter have opposed the prayer of the applicant. It is stated that the family is not in indigent condition as the applicant's mother got little over a lac of rupees towards retiral benefits and is

also in receipt of family pension. It is further stated that the family has got Ac.9.83 decimals of land at Langiyuda near Berhampur. It is further stated that the family has a house at Bhubaneswar which has been constructed by the deceased Government employee. It is further stated that the applicant's father passed away in 1984 and the petitioner had applied for compassionate appointment in 1994. As the family had managed for ten years without compassionate appointment, no case is made out for granting compassionate appointment to the applicant. It is also stated that the Hon'ble Supreme Court in Umesh Kumar Naypal v. State of Haryana have held that the object of granting compassionate appointment is to enable the family to tide over the sudden crisis and compassionate appointment is not a vested right which can be exercised at any point of time. It is also stated that had the family really been in indigent condition, then the widow would have herself applied for compassionate appointment or one of the daughters would have applied for compassionate appointment after attaining majority. But instead the family has waited for ten years till the applicant attained majority in 1993 and even thereafter after a delay of one year he has applied for compassionate appointment. On the above grounds, the respondents have opposed the prayer of the applicant.

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4. The applicant in his rejoinder has stated that the amount received by way of retiral benefits has been fully utilised by repaying the loan incurred during the illness of the deceased employee. Moreover, just because the family had got certain retiral benefits, compassionate appointment cannot be denied. In that event,



compassionate appointment cannot be considered for ward of any employee who has died in harness. It is further stated that the land at Berhampur is not high yielding land and the total income from the land is not adequate to maintain the family. It is further stated that the applicant's mother passed away on 23.9.2000 and the family pension is no longer available. On the above grounds, the applicant has reiterated his prayer in the O.A.

6. I have heard Shri H.P.Rath, the learned counsel for the petitioner and Shri U.B.Mohapatra, the learned Additional Standing Counsel for the respondents. The learned counsel for the petitioner has relied on the decision of the Hon'ble Supreme Court in the case of Balbir Kaur v. Steel Authority of India Ltd., AIR 2000 SC 1596. The respondents in their counter have relied on the following decisions:

(i) Saraswathi Bewa v. Union of India, 193. Swamy's Case Law Digest 95/1;

(ii) Smt. Teja v. Union of India, (1990) 12 ATC 48;

(iii) Lakshmamma v. Union of India, (1992) 19 ATC 333;

(iv) Lokesh Mathur v. Union of India, ATR 1989(1) CAT 99;

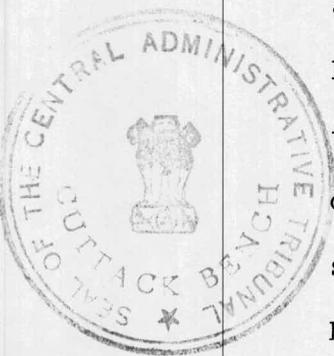
(v) L.I.C. v. Asha Ramachandra Ambekar, JT 1994(2) SC 183.

Reference has also been made to the case of Umesh Kumar Naypal v. State of Haryana, JT 1994(3) SC 525. I have perused all these decisions.

7. Hon'ble Supreme Court in Balbir Kaur's case (supra) have held that existence of Family Benefits Scheme for employees of Steel Authority of India Ltd.

cannot be a ground for denying the benefit of compassionate appointment. It is also a fact that when an employee dies in harness the family receives certain retiral benefits. Because of grant of such retiral benefits compassionate appointment cannot be denied for that reason alone. This contention of the respondents is accordingly held to be without any merit and is rejected.

8. The second ground urged by the learned Additional Standing Counsel is that the family is not in indigent condition because it is in possession of Ac.9.83 decimals of land near Berhampur and also has a house at Bhubaneswar constructed by the deceased employee. The applicant in his rejoinder hasstated that the house at Bhubaneswar has been sold in December 1991. But the fact of the matter is that the family is in possession of Ac.9.83 decimals which is not a small area. The applicant has stated and this is also borne out by the report of the Revenue Inspector that income from that land is only Rs.400/- per annum because the land is classified as old fallows. The respondents in their counter have mentioned in paragraph 17 that the income certificate issued by the Tahasildar is still awaited. The applicant has enclosed along with his petition the report of the Revenue Inspector stating that the land of the family covering Ac.9.83 decimals has annual income of Rs.400/-. Even if it be so, the fact of the matter is that the family is in possession of about 10 acres of land near Berhampur which itself is of substantial value.



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9. It has been submitted by the learned counsel for the petitioner that in their counter filed in OA No.442 of 1995 the respondents have held out hope for giving him compassionate appointment, but this has been belied by the order at Annexure9. The respondents have pointed out that in their counter to OA No.442 of 1995 they have merely indicated that the matter is pending consideration of the Comptroller & Auditor General of India, and the Comptroller & Auditor General after due consideration has rejected the request for compassionate appointment. I have gone through the records of OA No. 442 of 1995 and I find that the respondents have stated in paragraph 2 of their counter that the matter is again being considered by the Comptroller & Auditor General. The respondents have not stated that compassionate appointment is going to be given to the applicant. The main ground on which the prayer for compassionate appointment has been rejected is that the applicant's father died in 1984 and the petitioner applied only in 1994 after ten years for compassionate appointment. The respondents have pointed out that as the family had managed for ten long years without compassionate appointment, this is not a fit case for compassionate appointment. It is furtherstated that had the family been really in distressed financial condition, the widow or any of the elder daughters after attaining majority would have applied for compassionate appointment. I find much force in this contention. In many cases after the death of Government servants, their daughters are being appointed. Had the family been really in distressed condition, then the widow or the eldest daughter would have come up for compassionate appointment. In Umesh Kumar



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Nagpal's case(supra) the Hon'ble Supreme Court have noted that the purpose of compassionate appointment is to provide immediate succour to the family of the deceased employee. Departmental instructions also provide that when request for compassionate appointment is made many years after the death of the Government servant, such cases will have to be considered with a great deal of circumspection. In the instant case, the family came up for compassionate appointment after passage of 10 years from the death even though the daughters had attained majority in the meantime and ~~could~~ <sup>SJM</sup> could have applied for compassionate appointment on attaining majority. But as that has not been done, I find no illegality in the action of the respondents in holding that this is not a fit case for compassionate appointment. There are also many decisions of superior courts that where prayer for compassionate appointment is made after many years of death, such cases should not be entertained as Hon'ble Supreme Court have laid down that this is not a vested right which can be exercised at any time.

10. In view of the above, I hold that the application is without any merit and the same is rejected but without any order as to costs.

*Somnath Som*  
SOMNATH SOM  
VICE-CHAIRMAN  
28.11.2011

AN/PS