

11

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NOS.961 & 962 OF 1996
Cuttack, this the 18th day of September, 1998

Ajaya Kumar Naik (in OA No.961/96)
Bhajaram Majhi (in OA No.962/96) Applicants

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.

(G.NARASIMHAM)
MEMBER (JUDICIAL)

(SOMNATH SOM)
VICE-CHAIRMAN

12
CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NOS.961 & 962 OF 1996
Cuttack, this the 18th day of September, 1998

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

.....

In OA No.961 of 1996
Ajaya Kumar Naik, 19 years,
son of Sri Banchhanidhi Naik
At-Tigiria Nizigarh,
P.S-Tigiria,
District-Cuttack

In O.A.No. 962/96
Bhajairam Majhi
25 years,
son of late Dhanu Majhi
At-Chandanpur,
P.S-Barasahi,
Dist.Mayurbhanj

.....

Applicants

By the Advocates - M/s P.K.Bhuyan
A.Dash &
P.K.Nayak.

Vrs.

In Both the Cases

1. Union of India,
represented through Secretary,
Department of Agricultural Research & Education and
B.B.,
Indian Council of Agricultural Research,
Krushi Bhawan,
Dr.Rajendra Prasad Road,
New Delhi-110 001.
2. Secretary,
Indian Council of Agricultural Research, Krushi Bhawan,
Dr.Rajendra Prasad Road,
New Delhi-110 001.
3. Director,
Central Rice Research Institute,
Bidyadharpur,
Cuttack-6.

4. Senior Administrative Officer,
Central Rice Research Institute,
Bidyadharpur,
Cuttack-6.
5. Sri Pramod Kumar Sahoo,
s/o late Pahali Sahoo,
working as S.S.Grade-I,
Central Rice Research Institute,
Bidyadharpur, Cuttack-6 Respondents.

By the Advocates - Mr.Ashok Misra,
Sr.Panel Counsel (for
respondents 1 to 4) &
Mr.H.P.Rath for
Respondent no.5.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

These two cases have been heard separately, but the applicants are similarly situated, the respondents including the private respondent are the same in both the applications, and the relief claimed by the two applicants in these two O.As. is also identical. The point for determination is also the same. As such one order will cover both these cases. Both the petitioners have prayed for quashing the appointment letter issued to respondent no.5 at Annexure-4 of both the applications and also for a direction to appoint the applicants as Supporting Staff, Grade-I, on compassionate ground in place of respondent no.5.

2. In OA No.961 of 1996 the applicant's case is that his father Banchhanidhi Naik was working as Supporting Staff (SS Grade 3) in Central Rice Research Institute. He retired from service on 9.12.1993 on the ground of invalidation. After the retirement of his father, the applicant obtained a legal heir certificate and applied for employment on compassionate ground. Besides the

petitioner, several other persons had also applied to respondent no.3 for compassionate appointment. After considering the applications, the Senior Administrative Officer in his letter 18.6.1996 at Annexure-2 had prepared a seniority list amongst the candidates who had applied for compassionate appointment. In that list, the applicant's name was shown against serial no.3 whereas respondent no.5's name was shown against serial no.5. In that letter, the applicant and six others were asked to furnish particulars of income and property of their family from the local Tahasildar with reference to their applications for appointment on compassionate ground. The petitioner accordingly furnished an income certificate from the Tahasildar, Tigiria, showing the income of the family as Rs.18,480/- on account of pension of his father. While the matter stood as such, respondent no.4 had issued appointment letter ^{dated} /20.12.1996 at Annexure-4 to respondent no.5 ignoring the case of the petitioner and overriding his seniority, and on this ground the petitioner has come up in this petition with the aforesaid prayer.

3. The applicant in OA No.962/96 has stated that his father Dhanu Majhi was working as Supporting Staff Grade-II in C.R.R.I. He expired on 11.12.1992. After the death of his father, the applicant obtained legal heir certificate and applied for employment on compassionate ground in May 1993. Besides the applicant, there were other persons who had also applied for compassionate appointment and Senior Administrative Officer (respondent no.4) in his letter dated 18.6.1996 at Annexure-2 had prepared a seniority list of the candidates who had applied for employment on compassionate ground. In that gradation list, the applicant was shown at serial no. 2 whereas respondent no.5 was shown against serial no.5. In this letter, respondent no.4 had directed the applicant and six others

to furnish particulars of income and property of their family from the local Tahasildar with reference to their applications for compassionate appointment. The applicant obtained and furnished a certificate issued by Tahasildar, Karanjia (Annexure-3) in which it was shown that his income is Rs.8500/- which was not included and the annual income of the applicant was shown as nil. While the matter stood as such, respondent no.4 in his letter dated 20.12.1996 at Annexure-4 had issued appointment order on compassionate ground to respondent no.5 ignoring the seniority of the applicant and as such the applicant has come up with the prayer as in the case of the applicant in OA No.961/96.

4. The official respondents have filed identical counters in both these cases. They have stated that according to the instructions of Government of India out of the total vacancies of a particular year only 5% can be filled up by way of compassionate appointment. Earlier cases of compassionate appointment were dealt with on first come first serve basis. But as the number of applicants for compassionate appointment increased significantly and it was not possible to give appointment to all of them within 5% quota, the departmental authorities could ^{not} appoint all the applicants together. There was one vacancy in the relevant year in the compassionate appointment quota and taking into consideration the cases of all the seven applicants whose names appear at Annexure-2, the departmental authorities have given compassionate appointment to respondent no.5 whose income is the lowest amongst the seven persons. The respondents have also pointed out that Annexure-2 is not a seniority list or a gradation list. As a matter of fact, there is no provision for maintaining a seniority list or gradation list of the applicants for compassionate appointment. Annexure-2 is only a memo which

was sent to all the applicants calling upon them to furnish income certificate and property details. The applicants have misunderstood this to be a gradation list and have come up with the aforesaid prayer. On the above grounds, the respondents have opposed the prayer of the applicants in these two cases.

5. Respondent no.5 has filed identical counters in both the cases. He has also stated that Annexure-2 is not a gradation list of the persons who have applied for compassionate appointment and there is no provision for maintaining a gradation list of such persons. He has also stated that appointment on compassionate ground is not a matter of right. The claim of the applicants that they are senior to respondent no.5 is not correct. Respondent no.5 has further stated that he has been given appointment because of death of his father in very indigent condition for saving the family from distress. It has also been stated that compassionate appointment is given on the basis of indigent circumstances for rehabilitating the family and existence of indigent circumstances is a subjective satisfaction of the administrative authorities and is not amenable to judicial scrutiny. On these grounds, respondent no.5 has opposed the prayer of the applicants.

6. The applicants in these two cases have filed identical rejoinders in which apart from repeating their averments in the petitions, they have also stated that elder brother of respondent no.5, Meru Sahu is working as a Canteen Boy in S.S. Grade-I, C.R.R.I., since long. This fact has been concealed by respondent no.5 while obtaining income certificate, which is a fraudulent one. It is also stated that as departmental authorities have not filed any seniority list, it cannot be said that letter dated 18.6.1996 is not a seniority list of the applicants. On the above grounds, the applicants have reiterated their prayer in the rejoinders.

7. We have heard Shri P.K.Bhuyan, the learned counsel for the applicants, Shri Ashok Misra, the learned Senior Panel Counsel appearing for official respondents, and Shri H.P.Rath, the learned counsel for respondent no.5. Learned lawyer for respondent^{no.5} has also filed a written note of submissions with copy to the other side which has been taken note of. We have also perused the records.

8. It has been submitted by Shri Ashok Misra, the learned Senior Panel Counsel appearing for the departmental respondents that the case of these two applicants for compassionate appointment has been considered and they have been kept in the list to be considered when vacancies come up. As only 5% of vacancies in a year is open to be filled up through compassionate appointment and the number of applicants is much more than the number of vacancies in the compassionate appointment quota, there would be some time gap between listing their names for appointment and giving them appointment. As regards giving appointment to respondent no.5, it has been submitted that amongst the seven applicants, his income was the lowest and that is how he has been appointed.

9. In these cases, at the conclusion of hearing, we had directed the learned Senior Panel Counsel appearing for respondent nos. 1 to 4 to produce the File of C.R.R.I. in which appointment order to respondent no.5 was issued. Accordingly, the files were produced and we have gone through the same. From CRRI File No.Admn.II.10-43/84-Admn.II, we find from notesheets at pages 71 and 72 that the cases of seven applicants were considered together and a tabular statement was prepared. In this tabular statement the date of death or retirement

of the employee has been mentioned, and on a reference to these dates, it is clear that the names of seven applicants who have been addressed in the letter at Annexure-2 have not been arranged in order of ^{date of} death or retirement of the employee. For example, entry no.7 in Annexure-2 is one Ganesh Ch.Sahoo who is claiming compassionate appointment due to death of his father Gobardhan Sahoo on 20.10.1993. His name is last on the list whereas name of Arabinda Kumar Das is at serial no.4 whose father passed away on 14.5.1994 . Thus, it is clear that order in which the seven applicants have been mentioned at Annexure-2 is not in order of date of death or retirement of the concerned employee of CRR I. In any case, there is no provision for maintaining a seniority list of the applicants. The departmental respondents have pointed out in their counter that when cases for compassionate appointment were few these were disposed of on first come first serve basis. But later on as the number of such cases increased and the vacancies for compassionate appointment quota became less, the departmental authorities had to choose following some criterion. From the notesheets at pages 71 and 72 of the relevant files, we see that in the relevant year there were 23 vacancies and 5% of that came to one. After considering the cases of these 7 persons including the cases of the applicants in these two O.As., the authorities decided to appoint respondent no.5 whose income was the lowest amongst the seven. Learned counsel for respondent no.5 has filed written submission in which he has urged that the father of the applicant in OA No.961 of 1996 retired on the ground of invalidation whereas respondent no.5's father died while in service and therefore, the case of respondent no.5 was more

urgent. It is not necessary for us to go into this because these are matters which are for the departmental authorities to consider. So long as the departmental authorities take an objective view, it is not for the Tribunal to introduce some other criterion, may be equally objective, in place of the criterion adopted by the Department. In the instant case, the departmental authorities have found that the income of Pramod Kumar Sahoo is Rs.500/- from agricultural land and Rs.11,916/- from pension and the total income of the family is Rs.12,416/-. Income of the family of the applicant in OA No. 961/96 is Rs.18,480/- and this is by way of pension which his father is getting. The income of the family of the applicant in OA No.962/96 is Rs.24,316/- which includes Rs.8500/- as income from other sources as certified by the Tahasildar but not included and Rs.15,816/- by way of family pension. Thus, it is seen that the departmental authorities have adopted the logic of appointing the person whose family income is the lowest and this cannot be called arbitrary or capricious. The applicants in their rejoinder have brought out the point that the elder brother of respondent no.5 is one Meru Sahoo who is working as a Canteen Boy and this fact has been suppressed by respondent no.5. We are not in a position to take this averment into account because this has been made only in the rejoinders filed by the applicants when the other side did not have a chance to rebut the averment. If the elder brother of respondent no.5 is working as a Canteen Boy under C.R.R.I., then this could have been mentioned by the applicants in their O.As. so that respondent no.5 could have got a chance to have his say on this point. As the applicants by their own action have not mentioned this in the O.As. and have thereby deprived respondent no.5 to reply to this, this averment cannot be taken into

consideration. We, therefore, hold that there is no legal or administrative infirmity in the appointment order issued to respondent no.5 on compassionate ground, and the prayer of the applicants to quash the same is without any merit and is rejected.

10. In the result, both the Applications are rejected but, under the circumstances, without any order as to costs.

(G.NARASIMHAM)

MEMBER(JUDICIAL)

Somnath Som
(SOMNATH SOM)
18.9.98
VICE-CHAIRMAN

AN/PS