

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.


ORIGINAL APPLICATION NO. 100 OF 1996.

Cuttack, this the 3rd day of October, 1996.

Smt. Chandrama Behera and another	....	Applicants
-versus-		
Union of India and others.	....	Respondents.

(FOR INSTRUCTIONS)

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

  
( N. SAHU )  
MEMBER (ADMINISTRATIVE)

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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.100 OF 1996

Cuttack this the 3<sup>rd</sup> day of October, 1996.

C O R A M:-

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

....

1. Smt. Chandrama Behera,  
W/o. Late Rama Chandra Behera.
2. Durga Sankar Behera,  
Son of late Rama Chandra Behera  
Both are resident of 12, Gajapati Nagar,  
Berhampur-760 010, Dist. Ganjam.

..... APPLICANTS

BY THE APPLICANTS : M/s. M.B.K. Rao, R.K. Pattnaik, Advocates.

- Versus -

1. Union of India, represented through its  
Director General, Department of Posts,  
Dak Bhawan, Sansad Marg, New Delhi-110 001.
2. The Chief Postmaster General,  
Orissa Circle, Bhubaneswar,  
District-Khurda.
3. Senior Superintendent of Post Offices,  
Berhampur (Gm.) Division, Berhampur (Gm.) - 760 010.  
Dist. Ganjam.

..... RESPONDENTS

BY LEGAL PRACTITIONER :- Shri Ashok Mohanty, Senior Standing  
Counsel (Central).

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O R D E R

MR. N. SAHU, MEMBER (ADMN.): This application is against the orders of the Respondents rejecting the claim for compassionate appointment. Applicant No.1 is a housewife -uneducated and Application No.2 a graduate. Annexure-3 dated 23-7-1990 is

the first order of rejection of Applicant No.2, son of deceased Rama Chandra Behera, who served the Postal Department for 35 years and who sought voluntary retirement on invalidation grounds. He was permitted to retire with effect from 1-12-1989 when he worked as Superintendent PSD Sambalpur. The impugned Annexure-3 was a reply to two representations dated 12-12-1989 and 16-6-1990. There were subsequent representations, five in number, during 1990-91 but there was no response. The applicant's father wrote to the Ministry of Personnel, Public Grievances and Pensions and thereafter sent one more representation on 18-8-1992, Annexure-6. On the ground that the applicants had undergone deprivation during the intervening period, they made a fresh representation on 29-12-1994 Annexure-7. This matter was again considered by the Circle Relaxation Committee on 6-11-1995. The plea for compassionate appointment was rejected on the ground that there is no indigent circumstance for compassionate appointment as the eldest son of the retired employee is employed, there is a house in their possession and after the death of the retired employee substantial family pension is being disbursed to the widow.

2. The learned Counsel Shri M.B.K. Rao and Shri R.K. Pattnaik relied on a Circular dated 30-6-1987 under which the

dependents of a Government servant retiring on medical grounds before attaining the age of 55 years can claim to be appointed on compassionate grounds, if the condition of the family is indigent.

3. In the counter, it is stated that the Circle Relaxation Committee considered the applicants' case on 5-7-90. They found that the applicant No.2's father received all the retirement benefits. The case was considered afresh. Because the eldest son is employed and the family is in possession of a house and the widow receives the family pension, the Circle Relaxation Committee rejected the claim for the second time. The first son of the applicant No.1 is working as a Clerk at Gopalpur Port and the family has a residential house at Gajapati Nagar besides annual income amounting to Rs. 28, 896/- by way of Family Pension.

4. The learned counsel for the applicant vehemently contended that the eldest son of the applicant remained separate and his salary income was of no assistance to the family. This fact was not considered by the Respondents. The Counsel also brought to my notice the decision of the Hon'ble Supreme Court in Phoolwati's case reported in AIR 1991 SC 469 for the proposition that the reality of a son staying separate and without any support to the family should be considered.

5. I have carefully considered the rival submissions. The basic fact remains that the applicant retired with effect from

1-12-1989. Twice his case was considered and rejected by the Circle Relaxation Committee. Six years after the retirement of the deceased, the present Original Application is filed. Even if we assume that the eldest son of the family lived separately and was of no assistance to him family pension and the residential house by themselves are sufficient indicators that the family is not destitute and is not in immediate need of succour. It has to be remembered that a compassionate appointment is an exception to the general principle of competitive appointment in the regular course. Such an appointment is de hors the rules. Therefore, the condition of indigence or penury should be strictly proved. The basic question is: was this family really indigent ?. When the applicant's father retired on invalidation grounds he received a substantial amount by way of retirement benefits. The CRC found that the family is not indigent. After the applicant's father died, again in 1995, they considered the fact of a residential house and the annual income of Rs. 28,896/- as family pension. This aspect has not been contradicted in any way. Indigence means the family is subject to abject penury and is in immediate need of succour because of the demise of the only bread earner. How did the family survive all these six years ?. An income of around Rs. 2,200/- per month besides a residential house is certainly a condition far removed from penury. The CRC have given a finding of fact after proper enquiry. There is no

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material to question the objectivity of the enquiry or to question the conclusions arising out of the facts gathered by the CRC. In the absence of these two criteria this Court can not substitute any opinion based on subjective pleadings about the indigence.

6. There is no merit in this application. The same is dismissed. No costs.

  
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( N. SAHU )  
MEMBER (ADMINISTRATIVE)

KN Mohanty.