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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 439 OF 1998
Cuttack, this the 10th day of August, 2001

Sri Babaji Charan Mallick... ...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.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
10.8.2001

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 439 OF 1998

Cuttack, this the 10th day of August, 2001

CORAM:

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

.....
Sri Babaji Charan Mallick, aged about 27 years, son of late
Dwija Mallick, Vill/PO-Ratnagiri, P.S-Vinjharpur,
Dist.Jajpur

..... Applicant

Advocates for applicant - M/s K.C.Kanungo
S.Behera

Vrs.

1. Union of India, represented through the Secretary to Government of India, Ministry of Human Resources Development, New Delhi.
2. Director General, Archaeological Survey of India, Janpath, New Delhi-11.
3. Superintending Archaeologist, Bhubaneswar Circle, Old Town, Bhubaneswar-2, Dist.Khurda.

..... Respondents

Advocates for respondents - M/s B.Dash
ACGSC

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

J.Som.
In this O.A. the petitioner has prayed for quashing the order at Annexure-2 rejecting his prayer for compassionate appointment to the post of LDC and for a direction to the respondents to consider him for appointment on compassionate ground. The respondents have filed counter opposing the prayer of the applicant, and the applicant has filed rejoinder. For the purpose of considering the petition it is not necessary to go into all the averments made by the parties in their pleadings. The main facts necessary for consideration of this OA are not in dispute.

2. The applicant's father Dwija Mallick passed away in harness on 13.9.1992 while working as Monument Attendant under the respondents. His wife had predeceased him. He was survived by two sons, one adopted son and one natural born, and one daughter. The daughter has in the meantime been married. The applicant has stated that his elder brother, the adopted son has ceased to look after the family which at present consists of the applicant only and on that ground he has come up with the prayers referred to earlier.

3. We have heard Shri K.C.Kanungo, the learned counsel for the petitioner and Shri B.Dash, the learned Additional Standing Counsel for the respondents.

4. The admitted position is that the applicant's father passed away on 13.9.1992. It also appears from Annexure-R/3 that the petitioner applied for compassionate appointment which was verified by the departmental officer on 10.9.1993. His prayer was rejected in the order dated 28.11.1997 (Annexure-2). In view of this, the contention of the respondents that the application is barred by limitation is held to be without any merit and is rejected.

J.Sm. 5. It is also the admitted position that the date of birth of the applicant is 15.7.1971. Thus after the death of his father, in 1992 he and his sister were entitled to get family pension till he has reached 25 years of age and till his sister got married. From the pleadings the date of marriage of the sister does not appear. But it is clear that the applicant has received family pension till July 1996 when he attained 25 years of age, i.e., for about four years after the death of his father. It is also the admitted

position between the parties that the applicant was engaged as a casual labourer on sympathetic ground and is continuing as such. He has the qualification for being appointed as LDC and his prayer is for compassionate appointment to the post of LDC.

6. Respondents have denied the assertion of the applicant that his elder brother has separated from the family. It is the admitted position that the elder brother got a part of retiral benefits. The respondents have pointed out that in spite of this in the legal heir certificate enclosed by the applicant along with his petition, the name of the elder brother does not appear. It has been stated by the learned counsel for the petitioner that even during the life time of the father the eldest son had separated from the family. This is not borne out by the affidavit sworn by the elder brother on 29.9.1997 (Annexure-R/2) in which he has stated that he has been living separately from the family for the last three years. In other words, according to the version of the elder brother he was living with the present applicant till 1994. The learned counsel for the petitioner has relied on Department of Personnel & Training circular dated ^{22.9.1992} / the gist of which has been printed in Swamy's Compilation and the xerox copy of which has been filed at Annexure-R/1. In this circular it has been mentioned that request for compassionate appointment consequent on death or retirement on medical ground of Group-D staff should be considered with greater sympathy by applying relaxed standards depending upon facts and circumstances of the case. In another circular dated 23.9.1992, gist of which has also been printed in Swamy's Compilation as enclosed by the respondents at Annexure-R/1

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it has been mentioned that request for compassionate appointment should not be rejected merely on the ground that the family has received benefits under various welfare schemes. It has been further stated that while these benefits should be taken into account, the financial condition of the family has to be assessed taking into account its liabilities and all other relevant factors such as earning member of the family, size of the family, age of the children, etc. and a balanced and objective assessment should be made on the financial condition of the family. The learned counsel for the petitioner has relied on the decision of the Hon'ble Supreme Court in the case Balbir Kaur v. Steel Authority of India Ltd., 2000 SCC(L&S) 767. In that case the Hon'ble Supreme Court have held that the fact that the widow has received payment under the family benefit scheme should not preclude the case of her family for compassionate appointment.

7. We have considered all these aspects carefully. At present the family of the deceased employee consists of the applicant himself, according to him. His elder brother is employed in OMFED and was in receipt of Rs.2800/- per month at the time of local enquiry held in 1993. The sister of the applicant is already married. The applicant has received family pension till 1996. The averment of the respondents that the family pension has been paid regularly has not been denied by the applicant in his rejoinder. It is also admitted that immediately after the death of the father, the applicant was engaged as a casual labourer and has been working as such. It has been submitted by the learned counsel for the petitioner that in the order at Annexure-2 rejecting the prayer for

compassionate appointment, no reason has been indicated and this is a non-speaking order. Even if it be so, the respondents have adequately explained in their counter the reasons for rejecting the prayer for compassionate appointment. In view of our discussions above we find no illegality in the order at Annexure-2 rejecting the prayer for compassionate appointment as LDC.

8. In the result, O.A. is held to be without any merit and is rejected but without any order as to costs.

(G.NARASIMHAM)

MEMBER(JUDICIAL)

Somnath Som
(SOMNATH SOM)
10.8.2001
VICE-CHAIRMAN

CAT/Cutt.B/ 104h August, 2001/AN/PS