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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 697 OF 1998
Cuttack this the 07th day of July, 2000

Laxmirani Behera

...

Applicant(s)

-VERSUS-


Union of India & Others


...

Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? ✓
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? ✓


(SOMNATH SANYAL)
VICE-CHAIRMAN
7.7.2000


(G. NARASIMHAM)
MEMBER (JUDICIAL)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 697 OF 1998
Cuttack this the 7th day of July, 2000

CORAM:

THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN

AND

THE HON'BLE SHRI G.NARASIMHAM, MEMBER (JUDICIAL)

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Laxmirani Behera @ Laxmimani
@ Hemalata Dei
W/o. Late Barish Chandra Behera
At/PO: Ranasahi
Dist - Balasore

...

Applicant

By the Advocates

M/s. Biswajit Mohanty-I
S. Patra

-VERSUS-

1. Union of India represented through it's Secretary to Govt. of India, Ministry of Defence, South Block, New Delhi
2. Scientific Advisor and Director-General of Research and Development, Defence Research and Development Organisation "B" Wing, Sena Bhawan, New Delhi
3. Director & Commandant, Proof and Experimental Establishment Chandipur, Balasore

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Respondents

By the Advocates

Mr. S. B. Jena,
Addl. Standing Counsel
(Central)

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O R D E R

MR. G. NARASIMHAM, MEMBER (JUDICIAL): In this Application for compassionate appointment under Rehabilitation Scheme, applicant's husband Harish Ch. Behera died on 12.12.1997 while in service under Res.3. Claim for compassionate appointment as widow of Late Harish Ch. Behera was turned down mainly on two grounds as evident from the counter of the Department, that there is doubt that applicant is the widow of the deceased inasmuch as Addl. Tahasildar, Balasore in M.C. No.117/97 issued certificate declaring Santilata Behera as the wife of the deceased and subsequent M.C. filed by the applicant 92/98 for review of the earlier Misc. Case is still ^{per} subjudice and that as ^{per} Office Memorandum dated 26.9.1995 (Annexure-R/1) only makes 5% of vacancies are to be filled up under compassionate appointment and ~~no~~ no such post is available to be filled up under compassionate appointment.

2. In the rejoinder the applicant asserted that she has been shown as nominee, ^{of} deceased employee in regard to G.P.F., C.G.E.I.S., D.C.R.G. and Family Pension and so on and these nominations are available with the respondents. In the Central Govt. Employees Group Insurance Scheme the deceased husband signed the nomination on 16.9.1981 describing her to be his wife and so also in the family pension nomination signed on 28.8.1980. Santilata is the ^{concubine} ~~conquiline~~ of the deceased employee. When the deceased drove out the applicant and kept Santilata as ^{Concubine} ~~conquiline~~, applicant filed M.C.233/87 under Section 125 of the Code of Criminal Procedure for maintenance. In that Misc. Case maintenance was awarded holding the applicant to be the legally married wife of the deceased, by judgment dated 21.6.1989 (Annexure-5) and this judgment has not been challenged in higher forum. Further on the death of the deceased employee there was

dispute between her, the concubine and her legitimate children in regard to compensation amount before the Commissioner of Workmen Compensation and Assistant Labour Commissioner, Balasore. The said Commissioner in order dated 24.9.1998 distributed the compensation amount amongst all including Santilata, the concubine. This was challenged by the applicant before the High Court of Orissa in M.A. No.753/98 which was disposed of on 22.3.2000. In that M.A. though Res.3 was a party did not challenge the status of the applicant as the widow of the deceased employee. In the final order the High Court had clearly indicated that the applicant is the widow ~~of~~ and Santilata as concubine. In course of hearing the applicant had filed a certified xerox copy of the order passed by the High Court.

3. We have heard Shri B.Mohanty, learned counsel for the applicant and Shri S.B.Jena, learned Addl.Standing Counsel appearing for the respondents. The points for determination are whether the applicant is the widow of the deceased employee and ~~if~~ is entitled to ~~appointment~~ under Rehabilitation Scheme. Order dated 21.6.1989 of the learned S.D.J.M., Balasore in the Maintenance Case under Section 125 Cr.P.C. (Annexure-5) would reveal that the learned Court, after considering the evidence adduced before him clearly held that the applicant is the legally married wife of the deceased and accordingly directed the deceased to pay a sum of Rs.200/- per month towards maintenance. It is not the case of the Department that this order has been challenged in the higher forum and set aside. This apart the judgment of the High Court in M.A.753/98 under Workmen's Compensation Act is also clear that the High Court held the applicant as the wife of the deceased. In this appeal before the High Court Santilata was arrayed as

Respondent 2 and who was held to be concubine of the deceased.

Thus there is ample material on record that the applicant is the widow of the deceased employee. In her representation dated 12.12.1997 under Annexure-A/2 seeking compassionate appointment she gave out that she has no source of income for the family other than the income of her late husband and because of his death the maintenance which she used to get pursuant to the order of the Criminal Court has also been discontinued. In other words what she represented to the authorities that she is in distress condition and needs employment under rehabilitation scheme to meet the sudden crisis on account of death of her husband. In the counter these facts have not been disputed. In other words, it comes to this that the applicant being the widow of the deceased employee is living a life of distress on account of death of her husband. Hence she is entitled to be appointed to any post under Res.3 on compassionate grounds subject to her educational qualifications, as per rules.

4. We are aware that Office Memorandum of the Ministry of Personnel, P.G. & Pension (Annexure-R/1) dated 26.9.1995 lays down that compassionate appointment can be made upto a maximum of 5% of vacancies falling under direct recruitment quota in any Group C or D posts and as such appointing authority can hold back upto 5% of vacancies to be filled by direct recruitment through Staff Selection Commission, so as to fill such vacancies by appointment on compassionate grounds.

As has been held by the Apex Court in a series of decisions that the main object of offering compassionate appointment is to ^{provide} succour to the family which has been suddenly launched into penury due to untimely demise of the sole bread earner,

i.e. in other words appointment on compassionate ground is a facility to provide immediate rehabilitation to the family in distress for relieving the dependent family members of the deceased employee from destitution. This would imply that the real object ^{for} of providing compassionate appointment ^{will} is to be achieved only when immediate or next available vacancy is filled up ^{by} for that member of the family to enable him/her to tide over the sudden crisis arising out of the death of the bread earner of that family. If 5% of vacancies ~~out of~~ direct recruitment quota is set apart for this purpose it cannot ^{but} result in considerable delay running to several years before the turn of such distressed member comes up for consideration for such appointment. Delay defeats the very purpose of providing compassionate appointment as has been held by the Apex Court in Umesh Ch. Nagpal case reported in 1994(4) SCC 138. The Principal Bench of this Tribunal in O.A. 1962/97 decided on 2.6.1998 (Lilabati vs. Union of India) reported in Swamy's News in June, 1999 at Page 78 - 80 held that there can be no waiting list for absorbing persons to get a compassionate appointment. We also agree with that view.

5 In view of our discussions above, we direct the respondents to provide applicant an appointment under compassionate grounds as against next available vacancy commensurating with her educational qualifications, ^{if any, as per rules.}

6 Original Application is accordingly allowed, but without any order as to costs.

Registry to send copies of this order to respondents forthwith.


(SOMNATH SONI)
VICE-CHAIRMAN


(G. NARASIMHAM)
MEMBER (JUDICIAL)

B.K.SAHOO//