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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 268 OF 1999
Cuttack, this the 20th January 2000

Rajat Kumar Parichha 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 Som
(SOMNATH SOM)
VICE-CHAIRMAN
20.1.2000

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN

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Rajat Kumar Parichha, aged about 35 years, son of late
Nimai Charan Parichha, At/PO-Kainsari, P.S-Udala,
District-Mayurbhanj, at present working as EDDA-cum-EDMC,
Kainsari B.O. on account with Udala Sub-Office
..... Applicant

Advocates for applicant - M/sK.C.Kanungo
S.Behera

Vrs.

1. Union of India, represented through the Director of
Posts, New Delhi.
2. Chief Post Master General, Orissa Circle, Bhubaneswar,
District-Khurda.
3. Superintendent of Post Offices, Mayurbhanj Division,
At/PO-Baripada, District-Mayurbhanj.
4. Sub-Divisional Inspector of Posts, Udala,
At/PO-Udala, District-Mayurbhanj
..... Respondents

Advocate for respondents - Mr.B.K.Nayak
A.C.G.S.C.

O R D E R

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SOMNATH SOM, VICE-CHAIRMAN

In this application under Section 19 of
Administrative Tribunals Act, 1985, the petitioner has
prayed for quashing the order rejecting the prayer of the
petitioner for appointment under rehabilitation
assistance. The second prayer is for a direction to the
respondents to give the petitioner regular appointment

under rehabilitation scheme on compassionate ground. By way of interim relief it has been prayed that the respondents should be directed not to disengage him from employment till the disposal of the O.A. or till the regular appointment is made to the post whichever is earlier. In order dated 9.6.1999 the prayer for interim relief was disposed of with a direction to the respondents not to disengage the applicant till regular appointment to the post is complete as per rules.

2. The petitioner's case is that his father was working as Extra-Departmental Delivery Agent-cum-Mail Carrier at Kainsari Branch Post Office and he passed away while in service on 5.5.1997. The applicant is the second son of the deceased E.D. Agent and he is living with his wife, one son, one daughter and his blind mother, the widow of the deceased E.D. employee. The elder brother of the applicant, who is working as a Health Worker (Male) has been separated long since by metes and bounds. During the life time of the father the landed properties were also divided and separately recorded in the name of the two brothers. Considering the distressed condition of the family, the departmental authorities gave provisional appointment to the applicant from the date of death of his father with effect from 5.5.1997 for a period of 90 days. But this appointment has been continued in spells till 29.1.1999. His prayer for compassionate appointment was considered by the respondents and ultimately in order dated 5.1.1999 at Annexure-3 his prayer has been rejected on the ground that the condition of the family is not indigent as one son is already employed. After issue of the order dated

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5.1.1999 he was asked to hand over charge on 6.1.1999 though the spell of provisional appointment was till 29.1.1999. Thereafter the respondents issued public notice inviting applications from public for the post of EDDA-cum-EDMC, Kainsari B.O. fixing the last date of receipt of applications to 22.3.1999. The petitioner has also applied in response to the notice at Annexure-4. Immediately thereafter on 5.4.1999 the petitioner along with his blind mother met the Chief Post Master General, Orissa Circle, Bhubaneswar (respondent no.2) with documents showing 100% of blindness of the mother, affidavit of the mother and the record-of-rights published separately in the name of the applicant. Respondent no.2 ordered for reconsideration of the case of the applicant by the Circle Relaxation Committee and also directed that respondent no.3 should allow the petitioner to work. Pursuant to such direction, respondent no.4 issued orders on 15.4.1999 allowing the applicant to work as EDDA-cum-MC. The applicant states that the Circle Relaxation Committee in their meeting held on 20.5.1999 have again rejected the prayer of the applicant on the self-same ground that the condition of the family is not indigent as one son is employed. This decision has, however, not been communicated to him. In the context of the above facts he has come up with the prayers referred to earlier.

3. Respondents in their counter have opposed the prayers of the applicant. They have stated that Nimaj Charan Parichha, ex-EDDA-cum-MC, Kainsari B.O. expired on 5.5.1997 leaving behind his widow and two married sons. The eldest son is serving as Health Worker.

The widow applied for compassionate appointment of her second son, the present applicant against the vacant post held by her husband. The matter was considered by the Circle Relaxation Committee in their meeting held on 16.12.1998 and rejected on the ground that the condition of the family is not indigent as one son is already employed. The respondents have mentioned about the widow and the applicant meeting the Chief Post Master General and praying for reconsideration. The case of the applicant was reconsidered by the Circle Relaxation Committee meeting held on 20.5.1999 but was rejected on the same ground. The respondents have stated that it is for the Circle Relaxation Committee to decide on the question of compassionate appointment whereas provisional appointment can be given by the Sub-Divisional Inspector (Postal), Udala (respondent no.4). Such provisional appointment was given to the applicant by respondent no.4 on 5.5.1997 in different spells only as a temporary arrangement till decision of the Circle Relaxation Committee is received. In such provisional appointment order it was clearly mentioned that his appointment would be terminated when his appointment will be considered or rejected by the Circle Relaxation Committee and he shall have no claim for the post. It was also mentioned in this order that respondent no.4 reserves the right to terminate the provisional appointment any time without notice and without assigning any reason. The respondents have stated that the applicant's provisional appointment has no bearing on the merit of his case for compassionate appointment. Accordingly, his provisional appointment was

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terminated on 6.1.1999. Again he was allowed to work with effect from 15.4.1999 in anticipation of reconsideration of his case by the Circle Relaxation Committee. Ultimately when his case was rejected for the second time he was relieved from the post on 8.6.1999 before receipt of the interim order dated 9.6.1999 by respondent no.4. It is stated that copy of the interim order dated 9.6.1999 was received by respondent no.4 from the applicant on 10.6.1999. But prior to receipt of that order the applicant was relieved on 8.6.1999. The original copy of the interim order of the Tribunal has not been received by the respondents from the Tribunal till date. On the above grounds, the respondents have opposed the prayers of the applicant.

4. I have heard Shri K.C.Kanungo, the learned counsel for the petitioner and Shri B.K.Nayak, the learned Additional Standing Counsel for the respondents and have also perused the records.

5. It has been submitted by the learned counsel for the petitioner that the first son of the deceased E.D.Agent who is working as a Health Worker, has been separated from the family long ago during the life time of the father. The properties have also been partitioned and the share of the applicant recorded separately in the name of the applicant. Instructions provide that where one of the sons has been separated long ago the financial condition of the residual family should be taken into consideration. But in this case this has not been done. It has been submitted by the learned Additional Standing Counsel for the respondents that

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there is no reliable material that the first son has been separated long ago. The unregistered deed of partition of the property and the date of publication of the record-of-rights separately in the name of the applicant in respect of his parcel of land are all subsequent to the death of the deceased ED employee and this shows that this partition has been brought about for the purpose of making out a case for getting compassionate appointment by the petitioner. It is also submitted that according to the documents furnished by the applicant himself, he has got Ac.2.78 of land from which as per the income certificate given by the Tahasildar his annual income is Rs.5500/-. It is also stated that there is no credible proof that the first son has been separated during the father's life time and on that basis it has been argued that the condition of the family is not indigent. I find that in this case the Circle Relaxation Committee has considered the case of the applicant twice. Initially the case was rejected and on a representation made by the widow and the mother before the Chief Post Master General, the latter directed for reconsideration of the case once again and pending reconsideration he was ordered to be given provisional appointment which was done. I also see that the record-of-rights has been published on 23.4.1998 after the death of the E.D. employee. The unregistered document for mutual partition is dated 4.8.1997. The order of the learned Assistant Consolidation Officer directing recording of land separately in the name of the two brothers is dated 25.6.1997. All these developments have taken place after the death of the ED employee. In the order dated 25.6.1997 of the Assistant Consolidation

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Officer a reference has been made about separate possession on the basis of Panchayat Patra. The Panchayat Patra enclosed to the counter is, however, of a later date 4.8.1997. It has been submitted by the learned counsel for the petitioner that this shows that there has been an earlier partition and a mutual deed of partition in front of the Panchayat. But this document has not been produced by the petitioner and therefore this contention cannot be accepted.

6. As in this case partition and separate recording of the property are after the death of the ED employee, the father and as no other document has been produced besides the affidavit of the mother which is again dated 30.1.1999 that the elder son has been separated, it cannot be held that the elder son has actually been separated. In view of this, the finding of the Circle Relaxation Committee after consideration of the applicant's case twice holding that the family is not in indigent condition cannot be found fault with. The prayer for quashing the order rejecting the prayer of the applicant for compassionate appointment is, therefore, held to be without any merit and is rejected.

7. The applicant has stated that in response to public notice he has applied for the post. The respondents in their counter have stated that after disengagement of the applicant on 8.6.1999 another person is working as EDDA-cum-MC in that post, but the respondents are silent about the stage of regular filling up of the post. In view of this, while I reject the Original Application, I direct that the case of the applicant should be considered for the purpose of regular selection in case, as averred by him, he has applied for

the post within the time stipulated. It is also directed that in case the petitioner applies for any other ED post in the recruitment unit within time and if he has got the eligibility for being considered for the post, then his case should be considered along with others on merits.

8. With the above observation and direction, the Original Application is disposed of but without any order as to costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
20.1.2000