

CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.444 OF 1999
Cuttack, this the 31st day of October, 2000

Bhagirathi Mohapatra 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
31.10.2000

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 444 OF 1999
Cuttack, this the 31st day of October, 2000

CORAM:

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

Bhagirathi Mohapatra,
aged about 24 years, son of Narasingh
Mohapatra of Village Atalpur, P.O-Praharaipur, Via-Berboi,
Dist.Puri

..... **Applicant**

Advocates for applicant - M/s S.Mishra(1)
S.NMishra
R.C.Prahraj
B.Das
B.N.Mishra

Vrs.

1. Union of India, through Director General, Posts, Dak Bhawan, Sansad Marg, New Delhi.
2. Chief Post Master General, Orissa, At/PO/PS-Bhubaneswar, District-Khurda.
3. Senior Superintendent of Post Offices, Bhubaneswar, At/PO/PS/Bhubaneswar, Dist. Khurda

Advocate for respondents- Mr.B.Dash

S. B. B. S. B.

SOMNATH SOM VICE-CHAIRMAN

In this application the petitioner, who is the son of one Narasingha Mohapatra, ex-Postman, has prayed for a direction to the respondents to consider the case of the applicant for compassionate appointment. The respondents have filed counter opposing the prayer of the applicant, and the applicant has filed rejoinder reiterating his prayer. For the purpose of considering this petition, it is not necessary to go into too many facts of this case except what is necessary for deciding this dispute. Before doing that it has to be mentioned that in course of final hearing of the matter, the learned counsel for the petitioner wanted leave of the

Tribunal to file an amendment petition. The prayer for adjournment was rejected and it was indicated in our order dated 19.10.2000 that in our final order we would consider this prayer and in case we allow the prayer, then the petitioner will be allowed leave to file an amendment petition.

2. We have heard Shri S.N.Mishra, the learned counsel for the petitioner and Shri B.Dash, the learned Additional Standing Counsel for the respondents and have also perused the records.

3. The admitted position is that the petitioner's father was working as Postman. In a departmental proceeding initiated against him in June 1987, he was compulsorily retired from service in order dated 23.6.1988 which is at Annexure-R/1. The charge against the applicant is that when he was working as Postman at Bhubaneswar G.P.O. during the period from 9.3.1986 to 2.5.1986 he did not deliver letters addressed to Muslim community in his beat. He also openly declared in the office that he would set fire to the letters addressed to the Muslim community. An enquiry was held against the applicant. The applicant did not attend the enquiry nor did he ask for time. Ultimately the charge having been proved, the applicant was compulsorily retired. The respondents have pointed out that the scheme of compassionate appointment does not cover case of giving employment assistance to a son or daughter of an employee who has been compulsorily retired, and on the above grounds they have opposed the prayer of the applicant. We find that the stand of the respondents is unexceptionable. Compassionate appointment can be given only in terms of the

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scheme meant for the purpose and the scheme does not cover a case where the employee has been compulsorily retired.

4. It is submitted by the learned counsel for the petitioner that at the relevant point of time the applicant's father suffered from mental illness and he was referred to the S.C.B.Medical College, Cuttack and he was also advised to get admission in the Mental Ward. In view of this, it is submitted that the applicant's father should have been invalidated from service and should not have been compulsorily retired. It is stated that the wife of the ex-employee and the mother of the present petitioner wrote on 12.8.1988 (Annexure-2) to retire the father of the applicant on invalid pension, but no action was taken. It is also submitted that in the context of mental illness of the applicant's father, drawal up of disciplinary proceeding and imposition of punishment of compulsory retirement was plainly illegal and on this ground the learned counsel for the petitioner wanted to amend the petition and wanted leave for the same. We find that in this case the order of compulsory retirement has been passed in June 1988 more than 12 years ago and it is only after the order of compulsory retirement was passed at Annexure-R/1 that the applicant's mother came up in August 1988 praying for invalidating her husband and for providing compassionate appointment. But by the time the representation was made by her, the order of compulsory retirement had already been passed. This order having been passed more than 12 years ago and not having been challenged over this long period cannot now be challenged by amending the O.A. moreso by the applicant when his father is still alive. Full Bench of the Tribunal in the case of Vidhata v. Union of India and others, (1998) 38 ATC 568, have held that grievance against a

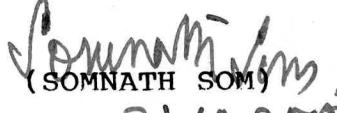
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departmental proceeding cannot be agitated by the heirs of the Government servant. In this case, the petitioner's father is alive. Any challenge to the order of compulsory retirement even by him would involve the question of limitation. Lastly, there is no averment in the OA that by the time the applicant's father was compulsorily retired, he had more than three years of service left so that had he been invalidated, employment assistance would have been available to his family members. In consideration of all the above, we hold that the oral prayer made for leave to amend the O.A is without any merit and the same is rejected.

5. In view of our discussions above, we hold that the O.A. is without any merit and the same is rejected. No costs.


(G. NARASIMHAM)

MEMBER (JUDICIAL)


(SOMNATH SOM)
31/10/2000
VICE-CHAIRMAN

October 31, 2000/AN/PS