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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.34 OF 2000
Cuttack this the 26th day of July/2000

Trilochan Bhuyan ... Applicant(s)

-VERSUS-

Union of India & Others ... Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to 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

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 34 OF 2000
Cuttack this the 26th day of July/2000

CORAM:

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

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Trilochan Bhuyan, 54,
S/o. Late Golakh Chandra Bhuyan
Vill - Chachina,
PO: Nuahat, Via - Derabis
Dist - Kendrapara
Extra Departmental Delivery Agent,
Nuahat Post Office

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Applicant

By the Advocates

M/s.M.M.Basu
P.Behera
D.Dey

-VERSUS-

- Scdm*
1. Union of India represented by
the Secretary to the Government of
India, Department of Posts, Dak
Bhawan, New Delhi
 2. The Chief Post Master General,
Orissa,
Bhubaneswar, Dist : Khurda
 3. The Superintendent of Post Offices,
Cuttack North Division
PO/Dist - Cuttack
 4. The Sub-divisional Inspector,
Post Office Salipur,
Dist : Cuttack, Orissa

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Respondents

By the Advocates

Mr.A.K.Bose,
Sr.Standing Counsel
(Central)

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O R D E R

MR. SOMNATH SOM, VICE-CHAIRMAN: In this Application under Section 19 of the Administrative Tribunals Act, 1985, the petitioner has prayed for a declaration that Directorate letter dated 29.5.1992 (Annexure-3) is discriminatory and violative of principles of natural justice and therefore is illegal and non est. The second prayer is for direction to Opposite parties to dispose of the applicant's representation at Annexure-1 afresh in accordance with law considering provisions of Annexure-3 as non est within a time-limit to be fixed by the Tribunal. Respondents have filed counter opposing the prayer of the applicant. It is not necessary to recount the averments made by both sides in their pleadings as these will be referred to at the time of considering the submissions made by the both sides.

2. Heard Shri P. Behera, learned counsel for the petitioner and Shri A.K. Bose, learned Sr. Standing Counsel appearing for the respondents and have perused the records.

3. Undisputed facts of this case falling within a small compass can be briefly stated. The applicant is functioning as Extra Departmental Delivery Agent, Nuahat B.O. from 23.5.1965. According to him, he fell sick because of gall bladder operation and was advised rest. The applicant has stated that because of his continuing illness he was unable to discharge his duties properly as the E.D.D.A. and therefore, he wanted to retire on invalidation ground and in the resultant vacancy his son, who has passed B.A. should be considered for compassionate appointment. Respondents have opposed the prayer of the applicant pointing out that according to D.G. (Posts) letter dated 27.5.1992 in case of E.D. Agents retiring on invalidation ground compassionate appointment ^{member} to the dependant/ of the family cannot be given.

They have also stated that the representation of the applicant has been disposed of and he has been informed accordingly. It has been submitted by Shri P. Behera, learned counsel for the petitioner that this circular dated 27.5.1992 is discriminatory and also violative of principles of natural justice and therefore, the same should be declared non est.

4. Position of law is well settled that compassionate appointment is not a vested right. For compassionate appointment there has to be a scheme and the applicant to be eligible for compassionate appointment must come within the four corners of the Scheme. In the instant case even though there is a scheme for providing compassionate appointments to the dependants of E.D. Agents, who die in harness in order to rehabilitate the family of the deceased employee, there is no scheme for giving such compassionate appointment to the near-relative and/or dependant of E.D. Agents who retire on invalidation. This is laid down in the circular dated 27.5.1992 of the D.G. (posts) vide Annexure-3. Learned counsel for the petitioner has stated that ^{said} the circular should be declared invalid on two grounds, firstly ~~that~~ it is discriminatory and secondly, before issue of the said circular no opportunity of hearing ~~him~~ ^{to him} was given and thereby the principles of natural justice have been violated. The second contention is without any merit, because circular in question was issued in 1992 and is meant for general application and is not meant for application the case of the applicant alone. The cause of action for the petitioner needing retirement on invalidation came up only in March, 1999, i.e. seven years after the circular dated 27.5.1992 was issued and therefore it cannot be urged that before issuing that circular he ~~himself~~ ^{and} ~~himself~~ ^{including} ~~himself~~ ^{J.M.}

J.M.

all E.D. Agents should have been given an opportunity of being heard. This contention is held to be without any merit and the same is rejected. The first contention urged by the petitioner is that this circular is discriminatory, because in case of Telecom Department which has been separated from the erstwhile Department of Post and Telegraphs, even Temporary Status Mazdoors have the facility of compassionate appointment as is evidenced from the Circular at Annexure-4. Merely because in another Deptt. there is provision for providing compassionate appointment in case of invalidated employees including temporary status mazdoors it cannot be held that not making such provision in respect of E.D. Agents retiring on invalidation is discriminatory. Law is well settled that if a particular class of people are treated differentially such difference will not, per se, ^{be} discriminatory. ^{^ J.S.M.} Here E.D. Agents form a class by themselves and a different ^{be} treatment to E.D. Agents cannot by itself ^{^ J.S.M.} be held to be discriminatory. Moreover, in case of regular employees retiring on invalidation, in the Postal Department, scheme for providing compassionate appointment is available, but the same is not available in respect of E.D. Agents. As we have stated above, E.D. Agents ~~are~~ ^{and} comprised of a separate group/class ^{^ J.S.M.} and different treatment for them cannot be held to be discriminatory. Respondents have pointed that earlier E.D. Agents of their Department were not getting any severance payment and were getting only a small amount of gratuity and recently the amount of gratuity and payment on account of severance have been substantially increased and therefore, for E.D. Agents retiring on invalidation provision of compassionate appointment is not there. On the above grounds we hold that circular dated 27.5.1992 at Annexure-2 cannot be held to be

discriminatory and this contention of the petitioner is, therefore, held to be without any merit and the same is rejected.

The second prayer of the petitioner that taking the circular at Annexure-3 ^{as} non est respondent No.4 should be directed to reconsider the representation for giving compassionate appointment to his son is ^{also} rejected as we have already held the said circular of the D.G.Posts(Annexure-3) is legal and valid.

In the result we do not see any merit in this O.A. which is rejected, but without any order as to costs.

(G.NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN. 2000

B.K.SAHOO//