

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

14. ORDER DATED 24-8-2001.

Heard Madam U. R. Padhi, learned counsel for the applicant and Mr. J. K. Nayak, learned Additional standing Counsel (Central) for the Respondents and have also perused the records. Learned counsel for the applicant has filed written note of submission which has also been taken note of.

In this Original Application, the applicant has prayed for a direction to the Supt. of Post Offices, Bolangir Division to absorb him in the post of E.D.M.C. or any other suitable post by creating Supernumerary post under rehabilitation Assistance scheme. It has been prayed that the Respondents should be directed to absorb the applicant in any suitable post in the Department as per his qualification. Respondents have filed their counter opposing the prayers of applicant and the applicant has filed rejoinder.

It is not necessary to refer to all the averments made by the parties in their counter because the facts necessary for determination of the dispute are not at controversy.

Admittedly, the father of the applicant while working as EDMC passed away on 16.3.98 leaving behind five legal heirs including the present applicant. At the time of death of the father of the applicant, he had more than nine years of service. Because of the distressed condition of the family, applicant applied for compassionate appointment and his case for compassionate appointment was rejected by the Circle Relaxation Committee on the ground that the applicant has read upto class- VII pass.

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NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

Respondents in their counter have also taken the plea that the applicant is aged about 32 years. This point is not valid because for ED post, there is no maximum age for recruitment more so when this is a case of compassionate appointment. Thus, the sole point for consideration is whether the applicant is entitled to be considered for appointment to the post of EDMC even though he has not passed class-VIII. It is submitted by learned counsel for the applicant that there is little difference in the matter of educational qualification between class VII and Class VIII and this should not stand as a bar against the applicant. It is further stated that during the life time of his father, the applicant has worked several times in the post of EDMC as a substitute with the fullest satisfaction of the authorities and this fact has not been taken into account while rejecting his prayer for compassionate appointment. It is not for the Tribunal to take a view whether class-VII and Class VIII is the same. In any case, it is admittedly the minimum educational qualification for the ED posts except ED BPM is class VIII. In case of compassionate appointment there is provision of relaxation of educational qualification only in respect of the widow of the deceased ED employees and not for his son. Thirdly law is well settled that service of a person as a substitute can not be taken into consideration. On the above ground the above submissions of the learned counsel for the applicant are held to be without any merit and

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9

OA.60/2000

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

are rejected. It is further submitted by learned counsel for the applicant that the applicant has in the meantime appeared at HSC examination in March, 2001 and the result is going to come out shortly. In view of this we dispose of this O.A. with a direction to the applicant that within one month of the result of this HSC examination in which the applicant has appeared in correspondence course, he should file a representation for re-consideration of his case for compassionate appointment, in case he passes in the HSC examn. It is further submitted by learned counsel for the applicant that he has no instruction if the result of the examination has in the meantime been published. In view of this we also give time to the applicant for filing such representation within 30 days from today in case the result has already been published. Respondents are directed to reconsider his case for compassionate appointment provided he passes the HSC examination. We also make it clear that in case he fails in this HSC examination he will be treated as HSC fail ^{with not be treated as} and by implication ^{~ J Som} class VIII pass. ^{V Som} with the above directions the OA is disposed of. No costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

KNM/CM.

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(SOMNATH SOM)
VICE-CHAIRMAN

Free copies of
final order
dt. 24.8.2001 issued
to counsel for
both sides.

Amr
S.C.D.

128
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