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O. A. No. 205/2001.

ORDER DATED 10-04-2002.

Applicant No.1, while working as Over-seer Mails Udayagiri Sub Division, under Respondents, retired from Government service on invalidation ground with effect from 26-05-1998 (Annexure-4). After the retirement, on invalidation ground, he applied for providing compassionate appointment to his son i.e. Applicant No.2. His request having been turned down in order dated 25.2.2000 on the ground that the family has got terminal benefits and invalid pension, the Applicants have come up in this Original Application with a prayer to quash the order dated 25-2-2002 at Annexure-8 and for a direction to the Respondents to provide employment to Applicant No.2 on compassionate grounds.

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The Respondents have filed their counter; wherein they have admitted the factual aspects urged by the Applicants in the Original Application. It has been further mentioned in the counter at page-2 as follows;

*xx xx xx. It is submitted that the applicant no.2 has read upto Class-IX and as per his qualification, he is eligible to be appointed against any Gr.'D' post but there was no vacancy in the cadre of Gr.D. Therefore, since there is no vacancy, the case of Compassionate appointment of the Applicant was not taken up as per the instructions contained in Annexure-R/1. As discussed above, there is no vacancy for compassionate appointment quota as on the date and therefore, the case of the Applicant No.2 for his appointment on compassionate ground has not been taken up.

Again on 2nd April, 2002, an additional counter has been filed by the Respondents, wherein apart from other things, at page-2 of the said counter it has been averred as follows:

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As the vacancy in the cadre of Sr.D in Orissa Circle against quota of compassionate appointment during the year 2000 was only one (i.e. 5% of the total vacancy of 18(eighteen)) the same was offered to the most deserving candidate by the Circle relaxation Committee and the case of Applicant No.2 was rejected by the Circle Relaxation Committee as communicated to him vide Chief PMG Orissa Circle, Bhubaneswar Letter No.:RE/24-4(8)/98 dated 25.2.2002.

Heard Mr.P.K.Padhi, learned Counsel for the Applicant and Mr.S.Behera, Learned Additional Standing Counsel(Central) appearing for the Respondents and perused the records.

On a bare reading of the order of rejection (of the prayer of the Applicants for providing compassionate appointment) dated 25-2-2002 (Annexure-8) and the averments made in the counter, ^{as} _{it} extracted above, goes to show that the verifying Officer have not applied his mind in a proper manner and in a most mechanical manner signed the verification contradicting the order of rejection and the averments made in the counter, it would be evident that the case of the Applicant is a deserving one to be considered for compassionate appointment but the order of rejection shows that the requests of the applicants for providing compassionate appointment have been rejected on the ground of receipt of retiral benefits and pension etc.

During the hearing, learned Counsel for the Applicant submitted that receipt of terminal benefits/pension can not be a ground for rejecting the claim of compassionate appointment more so in a case where the family is in indigent condition due to the incapaciation of the bread earner of the

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family. In support of his contention, learned Counsel for the Applicant has relied upon a decision of this Bench in O.A.No.81/2001 decided on 6-3-2002 (reported in 2002(1) Current Judicial Decisions (A.T.) 21) wherein this Tribunal relying on a decision of the Apex Court (rendered in the case of BALBIR KAUR AND ANOTHER VRS. SAIL AND OTHERS) reported in 2002(2) AIR(SC) 255 observed as follows:—

".....The only thing now remains to be seen as to whether the terminal benefits paid to the widow of the deceased can be taken into account for the purpose of determining the indigent condition of the family. It is well settled, in law, by now that the terminal benefits cannot be computed for the purpose of determining the indigent condition or otherwise of the family of a deceased Govt. servant."

Further in support of the plea of the Respondents, with regard to the quota of 5% for providing compassionate appointment of the total vacancies, my attention has been drawn, by the learned counsel for the Applicant, to a letter dated 13.8.2001 issued by the Department of Posts, New Delhi in which it has been provided as follows:—

"Since wait listing of candidates for compassionate appointment has been dispensed with chance of absorption of the approved candidates kept in the waiting list against vacancies available within 5% ceiling of direct recruitment quota in this Department or elsewhere is remote. This may cause hardship to the approved candidates who have been waiting for some time. In consideration of these aspects, it has been now decided to consider such wait listed candidates for the vacant posts of Gramin Dak Sewaks if they are willing and eligible for the post."

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In the above view of the matter, the authorities/ Respondents ought not have turned down the prayer of the Applicants for providing compassionate appointment to the Applicant No. 2 as has been done in the case on 25.2.2002 (Annexure-8), and, therefore, the said order under Annexure-8 dated 25.2.2002 is hereby quashed and, as a consequence, the Respondents are hereby directed to reconsider the matter afresh for providing an employment to the Applicant No. 2 on compassionate ground by treating the family of the Govt. servant to be in distress/indigent condition. They should do so, within a period of 90 (ninety) days from the date of receipt of a copy of this order. It is, however, made clear that while considering the case of the Applicant No. 2 for providing compassionate appointment, the Respondents are hereby directed to keep in mind the letter issued on 13.8.2002 by the Department of Posts, New Delhi, referred to above.

In the result, therefore, this Original Application is allowed in the aforesaid terms. No costs.

Manoranjan Mohanty
10/04/2002
(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)

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