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O.A.NO.482 of 2001

Order dated: 30th August 2004.

On. 30.8.04

Copies of final
order prepared
for counsels
for both sides.

Applicant's father (Arakshita Nayak) breathed his last, prematurely, on 12-08-1988, while still in employment as a Driver, in Orissa (Bhubaneswar) Establishment of Eastern (Calcutta) Region of Geological Survey of India. He left behind his widow, three daughters and one minor son i.e. the present Applicant. The widow-mother of the Applicant, on 12-03-1993, represented to the Authorities/Respondents to provide an employment on compassionate ground, to her son/the present Applicant and the said prayer was turned down (on 25.03.1994) on the ground of certain discrepancy in the name (as recorded in the High School Certificate) of the Applicant and, in the said premises, O.A.No.350 of 1996 was filed in this Tribunal and, by order dated 07.10.1999, the Respondents were called upon by this Tribunal to cause an enquiry to reconcile the discrepancy in the name of the Applicant as recorded in his High School Certificate. Thereafter, the Applicant and his widow mother represented to the Authorities, time and again, on 13.06.2001. By their communication dated 20.06.2001 (received on 04.08.2001) the Eastern Regional Office of Geological Survey of India intimated the distress family that the name of the Applicant has been placed at Sl. No. 11 to provide him a compassionate appointment. During

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October, 2001, the present Original Application under section 19 of the Administrative Tribunals Act, 1985 has been filed by the Applicant on the allegation that the Respondent-Department have provided employment to certain persons on compassionate ground, although Applicant's father died prematurely long before the death of those whose family members were provided with employment. During the pendency of this case, on 14.3.2002, letters were issued to the Applicant to exercise option as to whether he would like to join the post of Safaiwala at Calcutta or at Gangtak based project in Sikkim. It is the case of the Applicant that though he gave his consent in response to the offer given on 14.3.02, no follow up action was taken by the Respondents; for which he approached this Tribunal with interim prayers. On 21.5.2003, interim orders were passed in the present case; relevant portion of which reads as follows:-

"3. Having heard the counsel for the Applicant and the Respondents, liberty is hereby granted to the Respondents to examine and consider the prayer of the Applicant and pendency of this Original Application shall not stand as a bar before the Respondents to offer him employment in any Group 'D' post available at Bhubaneswar under the Respondent/Department".

On a subsequent date of hearing (17.6.2003), Mr. A. K. Bose, Learned Senior Standing Counsel appearing for the Respondents intimated that the proposal for providing employment to the Applicant, on compassionate ground, has been referred to the headquarters of Geological Survey of India/Mining Department/Ministry of Mines of Govt. of India in letter

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No.A-12031/Comp.Apptt./ER0/2002/17 dated 13.6.02;

relevant portion of which is extracted below for a ready reference:-

"Late Arkhita Nayak, Ex-Driver, had expired on 12-8-1988 and the wife of late official applied for compassionate appointment of her son Sri Pabitra Nayak(Gochhayat) on 12.3.1993. The case could not be placed before the CAC as there was doubt about the genuineness of the Educational Certificate produced by the candidate. The certificate was got verified and the Head Master of the concerned School gave a report that it was not genuine and the matter for compassionate appointment was accordingly dropped. Shri Pabitra Nayak(Gochhayat) filed an application in Hon'ble CAT, Cuttack Bench vide O.A.No.350 of 1996 and the Hon'ble CAT vide its order dated 7/10/1999 in this application ordered that Shri Pabitra Nayak(Gochhayat) is the natural born son of late Arkhita Nayak and the transfer certificate issued by the Head Master, Kakatpur High School, is in respect of the same Shri Pabitra Gochhayat. As such the case of Shri Pabitra Nayak alias Gochhayat for compassionate appointment may be considered in accordance with the rules after enquiring into the matter by the committee. A committee was set up to enquire into the matter of genuineness of educational certificate submitted by Shri Pabitra Nayak(Gochhayat) as per order of CAT and based on the report of Committee, which found the certificate to be genuine, was placed before the CAC on 22-5-2000. The CAC have recommended the case of Shri Pabitra Nayak (Gochhayat) for appointment in Group D post in Eastern Region office, Geological Survey of India subject to its approval by the Secretary, for it being more than 5 years old. (The minute of CAC is enclosed herewith for ready reference)."

The resolution of the compassionate appointment dated 22-5-2000 was also enclosed to the aforesaid letter dt'd. 13.06.2002; relevant portion of which is extracted below for ready reference:-

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"Considering the above CAT judgment the Committee, therefore, recommends that Shri Pabitra Nayak(Gochhayat) son of late Arakhita Nayak may be given appointment as per rules in the regular Group 'D' post as Shri Nayak passed Class-VIII only and he is fit for Group D post."

However, the rules in Chapter 31 Sl. No. 7 Swamys complete Manual of Establishment and Administration (page 405) says that in case of belated applications, there is no bar on compassionate appointment, but in such case one should be "Circumspect" about the genuineness of pecuniary circumstances and the decision may be taken by a Secretary level Officer only. In the present case, the application was made on 12.3.1993, nearly five years after the death of the Govt. servant. A letter seeking the reason for such delayed application was sent to the DDG, O.Pn. Orissa Vide letter No. 1499/A-12011/ Comp-120/AN/DRS/Admn./ER/93 Dated 27.5.1993 which was replied to by the applicant vide letter dated 7.7.93 duly by the DDG, O.Pn. Orissa vide letter date 16.9.1993".

The above goes to show that there was really reason to extend the compassionate appointment to the Applicant. But by their communication dated 5th February, 2003, the Respondents having turned down the prayer of the Applicant for a compassionate appointment, this case has taken a different turn at the last moment. The relevant portion of the communication dated 5th February, 2003 of the Govt. of India, Ministry of Mines issued under the signature of Shri A. K. Kundra, the Secretary of the Govt. of India is extracted below in extenso for a ready reference:-

"O R D E R.

The case in brief is that Shri Arakhita Nayak, Ex-Driver, O.Pn. Orissa Geological Survey of India, Eastern Region had died in harness on 12.8.1988 leaving behind his widow Smt. Sundari Bewa and one son Shri Pabitra Nayak(Gochhayat) now aged about 27 years. The widow of the deceased Government servant had applied for

appointment of her son in 1993 after a lapse of about five years. As per Policy of the Government Compassionate appointment could be considered for a son or a daughter or a near relative of the government servant who died in harness, including death by suicide, leaving his family in indigent circumstances deserving immediate assistance for relief from financial distress. Such belated requests in exceptional cases where the death of the Government Servant took place long back could be considered keeping in view the overall policy of compassionate appointment. However, the underlying spirit behind the policy guidelines is the need for an immediate assistance to the family of government servant who dies in harness. The very fact that the family has been able to manage somehow all these years should normally be taken as adequate proof that the family had some dependable means of subsistence.

2. Since the son of the deceased government servant was minor at the time of the death of his father, the widow could have applied for her appointment on compassionate ground if the financial condition of the family was so indigent as to deserve immediate financial assistance without waiting for her son to become a major. As requests for belated appointment on compassionate ground would call for a greater deal of circumspection, instructions stipulate that any decision to consider such case should be taken only at the level of Secretary of the Department concerned.

3. In view of these policy decisions and in compliance of CAT order dated 7.10.1999, GSI has forwarded the case to the undersigned. The request of the wife of late Shri Arikhita Nayak for appointment of her only son Shri Pabitra Nayak (Gochhayat) under compassionate appointment scheme been duly considered by me.

4. It has been noted that Shri Arikhita Nayak had worked for 18 years in Geological Survey of India and after his death, his family consisting of wife and his son, stated receiving pension @ Rs. 2024 + DA (as admissible) per month (revised), besides having received the other statutory dues after his death. The family has been sustaining itself on its own for 14 years. Besides, there was no immediate liability, as marriage of a daughter etc. at the time of the death of the government servant. In the above background, it can be safely inferred that the family had some adequate means of subsistence. Under these circumstances, invocation of exceptional provisions of the compassionate Appointment Scheme

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for considering the request at such belated stage is not warranted.

5. Having regard to the totality of circumstances, the case of Shri Pabitra Nayak (Gochhayat) for compassionate appointment at this belated stage does not merit any consideration".

2. On a thorough examination of the order dated 5th February, 2003 of the Govt. of India, it appears that the Secretary of the Department has turned down the prayer of the Applicant (for providing him an employment on compassionate ground) only on the ground of delay. The Govt. servant died prematurely on 12.8.1988, when the Applicant was a minor. The widow of the late Govt. servant/a driver of remote Kakatpur area of Puri District of Orissa must have undergone a tremendous disturbed situation with three daughters and one minor son. However, immediately after the minor son (Applicant) attained the majority, representation was submitted (seeking compassionate appointment) on 12.3.1993 i.e. within four years and five months of the premature death of the Govt. servant. Instead of showing sympathy to the disturbed family and getting the discrepancy reconciled, the Respondent-Department ^{at the relevant time,} took ~~hypertechnical~~ objection, just to turn down the prayer and, only after the intervention of this Tribunal, they took step to reconcile the discrepancy and took steps to resolve (on 22.5.2000) to provide an employment to the applicant. Although the prayer for providing even a compassionate appointment was not delayed by five years, still then it was considered to be a delayed case and the

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matter was sought to be placed before the Secretary of the Department/Ministry. Only after filing of the present case, the Department issued a letter on 14th March, 2002 to keep the Applicant under false assurance to exercise option to join as Safaiwala either at Calcutta or at Gangtak. When the Applicant pointed out that a vacancy is available at Bhubaneswar's Office, this Tribunal issued interim orders to give due consideration to his case for being posted at Bhubaneswar and, at that belated stage, the Department has turned down the case of the Applicant on the hypertechnical ground of limitation.

3. Although there was no strict bar for providing compassionate appointment on belated application, in all fairness of things, clearance of the Secretary level Officer was suggested to be obtained by the Compassionate appointment Committee without examining the matter in its proper perspective; because explanation for the delay is available itself in the proceeding and the case, now, has been turned down on the ground of delay. While rejecting the case of the Applicant, on hypertechnical ground of delay, the Secretary has posed a question that since the male child was minor, the widow ought to have offered herself for employment. While doing so, the Secretary (apparently, while sitting in calmness in his chamber) has forgotten to think the situation of a poor widow of a prematurely deceased low paid Govt. servant with three daughters and minor son. It

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is most unfortunate that the Secretary of the Deptt. has failed to visualise the plight of such a widow of a remote village of Orissa/India. He has also taken into consideration of the fact about the family pension etc. being paid to the family for their sustenance; although under the law of the land (as propounded by the Apex Court of India in the case of BALBIR KAUR AND ANOTHER vs. STEEL AUTHORITY OF INDIA (reported in 2002(2) ATT(SCC)255) terminal/pensinary benefits are not to be taken into consideration for determining the distress/indigent condition of the family.

4. Having given anxious consideration to the facts of this case, the rejection order dated 5th February, 2003, passed by the Secretary to Govt. of India in the Ministry of Mines is hereby quashed with direction to the Respondents to provide compassionate appointment to the Applicant; for the ends of justice; forthwith as the employment, on compassionate ground, was sought within five years of the premature death of the Govt. servant.

5. In the result, this O.A. is allowed. No costs.

Manoranjan Mohanty
(MANORANJAN MOHANTY
MEMBER (JUDICIAL))