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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK

O.A.NOS. 557/2001 & 111 and 138 of 2002

Cuttack, this the ~~29th~~ day of April, 2003

Sri Umesh Chandra Patnaik (in OA No. 557/2001)

Kishore Chandra Dhal (in OANo.111 of 2002)

Manoranjan Parham (in OANo.138 of 2002).....

Applicants

Vs.

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*


(B.N.SOM)

VICE-CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK

O.A.NOS. 557/2001 & 111 and 138 of 2002

Cuttack, this the ~~2nd~~ day of April, 2003

CORAM:

HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN

.....

In OA No. 557 of 2001

Sri Umesh Chandra Patnaik, aged about 22 years, son of late Sudhakar Patnaik, residing at Gandhinagar, 9th Lane, Berhampur, Dist. Ganjam, Orissa

760 001

Applicant

Advocates for applicant

- M/s (Dr.) M.R.Panda

M.K.Nayak & R.Panda

1. Union of India, represented through the Secretary, Department of Posts, Dak Bhawan New Delhi.
2. Chief Postmaster General, Department of Posts, Orissa Circle, Bhubaneswar 1, Dist. Khurda.
3. Senior Superintendent of Posts, Berhampur Division, Berhampur, Dist. Ganjam.
4. Ku. Pragnya Paramita Sarangi, w/o Deshabandhu Sarangi, P.A., S.S.P.O., Puri Division, At/PO/Dist. Puri.
5. Ku. Suprava Parham, D/o late Rajkishore Parham, P.A., S.P.O., Dhenkanal Division, At/PO/Dist. Dhenkanal.
6. Sri Debashis Mohanty, s/o late Narayan Chandra Mohanty, P.A., S.P.O. Bhadrak Division, At/PO/Dist. Bhadrak.

7. Smt. Pratima Swain, w/o late Bijaya Kumar Swain, Postman, S.S.P.O., Cutback City,
At/PO/Dist. Cutback.

8. Smt. Anjali Patnaik, wife of late K.T.V. Ramanya, Group D, S.S.P.O., Berhampur
Division, At/PO Berhampur, Dist. Ganjam

Respondents

Advocate for Respondents 1 to 3

- Mr. A.K. Bose,
Sr. CGSC

In OA 111 of 2002

Kishore Chandra Dhal, aged about 23 years, son of late Harish Chandra Dhal, village
Chhelikani, P.O. Sanasarasposi, Via Kuliana, Dist. Mayurbhanj

..... Applicant

Advocates for applicant

- M/s A.R. Dash, N. Lenka,
N. Das & R.N. Behera.

Vs.

1. Union of India, represented through Secretary, Department of Post, Government of India, Dak Bhawan, New Delhi.
2. Chief Post Master General, Orissa Circle, Bhubaneswar, Dist. Khurda.
3. Superintendent of Post Offices, Mayurbhanj Division, Baripada

.....

Respondents

Advocate for Respondents

- Mr. B. Dash, ACGSC

In OA 138 of 2002

Manoranjan Parham, aged about 24 years, son of Simanchal Parham, Ex Group D ,
Medical College S.O., At/PO Mandarada, Via Khariaguda, Dist. Ganjam

.....

Applicant

Advocate for the Applicant

- Mr.G.K.Behera

Vs.

1. Union of India, represented through Director General of Posts, Dak Bhawan, Sansad Marg, New Delhi 110001.
2. Chief Post Master General, Orissa Circle, Bhubaneswar 1, Dist. Khurda.
3. Sr.Superintendent of Post Offices, Berhampur (GM) Division, Berhampur 760 001, Dist. Ganjam

..... Respondents

Advocate for the Respondents - Mr.S.B.Jena, ACGSC &

Mr.A.K.Bose, Sr.CGSC

ORDER

SHRI B.N.SOM, VICE-CHAIRMAN

1. These three Original Applications have been filed by the sons of the deceased employees, who were working under the Respondent-Department, praying for direction to the Respondents to give them compassionate appointment. The applicants in the three O.As. are similarly situated. They have made similar averments in the Applications and the Respondents have filed their counters refuting the allegations made by the applicants. All the three O.As. having raised common questions of law and fact, I am proceeding to dispose of the same in this common

order, although they have been heard separately. However, for the purpose of convenience, we are referring to the detailed facts and submissions made by the learned counsel for the parties in OA No.557 of 2001.

2. Facts of the case in O.A.No. 557 of 2001 are that on the death of the father of the applicant in March 1998, the applicant approached Respondent No.2 for considering his case for appointment under compassionate quota under Berhampur Postal Division. His application was approved by Respondent No.2 in August 1998(Annexure 1). Later on, Respondent No.3 by dint of a letter dated 3.6.1999 asked for the willingness of the applicant to join Army Postal Service as a means of obtaining immediate job. The applicant consented to it (Annexure 2). Thereafter in March 2001, Respondent No.3 again asked him for his willingness to work in any Ministry/Department of Government of India to which also the applicant gave his consent. But no offer of appointment was ever issued by Respondent No.3 while the applicant's family is suffering from financial difficulty. He further alleged that his name has been kept in the waiting list for compassionate appointment since 1998. But no sooner did he approach the Tribunal, the vacancies ^{were} / filled up hurriedly to deprive the applicant of the benefit of employment. Aggrieved by this action of the Respondents, the applicant has approached this Tribunal seeking the following reliefs:

- " i) Order directing the respondent to produce the relevant record along with return;
- ii) order directing the respondent to consider the case of the applicant (Annexure 1) and give appointment on priority.
- iii) Order directing the respondent to consider the case of the applicant for appointment under compassionate ground.
- iv) Order declaring the action of the respondent in not considering the case of the applicant for compassionate appointment as bad, illegal and unconstitutional;
- v) Order allowing all or any other consequential benefit as would be available to the applicant under law;
- vi) Order allowing the applicant(sic) with costs;
- vii) Order declaring the impugned order dated 13.12.2001 (Annexure 5) is bad, illegal and unconstitutional and quash the same."

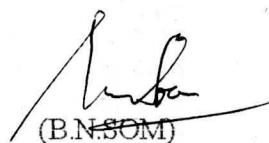
4. The Respondents in their counter have denied all the allegations of the applicant. They have submitted that a Special Committee has been constituted, called, Circle Relaxation Committee, chaired by the Chief Post Master General, Orissa Circle, for considering the cases of compassionate appointment. This Committee recommends individuals for appointment under compassionate scheme subject to the availability of vacancy under compassionate quota which is 5% of the annual direct recruitment vacancies. In the present case, when the applicant's name was approved for compassionate appointment under compassionate quota, there was no vacancy in Postal Assistant cadre in Berhampur Postal Division. They have, out of bona fide intention and to help the candidate, tried to secure a job in other Ministries/Departments for which his name was circulated, but that attempt did not prettify. They have finally stated that the applicant could not be offered appointment till date due to want of vacancies under compassionate quota. Referring to the judgment of the Apex Court in the case of Hindustan Aeronautics Limited v. Smt. A.Radhika Thirumalai, JT 1996 (9) SC 197, they have stated that their inability to offer appointment on compassionate ground for want of vacancies cannot be either faulted or called in question by the applicant nor can a grievance be made out of it.

5. I have heard the learned counsel for both the parties. During oral submissions, Shri A.K.Bose, the learned Senior Standing Counsel and Shri S.B.Jena, the learned Additional Standing Counsel, appearing for the Respondents, have made detailed submissions in the matter. They have stated that the Respondents have treated all the cases of compassionate appointment with utmost care and sympathy and strictly according to the instructions issued by the Government from time to time. They have submitted a detailed statistics providing information about number of vacancies in direct recruitment quota for the years 1997 to 2000, number of vacancies which fell under compassionate quota and the names of the Divisions to which the vacancies were allotted, the principles adopted by Respondents in allotting compassionate quota vacancies/candidates during these years. They have disclosed

that prior to the year 1997 the compassionate quota vacancies used to be filled up by the concerned Postal Divisions from out of the waiting list in order of seniority maintained by each Postal Unit for this purpose as per the availability of vacancies under ^{then} ~~the~~ quota. But on receipt of allegations to the effect that when candidate of a particular Division approved earlier was still awaiting appointment due to want of vacancy in that Division, a candidate approved later for another Division was being absorbed due to availability of vacancy in the said Division, it was decided by the Circle Relaxation Committee to maintain the waiting list on Circle basis and to allot vacancy under compassionate quota to the Divisions on considering demands of all the Divisions on certain yardsticks. Thus, they illustrated that number of vacancies which occurred between 1997 and 1999 being 108, five vacancies were allotted under compassionate quota for those years; for the year 2000 out of 51 direct quota vacancies, 3 vacancies were allotted; and for 2001 against 79 direct quota vacancies, 4 vacancies were allotted for compassionate quota. The procedure was further streamlined by the Circle Relaxation Committee by allotting vacancies under this quota to a particular Division keeping its manpower need in view and the volume of business. They have also submitted a list of 50 candidates who were approved for appointment as P.A./S.A. under compassionate quota from the year 1995 to 2000. Out of this list, one candidate did not turn up, 10 candidates were offered appointment as P.A./S.A. and 10 more candidates were absorbed as G.D.S. (all candidates in the waiting list for appointment were offered appointment against GDS post), leaving 30 candidates in the waiting list as maintained prior to 8.2.2000. They have disclosed that the position of the applicant in OA No. 138 of 2002 stood at Serial No.29 of the waiting list, the position of applicant in OANo.111 of 2002 stood at Serial No.7 and that of applicant in OANo.557 of 2001 stood at serial No.14. During oral submissions, the learned Senior Standing Counsel submitted that the Respondents have done away with the system of waiting list and presently the Circle Relaxation Committee is considering cases only when vacancies are available for offering

appointment. In this way, during 2001, three vacancies were reported and three candidates were approved out of the applications received for appointment under the scheme and allotments have also been made to the respective Divisions for appointment.

6. From the facts of the case, it is clear that the Respondents could not appoint the applicant because of non-availability of a vacancy under the quota. The Respondents also cannot be faulted for doing away with the waiting list because the concept of waiting list cuts across the very concept of compassionate appointment which must be offered then and there to help the family to tide over extreme economic distress. This aspect of the Scheme has already been upheld by the Apex Court in the case of Umesh Kumar Nagpal vs. State of Haryana and others, JT 1994 (3) SC 525. While I find that the Respondents have streamlined the system of processing cases for compassionate appointment and before they abolish the waiting list system, they tried all means available at their disposal to offer appointment to the candidates in waiting, there is no doubt that they could not have done more. It is also clear that if the applicants in these cases could not be offered appointment, that was only because of non-availability of vacancies and not for any other reason. Considering all these facts and circumstances of the case, all the three Original Applications fail. No costs.



(B.N.SOM)

VICE-CHAIRMAN

AN/PS

