

ORDER DATED 11-12-2001.

Heard Shri S.K.Mohanty, Learned Counsel for the Applicant and Shri A.K.Bose, learned Senior Standing Counsel appearing for the Respondents and have also perused the records.

In this Original Application, the applicant has prayed for quashing the orders at Annexures-3 & 4 and for a direction to the Respondents to reinstate the applicant to the post of Extra Departmental Mail Carrier (in short E.D.M.C.), S.Tikarapada Branch Office with all consequential financial benefits. Departmental Respondents have filed counter opposing the prayers of the applicant and the applicant has filed rejoinder.

For the purpose of deciding the dispute, it is not necessary to go into too many facts of this case. The admitted position is that the father of the applicant one Laxman Nayak, passed away on 3-5-1997 while working as E.D.M.C. S.Tikarapada Branch post Office. It is also admitted position is that the applicant was appointed as provisional E.D.M.C. in that post from 1-3-1997 to 28.10.1997 and again from 2.1.1998 to 24.6.99. It is also an admitted position that the applicant's case for compassionate appointment was considered by the Circle Relaxation Committee (in short C.R.C.) and the same was rejected in order dated 2.06.1999 at Annexure-3. Consequent to this and consequent to the selection of a regular person to the post of E.D.M.C through a process of regular selection in order dated 15.6.1999, the service of applicant was

terminated with immediate effect. It is also the admitted position that for the post of EDMC, the minimum educational qualification is Class-VIII pass whereas the applicant has read upto Class-V according to the S.L.C. submitted by him.

The C.R.C. has rejected the proposal for compassionate appointment on the ground that the applicant does not have the minimum educational qualification for being appointed to the post of EDMC. It is this decision which the applicant has challenged on various grounds which are discussed below.

The first ground urged by the learned counsel for the applicant is that the educational qualification could have been relaxed in his favour in pursuance of the Director General of Posts Letter dated 12.3.1993 and 2.2.1994 - gist of which has been printed in Swamy's compilation of ED Rules (7th edition) pages 145 to 147. It is submitted by learned Senior Standing Counsel for the Respondents that these instructions specifically provide that educational qualification can be relaxed only in favour of widow or widower seeking compassionate appointment and not in case of other dependents of the deceased ED employees. It is submitted by learned counsel for the petitioner that in the circular itself it has been mentioned that clarification has been sought if such relaxation in educational qualification can be given in respect of dependents of the deceased ED employee other than the widow or widower and the circular is silent on this point

and therefore, in the absence of any specific bar the relaxation of educational qualification should have been allowed. We have gone through the circular carefully and we are unable to accept the above submissions of the learned counsel for the petitioner. In the circular in para 2(1) it has been mentioned that clarification has been sought whether relaxation of educational qualification as is given to a widow of the deceased employee can be given to dependents/near relatives of the deceased ED agents. In para-3, clarifications 1 and 2 it has been specifically provided that relaxation would be available only to the widow or widower and that too, only for appointment against such category of ED posts for which prescribed educational qualification is that of Gr.D. From this it is clear that the provisions for relaxation of educational qualification has been made only in respect of widow or widower of ED Agent and this relaxation is in line of similar relaxation given for widow of a Govt. employee given by the Department of Personnel Public Grievances in their circular dated 30.6.1987. In view of this, it is not possible to accept that the instruction is silent on this point. Law is well settled from several decisions of the Hon'ble Supreme Court that compassionate appointment can be given only in terms of the compassionate appointment scheme available in the Department and therefore, as the instructions in the instant case did not provide for relaxation of educational qualification in favour of son of the deceased ED employee, it was not open for the

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CRC to give such relaxation.

The decision of the Hon'ble Supreme Court in the case of DHALLA RAM VRS. UNION OF INDIA AND OTHERS reported in AIR 1999 SC 564 does not provide any support to the case of applicant because in this case the Hon'ble Supreme Court have stated that there should not be any difficulty to consider an eligible candidate for providing immediate assistance to the family of the deceased employee. In the instant case the applicant is not an eligible candidate because he did not have the minimum educational qualification and therefore, this decision does not go to support the case of applicant. As regards the decision of the Hon'ble Supreme Court in the case of DIRECTOR OF EDUCATION (SECONDARY) VRS. PUSPENDRA KUMAR reported in AIR 1998 SC 2230, on a careful reading of this decision it appears to us that this decision goes to support the view taken by us rather than the submissions made by learned counsel for the applicant. In this decision, Their Lordships of the Hon'ble Supreme Court have held that compassionate appointment is an exception to the general provision of employment and rules of compassionate appointment can not therefore be so construed so as to subsume the main provision. In the instant case the main provision for recruitment to the post of EDMC provides for the minimum educational qualification of class VIII pass. Relaxation has only been provided only in case of widow or widower. It is, therefore, not possible for us to accept the contention of learned counsel for the applicant that in consideration of the fact that he had admittedly worked in the post from

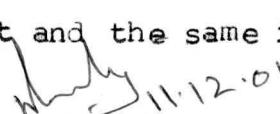
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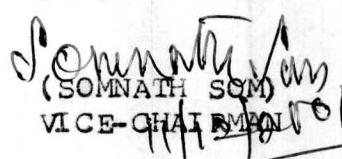
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1.8.1997 to 28.10.97 and again from 2.1.1998 to 24.6.1999 the provisions of the recruitment rule as also the compassionate appointment scheme have to be relaxed in his favour. In view of the above, we find no infirmity in the decision of the CRC in rejecting the prayer of applicant. This prayer of the applicant for quashing Annexure-3 is accordingly held to be without any merit and is rejected.

The second prayer of learned counsel for the applicant is for quashing the order at Annexure-4 terminating his service. Applicant had admittedly been working in the post on provisional basis. He had not come through any process of selection in which other persons have also been considered. His appointment order specifically provided that he should make way for the regularly selected candidate if and when he is appointed. Applicant's prayer for compassionate appointment having been rejected, it is only consequential that he has to make way for the regularly selected candidate. We therefore, find no infirmity in the order at Annexure-4. This prayer is also accordingly rejected.

In the result, therefore, in view of our discussions made above, we hold that the Original Application is devoid of merit and the same is rejected. No costs.

  
(NITYANANDA PRUSTY)  
MEMBER(JUDICIAL)

  
(SOMNATH SOM)  
VICE-CHAIRMAN

KNM/CM.