

O.A. No. 102/03

Oral Order

Dt.23.03.04

Bhakataram Dharua; while working as a Mail Carrier( in short "EDMC") of Lakhanpur Branch Post Office of Baragarh Revenue District of Orissa, in Extra Departmental Organisation of Postal Department of Government of India; died prematurely, on 07.06.95, leaving behind his widow and two minor children/sons of the age group of 5-10 years of age.

It appears from Annexure 4 of the O.A. that "Dharuas" are members of Scheduled Tribe (under the Constitution of India ( Scheduled Tribe) order 1950) being " GONDA". The widow of the said EDMC submitted a representation, on 15.08.95, to the Senior superintendent of Post Offices (in short 'SSPO') of Sambalpur Postal Division of Orissa to give her an engagement in place of her husband. She also submitted another representation, on 15.08.95, to the Assistant Superintendent of Post Offices ( in short 'ASPO') in charge of Bargarh Postal Sub Division to the same effect, where-in she disclosed about her minor children (of 5-10 years of age) and about the distress condition, in absence of any agricultural land. In the said representation she also disclosed about her financial status and also raised the question of survival (of her and that of her two minor children) amounting to the rights under Article 21 of the Constitution of

Y  
S

India. To state in nut-shell, within almost two months of the premature death of the EDMC, his widow prayed for providing an employment on compassionate ground, by disclosing her distress condition and by raising a question of survival ( of her & her 2 children) guaranteed under Article 21 of the Constitution of India. As it appears from Annexure-5 dated 30.08/06.09 of 1995, the Respondent Department granted an amount of Rs.1000/- to the distress family (from the welfare fund) as an immediate assistance; which goes to show that Department was satisfied that the family of the widow and two minor children were really in great distress. It appears further that during 2002, when one of the minor son attended majority, he also represented to the authorities seeking for a compassionate employment. No heed having been paid to the grievances (of Sukanti Dharua, the widow of the above named EDMC, and her elder son named Pandab Dharua), they have filed the present Original Application under Section 19 of the Administrative Tribunals Act, 1985 seeking direction to the Respondents Department to provide a compassionate employment in favour of the elder son named Pandab Dharua.

2. The Respondent Department has not disputed the distress condition of the family, although a counter has been filed. Rather they have pointed out that by a communication under Annexure R/1 dated 19.06.95 of the Asst.

8

Supdt. of Post Offices of Baragarh Postal Sub-Division, the widow ( the Applicant No.1) was intimated to the following effect:-

“ Appointment of EDMC Lakanpur BO on compassionate Ground.  
Madam,

It is to intimate that the Post of EDMC, Lakanpur BO will be filled up. If any of children of Late Bhakaram Dharua is having required qualification of VIII (eighth) class passed above and between the age of 18 years to 65 years may apply for the Post in prescribed proforma. If no person is eligible, then you may intimate to this office in writing that non of the family members of Late Dharua is eligible and willing to work in the said Post.

2. Death Certificate of Sri Late Dharua has not yet been received so far although you have been requested to submit early please submit the same without delay.”

It is also the case of the Respondent that under Annexure R/2 dt.19.07.95 of the Asst. Supdt. of Post Offices of Baragarh Postal Sub-Division, the Applicant No.1 was also given another letter, text of which reads as follows:-

“Subject:- Compassionate employment of nominee of Late Bhakaram Dharua Ex-EDMC, Lakanpur, B.O.

Madam,

Three sets of forms for employment of one of the dependents of Late Bhakaram Dharua are sent herewith. You have been asked to submit application in prescribed forms along with copy of death certificate and income certificate of Late Bhakaram Dharua immediately but nothing has been received from you. If any of the dependents are eligible for the post, the application in three sets of forms, death certificate, income

8

certificate, and school certificate, may please be submitted to this office within 7 days of receipt of this letter.

If no application is received within the above time of 7 days it will be presumed that there is no dependent eligible for the post and will be taken to fill up the post immediately."

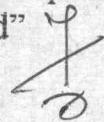
It is the further case of the Respondents that a Departmental communication (under Annexure R/3 dated 07.08.95 of the Senior Supdt. of Post Offices of Sambalpur Postal Division) was issued to the Applicant No.1; the text of which reads as follows:-

"Sub: Appointment of EDMC, Lakhapur B.O. on compassionate ground.

Madam,

It is to intimate that you have been asked to submit application along with required documents on the above subject by the ASPO in charge Bargarh vide his letter No.B/EDMC/Lakhapur dated 19.06.95. But till this day no application from you is received. You are once again requested to submit the same to ASPO in charge Bargarh within 15 days under intimation to this office; failing which this case will be treated as closed."

It is also the case of the Respondent Department that since no response was made to their letter dated 07.08.95, the case for providing a compassionate employment to the distress family was closed. The text of the letter under Annexure R/4 dated 07.09.95 of the Sr. Supdt. of Post Offices at Sambalpur is extracted below:-

"Please refer to this Office letter of even no dated 07.08.95 on the above subject. Till date nothing is receipt from you. Hence your case is provisionally treated as closed" 

In the counter filed by the Respondent Department, it has been admitted that the Applicant submitted a representation addressed to the ASPO in charge of Bargarh Postal Sub-Division and that was done in a plain paper and that the ASPO was not the competent authority to provide compassionate employment.

3. Heard Mr. D.P. Dhalsamant, Ld. Counsel appearing for the Applicants and Mr. S. Behera, Ld. Additional Standing Counsel appearing for the Respondent Department and perused the materials placed on record.

4. It appears from the materials placed on record that Respondent Department knew it well about the distress condition of the family and, therefore, being fully satisfied, immediately granted a financial assistance of Rs.1,000/- and issued letters (as claimed by them in their counter) on 19.06.95, 19.07.95 & 07.08.95 to the widow of the prematurely deceased Mail Carrier of the Extra Departmental Organisation of Postal Department of Government of India. That the Respondents were satisfied about the distress condition of the family is apparent from the Department's letter dated 30.08.95 (filed as Annexure-5 to the O.A.); when the Respondent Department sanctioned an amount of Rs.1,000/- from the Welfare fund for immediate assistance to the family. The widow was equally anxious about the two young children; which is apparent from her letters (under Annexure 4)

6 and Annexure-7 to the O.A.) addressed to ASPO/SSPO on 15.08.1995.

When both sides were apparently sincere, it is not understood for what reason ( that too within 24 hours of release of immediate financial assistance from Welfare Fund, under Annexure-5 dated 06.09.95) the SSPO of Sambalpur closed the file under Annexure R/4 dated 07.09.95.

5. In absence of any materials to contrary, it is difficult to accept the submissions of Mr. D.P. Dhalsamant (Ld. Counsel appearing for the Applicant) that the letters enclosed as Annexures R/1 to R/4 to the counter have not really been sent to the poor widow. But the hurried attitude shown under Annexure R/3 dated 07.08.95 and Annexure R/4 dated 07.09.95 throws sufficient doubt on those Annexures ( R/1, R/2, R/3 and R/4); when looked to the same with reference to averments made in para 8 of the counter filed by the Respondent Department. Mr. Dhalsamant, has tried his best to make out a case with reference to those documents (under Annexure R/1, R/2, R/3 & R/4) by branding them to be after thought intended documents just to throttle the case of the poor Applicants. The discrepancies pointed out by Mr. Dhalsamant also creates a feeling to accept his stand; when under Annexure R/3 dated 07.08.95, the widow ( Applicant No.1) was stated to have been asked to submit her case before the ASPO (Bargarh Postal Sub-division) and yet, in paragraph 8 to the counter, the Respondent

12

Department has taken a stand that submissions of the application to the said officer (ASPO Bargarh) to be an in-competent one. In fact under Annexure-6 & 7 dated 15.8.95 the widow/Applicant No.1 submitted the application to the SSPO (Sambalpur) and also to the ASPO in charge of Bargarh Sub-division. Howcvr, without entering into the issue as to whether the documents submitted with the counter are genuine or not or as to whether those documents were really served on the widow/Applicant No.1 or not, the case has been examined from a different angle.

6. The Departmental letters under Annexure R/1 & R/2 goes to show that ASPO (Bargarh) asked the Applicant No.1 to apply for compassionate employment. Again the Departmental letter under Annexure R/3 dated 07.08.95 of the SSPO (Sambalpur) requied the Applicant No.1 to apply to the ASPO (Bargarh) within 15 days and, on 15.08.95 i.e. within 15 days, the Applicant submitted her representation ( under Annexure-7 dated 15.08.95) to the ASPO in charge of Bargarh Postal Sub-division. If the said ASPO was incompctent to deal with the matter ( as disclosed in para-8 of the counter of the Respondent Department) it was for him to transmit the same to the appropriate authority (SSPO at Sambalpur or to such other authoritics) to deal with the matter. In the alternative, the said ASPO Bargarh ought to have instructed the poor Applicant No.1 to do the needful in the peculiar

✓

13

facts and circumstances of the case in hand. The Respondent Officers ought to have acted pragmatically in the circumstances; instead of remaining satisfied by writing English letters to the poor widow. In all fairness full assistance ought to have been extended to the poor distress family by deputing a responsible officer to the locality to interact with the distress family in vernacular language. In a similar circumstances, the Hon'ble High Court of Orissa in the case of Ranganath Misra Vrs. State of Orissa and others ( reported in Vol.XLII (1976) CLT, page 319), while analysing the matter, the Hon'ble Shri R.N. Mishra J. stated as under:-

“ XXXXXX the application XXX had been made within time. In fact, XXX it was made on the very first day of the commencement of the Amending Act. If the Inspector of Schools was not the appropriate authority, the said application should either have been returned XXX forthwith for presentation to the appropriate authority or should have been forwarded to the prescribed authority by the Inspector of Schools.”

7. In dealing with the case of a Tribal lady of the remote backward area in Bargarh Revenue District of Orissa, one should not have resorted to too much of technicalities. After-all, the scheme for providing compassionate appointment has been framed to resolve the immediate distress condition of the family of a prematurely deceased employee and to protect the rights (of the members of such a family) guaranteed under Article 21 of the Constitution of India. The authorities, on whom powers have

✓  
J

been vested to exercise the control, should come forward to ease the situation; when there is hardship in the working process. It appears, neither the SSPO nor the ASPO extended the real helping hand to the distress family.

8. In the aforesaid premises the Respondents are hereby called upon to rise to the occasion and cure the mistake they have committed ( which they should do, without resorting to much of technicalities) and consider the case for providing an immediate compassionate employment in favour of the Applicant No.2. Since the papers (like death certificate, legal hair certificate & income certificate) are now available ( having been furnished as Annexures to the O.A.) the Respondents should do well in completing the said exercise within a period of 60 days from the date to receipt of copies of this order, by giving due consideration to the poor case of the Applicants.

9. In the result, this case is allowed. No costs.

AFR

MEMBER ( JUDICIAL)

Yoban S  
23/03/2004