

9

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 185 of 2003
Cuttack, this the 1st day of February, 2005

Sudam Charan Pradhan. Applicant.

-Vrs.-

Union of India & 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? Yes.

(MANORANJAN MOHANTY)
Judicial Member

[Signature]
01/02/05

10
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

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CORAM:

THE HONOURABLE MR. MANORANJAN MOHANTY, JUDICIAL MEMBER.

SUDAM CHARAN PRADHAN,
Aged about 28 years,
Son of Trinath Pradhan,
Village-Narayanpur,
Via-Khariguda, Nuapada,
Dist. Ganjam (Orissa),
at present C/o. Sri Prakash Jena,
Qrs. No. Type-III, 412, New A.G. Colony,
Nayapalli, Bhubaneswar, Dist. Khurda. ... Applicant.

By legal practitioner: M/s. B.S. Tripathy,
M.K. Rath,
J. Pati,
Advocates.

-Versus-

1. Union of India, represented through its Secretary, Ministry of Agriculture, Govt. of India, Department of Agriculture and Co-operation, Krishi Bhawan, New Delhi-1.
2. Director, (A.H&T), Ministry of Agriculture, Department of Animal Husbandary and Diarying, Krishi Bhawan, New Delhi-110 001.
3. Director, Central Poultry Breeding Farm, Bhubaneswar, At/Po: Bhubaneswar, Dist. Khurda. ... Respondents.

O R D E R

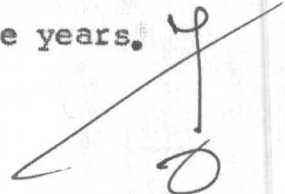
MR. MANORANJAN MOHANTY, JUDICIAL MEMBER:

One Trinath Pradhan, while working as Poultry Attendant in Central Poultry Breeding Farm at Bhubaneswar fell ill and after prolonged treatment, he was found to be totally incapacitated to continue in service; for which he had to face premature retirement from service by an order dated 11-12-2000 with effect from 08-12-2000. In order to overcome the distress condition of the family that was faced

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following to premature retirement of the Government servant, the Applicant third son of the Government servant prayed to get an employment on compassionate ground. No heed having been paid to the said grievance of the Applicant, he filed the present Original Application under section 19 of the Administrative Tribunals Act, 1985. While issuing notice to the Respondents, liberty was granted to them to give due consideration to the grievances of the Applicant and while filing counter, the Respondents have disclosed about the rejection of the claim of the Applicant under Annexure-R/3 dated 19-07-2004. In the counters and Annexure-R/3 dated 19-07-2004, the Respondents have disclosed the following two reasons for rejecting the claim of the Applicant for providing him an employment on compassionate grounds:


- (a) following to premature retirement w.e.f. 08.12.2000, the Government servant received Rs. 2.4 lakhs as a lump sum amount and around Rs. 3,000/- as monthly pension and in the consideration of the Respondents, this amount being sufficient, the family cannot be considered to be in distress condition;
- (b) due to non-availability of vacancies under 5% quota, the claim for compassionate appointment could not be materialised for a period of three years.



2. Heard Mr. B. S. Tripathy, Learned Counsel appearing for the Applicant and Mr. Uma Ballav Mohapatra, Learned Senior Standing Counsel representing the Respondents and perused the materials placed on record.

3. For the reason of the views taken by the Apex Court of India in the case of BALBIR KAUR AND ANOTHER -vrs.-STEEL AUTHORITY OF INDIA LTD. & OTHERS - AIR 2000 SC 1596, the terminal benefits/pensionary benefits granted to a Govt. servant are not available to be computed for determination of the indigent condition of a family. That being so, the 1st objection of the Respondents(that the retired Government Servant got around Rs. 2.4 lakhs as lump sum, at the end of 30 years of his regular service and that he is getting around Rs. 3000/- per month as pension; which is sufficient to show the absence of distress condition of the family) is hereby overruled; especially when it has been disclosed by the Applicant in the rejoinder that the entire amount of Rs. 2.4 lakhs received as lump sum terminal benefits were spent in giving treatment to the ailing prematurely retired Government servant.

4. In the rejoinder, it has also been disclosed by the Applicant that certain similarly placed persons (like him) have also been given employment on compassionate ground whereas his case was ignored discriminatorily. The Apex Court of India



in the case of SMT. KAMALA GAINED VRS. STATE OF PUNJAB AND OTHERS - 1992(5) SLR (Vol. 83) 864 have held that even in the case of showing compassion, there should not be any discrimination. The Hon'ble Apex Court in the said case observed as follows:-

"Even if it is compassion, unless there be some basis there is no justification for discriminatingly extending the treatment. We, therefore, direct that within three months from now a suitable Class-I post in P.C.S. executive shall be provided to the Applicant's son in lieu of the offer already made".

5. Save and except the bald statement of the Respondents that there were nonavailability of vacancies under 5% quota to give compassionate appointment to the Applicant for a period of 3 years, no details have been provided by the Respondents, neither in the counter; nor in the impugned order. The Government servant faced premature retirement (leading to distress condition of the family) during December, 2000 and application seeking compassionate employment was filed during April, 2001. Respondents ought to have looked as to how many vacancies were available in Gr. 'C'/Gr. 'D' category during 2001, 2002, 2003 and even during 2004 and ought to have identified vacancies under 5% quota to be given the aspirants of compassionate appointment. As against those vacancies, the case of the aspirants should be considered and out of them most deserving cases could have been considered for compassionate appointment. No such details have been given/disclosed by the Respondents, neither in their counter nor during hearing.

It appears, without giving real consideration to the matter, in issue, the rejection order has been passed under Annexure-R/3 dated 19.07.2004 and, therefore, the said impugned order under Annexure-R/3 dated 19.07.2004 is hereby quashed and while doing so, the Respondents are hereby called upon to give full consideration to the grievances of the Applicant by keeping in mind the provisions of the rules/instructions governing the field. Since due consideration was never given to the case of the Applicant, in its proper perspective as yet, his case should receive due consideration as against the future vacancies in Gr. & C' or Gr. 'D' commensurate with his educational qualification. Applicant should put up a consolidated representation giving all details before the Respondents/competent authorities by the end of February, 2005; which should receive due consideration of the said authority/Respondent by the end of May, 2005. In the result, this Original Application is disposed of with the aforesaid observations and directions. There shall be no order as to costs.

Manoranjan Mohanty
(Manoranjan Mohanty)
Judicial Member

KNM/PS.