

DA 219/03

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

Mr. 21. 3. 9. 04

Copies of order
prepared for
counsel for
both sides.

h
16/9

h
16/9/94
So (5)

ORDER DATED 03-09-2004.

Banamali Sahu, Ex-Jamadar of Sunabeda Sub-Post Office represented on 05.01.1984 to go on voluntary retirement on invalidation ground. While making such representation, he also represented on 15-08-1984 to his higher Authorities to provide an employment to his son Madan Mohan Sahu, the present Applicant. In consideration of ~~his~~ representation dated 05-01-1984 of Banamali Sahu (Ex-Jamadar), the Chief District Medical Officer of Koraput District was moved on 04-11-1985 (i.e. after a lapse of one year and eleven months) to examine the Government servant and to furnish a report; which was accordingly furnished by the Chief District Medical Officer, Koraput on 17-12-1985. On the face of the report of the C.D.M.O. dated 17-12-1985, the aforesaid Banamali Sahu was allowed to go on voluntary retirement (on invalidation ground) on 24-12-85. Said Banamali Sahu, ultimately, died on 22-11-1992. His prayer to provide a compassionate employment to his son Madan Sahu (Applicant) ^{did} ~~was~~ not heeded any result, during the life time of Banamali Sahu, and on 18.7. 1995 the Respondents rejected the prayer for providing employment; -relevant portion of which (Annexure-R/1) reads as under:-

"This is to inform you that the case of appointment of Shri M.M. Sahu on compassionate ground does not come under the purview of Directorate's instruction, since the late official Sri Banamali Sahu had taken invalidation retirement from service after attaining the age of 57 and he had less than 3 years of service left for superannuation".

AFR

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

2. It is the case of the Applicant that due to poverty he could not take care of his widow mother (following to the death of his father on 22-11-1992) and in the said premises, his mother (widow of Banamali) died on 08.03.1996 and for the reasons of the poverty he also could not approach this Tribunal earlier. By filing the present Original Application, on 13.2.2003, under Sec. 19 of the Administrative Tribunals Act, 1985 (together with a petition for condonation of delay), the Applicant has prayed for a direction to the Respondents to provide him a compassionate appointment. He has, virtually, challenged the rejection order under Annexure-7/Annexure-R/1 dated 18.7.1995, after a lapse of seven years.

3. By filing a counter, Respondents have supported the rejection order passed under Annexure-7/Annexure-R/1 dated 18.7.95.

4. Heard Mr. P.K. Giri, Learned Counsel for the Applicant and Mr. S. Behera, Learned Additional Standing Counsel representing the Respondents and perused the materials placed on record.

5. For the reason of the Government of India (Department of Posts) Letter No. 24-416/92-SPB-I, dated 22-2-1993 (revised instructions for compassionate appointment ^{the} towards of deceased postal employees) compassionate appointment is also available to the invalid retirement cases. On perusal of the said Government of India instructions dated 22.2.93,

AFR

it goes to show that compassionate appointment was also being extended to invalid Government servants cases before issuance of the Govt. instructions dated 22-2-1993, in a routine manner, and after issuance of the Government letter dated 22-2-1993, the scheme for providing compassionate employment to the wards/dependents of invalid pension holders were restricted to some extent. The said Govt. letter dated 22-2-1993 is extracted herein below for ready reference:-

"I am directed to invite your attention to Department of Personnel and Training, O.M.No.14014/6/86-Estt.(D), dated 30.6.1987, containing guidelines for consideration of cases for appointment in relaxation of Recruitment Rules on compassionate grounds of son/daughter/near relative of Government employees who die in harness or retire on invalid pension. It may be noted from paras 1(a) & (b) thereof that the benefit of Compassionate appointment is intended for those cases where an employee dies in harness leaving his family in immediate need of assistance when there is no other earning member in the family. In case of retirement on invalid pension, the benefit can be extended only in exceptional cases if the competent authority is satisfied that the condition of the family is indigent and is in great distress.

2. However, it has been noted that of late even the compassionate appointment cases of wards of those Government servants, who retire on invalid pension, are rather considered in routine manner. There has also been a tendency on the part of employees to seek retirement on medical grounds just three years before the date of superannuation to become eligible for consideration of the case of his ward for appointment on compassionate ground. This results in misuse of the facility and also involves delay in giving appointment in deserving cases of employees dying in harness.

3. It is, therefore, emphasized that when an employee retires on invalid pension under Rule 38 of CCS(Pension) Rules, 1972 before attaining the age of 55 years (57 years in the case of Gr.D)

AFR

employees), the following points should be taken into account in dealing with requests for compassionate appointment-

- (i) Such cases should be considered only as an exception when the basic condition, namely, the family being in indigency/great distress and is in need of immediate assistance, is fulfilled.
- (ii) Where retirement is sought on account of health reasons and common ailments like Bronchitis, Asthma, Hypertension, etc., the details of leave on account of health reasons taken by the officials in the past may also be communicated to the Competent Medical Authority along with information under Note 1 below Rule 38 of CCS (Pension) Rules, 1972, to enable him to form an objective assessment of the state of health of the official as to whether or not he is permanently unfit for future service;
- (iii) The competent Medical Authority should also be specifically requested to intimate whether the official is fit for further service of less laborious character than that which he had been doing as provided in Rule 38(4) *ibid.*

4. It is important that cases of compassionate appointment of a ward of Govt. servant retired on medical grounds should be considered with great deal of circumspection both in Circles as well as Offices of the Regional Postmaster General taking into account the aforesaid points and the other conditions laid down in the general instructions on the subject to ensure that the benefit is extended in deserving cases only. The cases requiring approval of the Directorate should be referred along with the information on the above points as also copy of synopsis with personal recommendations of the Head of the Circles as at present".

6. On a plain reading of the Govt. letter dated 22-2-1993 (supra) it goes to show that prior to 22.2.93 cases of wards of Govt. servants (who retired on invalid pension) were being considered in a routine manner and, ^{were} there ~~by~~ no prohibition of age limit, as was

APD

7

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

imposed in Govt. letter dated 22.2.1993. By Government letter dated 22-2-1993, Govt. emphasized that in the event of invalid pension being granted before attaining the age of 55 years (57 years in the case of Gr.D employees) compassionate appointment is only available to be considered. Thus, before 22.2.1993, there was no such prohibition pertaining to age limit of 55 years/57 years.

7. In the present case, the father of the Applicant, while opting for voluntary retirement, represented on 15.8.1984 to provide a compassionate appointment to his son/present Applicant and, ultimately, he was allowed to go on invalid retirement, prematurely, on 24.12.1985. The delay of about 2 years in granting him invalid retirement is squarely attributable to the Respondent-Department. Had his case been considered immediately, then he would have faced the retirement on invalidation, well before attaining 57 years and in that event, being a Gr.D employee, his prayer for providing a compassionate appointment would not have throttled. Apart from the above, the restriction pertaining to the age factor came into force w.e.f. 22.2.1993. But the grievance of the applicant was long before issuance of said instruction dated 22.2.93 and, therefore, this circular being ^a prospective one, ought not to have been stretched to the case of the applicant; For the reason of the views of the Hon'ble Apex Court of India rendered in the case of Y.V. RANGIAH

AFR

Y
6

F-11

OA. 219/03

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

AND OTHERS VRS. V. J. SRENIVASA RAO AND OTHERS
(reported in AIR 1983 SC 852) and in the case
of P. MAHENDRAN AND OTHERS VRS. STATE OF
KARNATAKA AND OTHERS (reported in AIR 1990 SC
405) and by the Hon'ble High Court of Orissa
in the case of GAYADHAR SAHOO VRS. STATE OF
ORISSA (INOJC NO. 811 OF 1990 disposed of on
26.4.1991). Applying the ratio enunciated by
the Hon'ble Apex Court, as also by the Hon'ble
High Court of Orissa, the Govt. of India
circular dated 22.2.1993 (supra) is/was
not available to be applied to the case of
the applicant; ^{being a} ~~being~~ the same prospective
one and, therefore, the impugned order, under
Annexure-7/Annexure-R/1 dated 18.7.1995 is
not sustainable and as a consequence, the
impugned order under Annexure-7/Annexure-R/1
dated 18.7.1995 is hereby quashed by granting
liberty to the Respondents to re-examine the
prayer of the applicant to provide him a
compassionate employment. While doing so,
the Respondents should consider the
indigent condition of the family of the
deceased Govt. servant, with reference to
the income certificate and legal heir
certificate to be produced by the applicant;
which he (applicant) should do by the end
of the September, 2004. On receipt of
~~documents from the Respondents,~~ ^{Applicant,} the Respondents
should take up the matter (for granting
compassionate appointment to the applicant)
and in any event a final decision in the
matter should be taken by the Respondents by

AFR

4
6

the end of December, 2004.

8. By filing a Misc. Application, the applicant had prayed for condonation of the delay in approaching this Tribunal, due to poverty. Learned counsel for the Applicant by placing materials as also during oral hearing explained the reasons for approaching this Tribunal delayedly. Law is also well settled that hypertechnicality should not stand on the way of dispensing with justice. In this view of the matter, the ^{question of} delay, as raised, is over-ruled. The grievance of the applicant

9. In terms of the aforesaid observations and directions, this O.A. is disposed of. Parties to bear their own costs.

AFR

M. R. Mohanty
03.09.2004
(M. R. MOHANTY)
MEMBER (JUDICIAL)