

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 331 OF 2003
Cuttack, this the 5th day of November, 2003


KAMALINI MOHANTY & ANOTHER. APPLICANTS.

-VERSUS-

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? Yes.


(MANORANJAN MOHANTY)
MEMBER (JUDICIAL) 05/11/2003

7

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 331 of 2003
Cuttack, this the 5th day of November, 2003.

C O R A M:-

THE HONOURABLE MR. MANORANJAN MOHANTY, MEMBER (JUDL.)

....

1. Kamalini Mohanty,
W/o. Late Mihir Prasad Mohanty,
EX-E. D. Branch Postmaster,
Guneibil Branch Post Office.
2. Kamakhya Prasad Mohanty,
S/o. Late Mihir Prasad Mohanty,
of Village: Rankia,
Po: Guneibil,
Ps: Kamakshyanagar,
Dist: Dhenkanal. Applicant.

By legal practitioner: Mr. D. P. Dhalsamant, Advocate.

:Versus:

1. Union of India represented through Secretary,
Department of Posts, Ministry of Communication,
Dak Bhawan, New Delhi-110 001.
2. Chief Postmaster General, Orissa Circle,
Bhubaneswar, Dist: Khurda-751 001.
3. Post Master General, Sambalpur Region,
Sambalpur-768 001.
4. Superintendent of Post Offices, Dhenkanal Division,
Dhenkanal-759 013.

..... Respondents.

By legal practitioner: Mr. S. Behera,
Additional Standing Counsel
(Central).

J
8

....

1/2/1

O R D E R

MR. MANORANJAN MOHANTY, MEMBER (JUDICIAL) :

Mihir Prasad Mohanty (the husband of Applicant No.1 and father of Applicant No.2) was working as G.D.S.B.P.M./E.D.B.P.M. of Guneibil Branch Post Office (under Marthapur Sub Post Office) of Dhenkanal District of Orissa since 12-1-1977. While working as such, he remained on medical leave, due to his illness, and ultimately, it was certified (by the Chief District Medical Officer of Dhenkanal) on 13-9-2002 that he was suffering from Cancer. Accordingly, the said District Medical Officer of Dhenkanal declared said Mihir Prasad Mohanty to be invalid (mentally and physically) for Government job. Basing on such a Medical Report, the Respondent-Department vide their order dated 21.10-2002 terminated the service of said Mihir Prasad Mohanty on medical invalidation ground. He was relieved from the post of GDSBPM/EDBPM, Guneibil Branch Post Office on 31-10-2002. On 25-10-2002, the said GDSBPM/EDBPM applied to the Department for providing an employment, on compassionate ground, in favour of his son i.e. present Applicant No.2. Ultimately, on 19-4-2003, the Ex-EDBPM expired and, on 28-4-2003 the representation for compassionate appointment was rejected (by the Respondents under Annexure-7) on the ground that the scheme for compassionate appointment under relaxation of normal recruitment rule has not been extended

//3//

to the dependent of GDS; who took retirement on invalidation ground and that it is only applicable in death case. In the said premises, this Original Application has been filed under section 19 of the Administrative Tribunals Act, 1985 with prayers (a) to quash the order of rejection (of the prayer for providing a compassionate appointment) under Annexure-7 dated 23-04-2003 and (b) to direct the Respondents to provide an employment in favour of the Applicant No. 2 under compassionate ground. On 10.6.2003, while directing for issuance of notices to the Respondents, the following interim orders were passed:-

*Pendency of this O.A. shall not stand as bar before the Respondents to give due consideration to the grievances of the Applicant, on merit, for providing him an employment on compassionate ground in favour of Applicant No. 2, notwithstanding the fact that ex-GDSBPM took premature retirement on invalidation ground. Simply because ex-GDSBPM (Mihir Prasad Mohanty) did not die before attaining the age of superannuation; the same cannot be a ground to deny compassionate appointment in favour of his legal heir and, if such a ground is allowed to prevail upon, it would lead to a total discrimination amongst regular departmental staff and ED staff of the Postal Organisation and thereby offend the provision of the Constitution of India".

2. Respondents have filed their counter admitting the factual aspects. They have, however reiterated the stand that since under the Rules, there is no provision for providing compassionate employment to the dependents

10
//4//

of the Gramin Dak Sevaks/Extra Departmental Postal Staff, who took retirement on invalidation; the prayer to provide compassionate employment to the Applicant No.2 has rightly been rejected. It is the stand of the Respondents that although Ministry of Personnel, Public Grievances and Pensions of Government of India, by its Office Memorandum dated 30.6.1987 extended the benefits of compassionate employment to families of both deceased and disabled Government servant, and similar benefits to have also been extended in postal Department, communication dated 16.12.1991, the clarificatory letters issued from time to time, excluded the families of the disabled Ex-EDAs. In DGP&T letters dated 04.08.1980 and that of 10.12.1986 were denied employment on compassionate ground.

3. Heard Mr. D. P. Dhalsamant, Learned Counsel Appearing for the Applicants and Mr. S. Behera, Learned Addl. Standing Counsel appearing for the Respondents and perused the materials placed on record.

4. Relying on the decision of the FULL BENCH of this Central Administrative Tribunal (at its Ernakulam Bench) rendered in the case of JAYARAGHAVAN VRS. UNION OF INDIA AND OTHERS (reported in 2002(1) ATJ (Vol. 36) 205) and the decision of this Bench of the Tribunal rendered on 16.04.2002 in Original Application No.17 of 2001 of RAGHUNATH SINGH VRS. UNION OF INDIA AND OTHERS, learned counsel for the Applicant submitted that since the Ex-GDSBPM was the only earning member

//5//

of the family consisting of five members, they are now (after the death of the Ex-GDSBPM) moving from pillar to post with begging bowls and, as such, there is need of providing a compassionate appointment. It was further argued by him that since it has been held by the Full Bench of this Tribunal (at Ernakulam) as also by this Bench of the Tribunal that there is no reasonableness not to extend the compassionate appointment to the dependents of a GDS who took retirement on being medically invalidated, and the instructions prohibiting such consideration having been held to be bad, the grievances ought to be considered by the Respondents for providing an employment on compassionate ground.

5. The decision rendered by the Full Bench of this Tribunal, in the case of K. Jayaraghavan (supra) and also the decision rendered by the Single Member Bench of this Tribunal in the case of Raghunath Singh (supra) has been perused. The Full Bench of the Tribunal quashed the Postal Department letter dated 29.05.1992 (by which extension of compassionate appointment benefits to the dependents/near relatives of EDAs discharged prematurely on medical invalidation was prohibited) by holding the same to be bereft of any reason/being unreasonable. In the said Full Bench case the following questions were answered as

under:-



12 ✓
//6//

*13. For the foregoing reasons, the reference is answered as under:-

Point No. 1(i) whether the benefit of the Scheme of employment assistance on compassionate grounds is available to the dependents/near relatives of ED Agents discharged prematurely on medical invalidation - Yes.

Point No. (ii) whether letter No. 14-25/91-ED&TRG dated 29.5.92 of the Assistant Director General (Trg.), Dak Bhavan, New Delhi is liable to be set aside as arbitrary and unreasonable - Yes."

This Bench had also, while directing the Respondent - Department to provide such benefits to the dependents of EDAs discharged prematurely on medical invalidation, observed in the case of Raghunath Singh (supra) as under:-

"The aforesaid Government decision dated 4th August, 1980 and the clarification given thereon on 10.12.1986 go to show that while dependents of both deceased and disabled regular employees of postal department are entitled to compassionate appointments, such benefits have only been extended to the dependents of deceased employees of Extra departmental Organisation of the said Department; which means, had the Applicant No. 1, in the present case, died in harness, then only there was/is no bar to provide a compassionate appointment to the Applicant No. 2 and that simply because the Applicant No. 1 had survived, although crippled/totally invalid the Applicant No. 2 is not to be given a compassionate appointment in order to remove the distress condition of the family. Such a provision being discriminatory, the very intention of providing compassionate employment (which is meant to remove the distress condition of the family of a deceased/ disabled employees; over and above the provision for grant of pension/family pension/ are being frustrated. Non-provision of

7
0

11711

compassionate employment to dependents of invalid personnel of Extra Departmental organisation of postal department; especially, when there are no provision of granting monthly pensions/family pension to retired ED Agents/their families; is not only discriminatory but a very harsh and inhuman one".

Thus, the prohibition to provide compassionate employment to the dependent of disabled Ex-EDAs having been held to be bad (being arbitrary, unreasonable and discriminatory) the same is not to stand in the way of the Applicant to be considered for a compassionate employment.

6. In view of the above, I find no reason to take a different view other than the views already taken in the aforesaid cases and, in the said premises, the order of rejection under Annexure-7 dated 28.04.2003 is hereby quashed and, as a consequence, the Respondents are directed to consider the case of the Applicant NO.2 for providing him an employment, on compassionate ground, within a period of 90 (ninety) days from the date of receipt of a copy of this order.

7. In the result, therefore, this Original Application is allowed by leaving the parties to bear their own costs.

Manoranjan Mohanty
(MAN ORANJAN MOHANTY)
MEMBER (JUDICIAL)

05/11/03

KNM/CM.