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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 714 of 2003
Cuttack, this the ~~22nd~~ day of April, 2008

Fakir Mallick Applicant,
Versus
Union of India & Ors. Respondents

For instructions

1. Whether it be referred to the reporters or not? X
2. Whether it be circulated to all the Benches of the CAT or not? y .


(C.R. MOHAPATRA)
MEMBER (ADMN.)

Original Application No. 714 of 2003
Cuttack, this the ~~22~~²²nd day of April, 2008

THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (A)

Fakir Mallick Applicant,
Versus
Union of India & Ors. Respondents

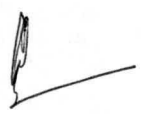
By legal practitioner: Mr. S.C.Mishras, Counsel

By legal practitioner: M/s.B.Pal, O.N.Ghosh, B.P.Mohapatra,
Counsel

MR.C.R.MOHAPATRA, MEMBER(A):

and two married daughters as his wife pre-deceased him. Also it is not in dispute that after his death, the Applicant as the legal heir received Rs.1,42,753/- towards DCRG, Rs.22,538/- towards insurance, PF balance of Rs.19,050/-, settlement salary of Rs.3,130/- and PLB Rs.2,646/- of his father. However, soon after the death of the ex employee, the applicant made application seeking employment on compassionate ground which having been rejected vide order under Annexure-A/6 dated 5th May, 2003 he has approached this Tribunal in the present Original Application filed under section 19 of the Administrative Tribunals Act, 1985 seeking to annul the aforesaid order of rejection (Annexure-A/6) with direction to provide him an employment on compassionate ground.

2. Respondents have filed their counter opposing the prayer for grant of an employment on compassionate ground by stating that one cannot claim as a matter of right to be appointed on compassionate ground, after the death of his/her father/mother. Such compassionate appointment is considered and provided with a view to redeem the family members from the financial hardships caused due to the death of the immediate bread earner of the family provided there remains no other means of livelihood of the family. Since it was found that the deceased left behind no dependent family members and financial condition of the applicant is not such so as to



enable the department to provide an employment to the Applicant who is aged about 40 years, on compassionate ground, the request of Applicant was rejected and communicated to him under Annexure-A/6.

3. Heard Learned Counsel for both sides and perused the materials placed on record.

4. Learned Counsel appearing for the Applicant has submitted that as rule specifically provides for providing appointment on compassionate ground immediately in the death of the bread earner of the family and the applicant being in unemployment having no source of income, his grievance ought not to have been rejected in the manner what has been done by the Respondents under Annexure-A/6. He therefore urged for grant of the relief sought for in this O.A. On the other hand, Learned Counsel for the Respondents has submitted that in view of the explanation given in the counter there is hardly any scope for extension of the benefits of compassionate appointment that too after lapse of more than seven years at the age of about 45 years.

5. I have given my anxious consideration to various submissions made by the parties. It is not in dispute that the father of applicant breathed his last on 17.10.2001 leaving behind the applicant and two married



daughters. By now applicant is aged about 45 years. It is also seen that all the dues of the late Nilmoni have been paid to the Applicant. Applicant has not placed any material in support of his stand of indigence.

It is trite law that there should be no departure from this general rule except under compelling circumstances such as death of the sole bread earner and the livelihood of the family suffering as a consequence. Once it is proved that in spite of the death of the bread earner, the family (has) survived and a substantial period is over, there is no necessity to say goodbye to the normal rule of appointment and to show favour to one at the cost of several others, ignoring the mandate of Article 14. The High Court and Tribunals should not confer benediction impelled by sympathetic consideration to make appointments on compassionate grounds when the regulations did not cover and contemplate such appointment. The appointment on compassionate ground cannot be a source of recruitment. It is merely an exception to the requirement of law keeping in view the fact of the death of the employee while in service, leaving his family without any means of livelihood. In such cases, the object is to enable the family to get over the sudden financial crisis. Such appointments have, therefore, to be made in accordance with rules, regulations or administrative instructions

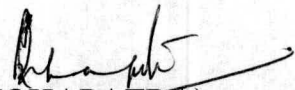
taking into consideration the financial condition of the family of the deceased.

But in the present case it is noticed that Late Nilmoni left behind no family burden like education of children, unmarried daughter, old parents etc. Also it is noticed that the applicant was aged about 40 years by the time the death took place and as a consequence, as per the Rules, he was out of the definition of 'dependent'. Indigent condition is a precondition of providing employment on compassionate ground. Except a bald statement of penury, Learned Counsel for Applicant has produced no material to show the dependency and distress condition of the Applicant. It is also not the case of the Applicant that there was any wrong in the decision making process of the matter thereby causing great injustice to him. The settled position of law is that the Tribunal cannot sit as an appellate authority over the decision of the authorities. It can only interfere, if there is any wrong in the decision making process of the matter which is not the case of the Applicant.

6. In the case of *Indian Drugs and Pharmaceutical Ltd v. Devki Devi*, 2007 (1) AISLJ 224, the Apex Court held that the compassionate appointment is not a right. In the case of *State of J& K v Sajid Ahmed Mir*, 2007 (1) AISLJ 219 the Apex Court observed that when the family could

survive in spite of the death of the employee at a belated stage the family should not get employment on compassionate ground. In the case of *National Institute of Technology and another v Miroj K. Singh* (2007 1 SCC (L&S) 668 by the time the employee died the son was a baby, still the Hon'ble Supreme Court held that compassionate appointment cannot be granted to the son after getting majority more than 15 years after the death of the employee.

7. In the instant case, more than seven years have already expired from the date of the death of the employee. At this stage grant of appointment on compassionate ground to the Applicant who is about 45 years of age would be a negation of the scheme. The claim of applicant does not contain any merit. Hence, this OA, being devoid of any merit, is dismissed. No costs.


(C.R. MOHAPATRA)
MEMBER(A)

KNM/PS