

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

Order dt. 5.4.04

Learned counsel for the applicant is present. On the prayer made on behalf of Mr. SSCG, time is granted till 10.5.04 to file counter.

Done -
27/4/04
REGISTRAR

For counter.

Regd

Dt. 10.5.04

The learned Sr. S.C. prays for time to file counter. Prayer allowed. Time granted till 22.6.04 for counter.

Done -
10/5/04
REGISTRAR

Counter filed,
copy not sent.
For order.

Regd

ORDER DATED 02-07-2004.

Giridhari Mishra was a Postal Assistant attached to Budharaja Sub-Post Office in Sambalpur Revenue District of Orissa. He was due to retire from service, on attaining the normal age of superannuation on 30.06.2002. But he died prematurely on 27.09.2000 (i.e. less than two years before his normal date of superannuation) leaving behind his widow (Applicant No. 2); elder son Sri Gopal Krishna Mishra, aged about 30 years (who is Applicant No. 3), un-married daughter Ms. Jharana Mishra, aged about 26 years (who is Applicant No. 4) and younger son Sri Chandan Kumar Sahoo, aged about 25 years (Applicant No. 1). Prayer of the family to provide a compassionate employment in favour of the Applicant no. 1 was turned down under Annexure-R/3 dated 10/11th February, 2004 i.e. during the pendency of the present Original Application under section 19 of the Administrative Tribunals Act, 1985.

In the order under Annexure-R/3 dated 10/11th February, 2004 the following reasons have been ascribed for turning down the prayer of the family to provide an employment to the Applicant No. 1, Chandan Kumar Mishra:-

"The official died just less than two years before he would have retired on superannuation w.e.f. 30.06.2002 A/n. Both the sons have become major and one of them is employed as a Casual Labour in GMT's Office and there is not much liability of the Family".

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Order at 22.6.04

Ld. counsel for the applicant submits that he has received copy of counter today only and therefore, please let me to file rejoinder. Heard. The same is granted till 22.7.04 to file rejoinder.

22/6/04

REGISTRAR

For hearing.

Copy of rejoinder not leave

On Memo

Bench.

1/7/04

In the counter, filed by the Respondents, it has been disclosed that the family of the deceased postal Assistant is getting a big amount of retiral benefits.

Heard Mr. Trilechan Rath, Learned Counsel appearing for the Applicant and Mr. A. K. Bose, Learned Senior Standing Counsel appearing for the Respondent-Department and perused the materials placed on record. For the reason of the decision of the Hon'ble Supreme Court of India rendered in the case of BALBIR KAUR VRS. STEEL AUTHORITY OF INDIA AND OTHERS, reported in 2002(2)ATT(SC)255 and of this Tribunal rendered in the case of RANKANIDHI SAHU vs. UNION OF INDIA AND OTHERS reported in 2002(2)(1)CJD(AT)21 and in the case of MINAKUMARI MOHANTY &S. UNION OF INDIA AND OTHERS reported in (1994)2 ATT(CAT)120, the terminal benefits are not to be computed towards determination of the distress condition of the family. Therefore, the objection taken by the Respondents in the counter is hereby over-ruled.

Merely because the ex-Government servant died within two years before his actual date of retirement that is no ground to deny the compassionate appointment to a member of the family (especially in absence of any prohibition) and, as such, the objection on that score (as raised by the Respondents at page-17 of Annexure-R/3 of the Counter) is not sustainable.

By filing a rejoinder, the Applicant

has pointed out that the Applicant No.3 was engaged as a Casual Labourer under the General Manager, Telecommunication only for few months and he has again become unemployed now.

On the face of the fact that four major members of the family have been left behind by the deceased Government Servant is itself ~~is~~ a ground to show that the family has got liability. Thus, the objections of the Respondents under Annexure-R/3 on the score (a) of casual engagement of one of the Applicants and (b) absence of liability are certainly to be over-ruled.

Last objection of the Respondents (as raised under Annexure-R/3) that both the sons have become major is a point to be considered. From the cause title of this case, it shows that not only both the sons are major, the only daughter (Applicant No.4) is also now 26 years old. For the reasons of the views expressed by this Tribunal (at its JODHPUR BENCH) rendered in the case of HARI SINGH vs. UNION OF INDIA AND OTHERS (OA No. 230 of 2002 decided on 27.09.2003) the dependent children being more than 25 years old, the benefit of rehabilitation Asst./providing compassionate appointment cannot be extended to them. In the said case (at Jodhpur Bench) this Tribunal examined the matter with reference to pension rules (in which the family pensionary benefits have only been extended to the dependent children below 25 years of age) and held as under:-

"xx xx xx] Thus, the son (including adopted son) as included in the definition of dependent family member would not include a son who has attained the age of 25 years and we are required to give this interpretation as per the rules of harmonious construction of the statutes. Once the son who has attained the age of 25 years cannot be said to be dependent and is also not entitled for grant of any pensionary benefits as per the pensionary rules, he could not be said to be dependent for the purpose of compassionate appointment also".

For the reasons quoted above, the Jodhpur Bench of this Tribunal (on examination of all aspects of the matter) held that the children above 25 years of age are not to get the compassionate employment. For the reasons of the fact that all the three dependent children (Applicants) are above 25 years age, they are not entitled to get compassionate employment benefits. However, the Learned Counsel for the Applicant, during the course of hearing pointed out that at the time of the death of the father of the Applicant Nos. 1, 3 & 4 (as also even at the time of rejection of the grievance of the Applicants for providing employment on compassionate ground) the Applicant No. 1 was below 25 years age and since none of the objections raised by the Respondents are sustainable in the touch stone of the judicial scrutiny, the Applicant no. 1 is entitled for the benefits of the compassionate appointment; as he was below 25 years of age at the time of the death of the Govt. servant.

In the above said premises, while disposing of this Original Application, the Respondents are hereby directed to examine the case of the Applicant No.1 afresh in the light of the discussions made above and if it is a fact that the Applicant No.1 was below 25 years of age at the time of the death of his father then the Respondents should reconsider his case for providing employment assistant; after assessing the indigent condition of the family; which is the predetermining factor. This observation is necessitated in view of the law pronounced by the Hon'ble Apex Court of India in the case of Y.V. RANGAIAH AND OTHERS vs. SRENVASA RAO AND OTHERS reported in AIR 1983 SC 852 ;P. MAHENDRAN AND OTHERS vs. STATE OF KARNATAKA AND OTHERS reported in AIR 1990 SC 405 and by the Hon'ble High Court of Orissa in OJC No.811 of 1990) decided on 26.4.1991 in the case of GAYADHAR SAHOO vs. STATE OF ORISSA AND OTHERS (wherein it has been held that Rules governing the field at the time of occurring a vacancy should be the determining factor and new amended Rule has no application) and, on the same analogy since at the time of death of the father of the Applicant No.1, he was below 25 years, the Jodhpur Bench decision (relied on the above) shall have no application, if it is determined by the Respondents, on examination, that he was below 25 years

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DA 1459/0
at the time of death of his father.

Send copies to parties.

~~MEMBER (JUDICIAL)~~

24/7/04

Copies of order of 24/7/04
issued to council for less
orders.

J
23/7/04.

Copies of order
of 24/7/04 sent
to all respects.

J
4/8

J
24/7/04