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O.A.NO. 274 OF 2004.

Order dated: 24-03-2006.

Nilamadhab Das Pattanayak, the father of the Applicant, was a Senior Clerk under the Director Central Rice Research Institute at Cuttack/Orissa. As a consequence of a road accident, said Nilamadhaba died prematurely, on 29-01-1997 leaving behind his widow, one minor son(the present Applicant) and two minor daughters in a distress condition. On 17-06-2000, the widow mother of the Applicant applied for an employment assistance (on compassionate ground) in favour of the present Applicant; who has, acquired B.Com qualification. Under Annexure-A/4 dated 04-05/10/2000, the Respondents intimated to the widow mother of the Applicant that the request (for providing employment on compassionate ground) will be considered in due course. Thereafter when repeated representations did not yield any result, the Applicant approached this Tribunal with the present Original Application filed under section 19 of the Administrative Tribunals Act, 1985; wherein he has prayed for a direction (to the Respondents) to provide him an employment on compassionate ground.

2. Respondents in their counter (filed on 14th September, 2004) have enumerated that as per the guidelines (dealing with the case for providing employment assistance to one of the legal heirs of a deceased

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Government servant), the case of the Applicant will receive due consideration. It has been stated, in the counter, that in the meantime all the dues of late Das Pattnayak, including family pension, have been paid to the family.

3. Applicant has also filed a rejoinder to the counter filed by the Respondent-Department reiterating the stand taken in his Original Application which has been taken note of.

4. This Original Application was listed for admission on 10-06-2004; when this Tribunal, while asking the Respondents to file their counter, observed that "Pendency of this case , however, shall not stand on the way of the Respondents to look to the grievances of the Applicant (and his mother) which they should do by 30th of July, 2004". Apparently, after receipt of notice in the present case, the Respondents have filed a Misc. Application No. 592 of 2004 stating therein that the case of the Applicant is still under consideration for providing employment assistance, on compassionate ground, as intimated to him under Annexure-A/8 dated 05.10.2000. It has further been pointed out that as against the vacancies of 5% falling under direct recruitment, there are other candidates waiting for employment on compassionate ground and, as in the present, there is no vacancy, the Applicant would be provided such employment as and when

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his turn comes. The Respondents by producing a letter under Annexure-R/4 dated 13th July, 2004, have pointed out that this fact has also been duly intimated to the Applicant.

5. Heard learned counsel appearing for both sides and perused the materials placed on record.

6. From the pleadings of the parties, it is now clear that due to indigent/distress condition of the family, the Respondents found the case of the Applicant to be a deserving one to be provided with an employment assistance; but for the reason of Government restriction of keeping only 5% of total vacancy of a year for grant of compassionate appointment, the Applicant could not be accommodated immediately. By placing reliance on a decision of this Tribunal (rendered in the case of Raghunath Pradhan vrs. Union of India reported in (2001) 2 ATT (CAT)452), and on the income certificate granted by the competent authority, learned counsel appearing for the Applicant has argued that as the said policy (of restricting the compassionate appointment up to a maximum 5% of direct recruitment post of a year) is anti thesis to the public policy, this is a fit case where direction should be given to the Respondents to provide employment assistance to the Applicant immediately in order to over come the indigent/distres condition of the family. It is to be noted here that the order imposing restriction of

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granting compassionate employment up to 5% of the direct recruitment vacancies is not under challenge in this O.A. Restriction of 5% quota on compassionate appointment has also been received due approval of the Hon'ble Supreme Court in very many cases, in the meantime. Therefore, I am not inclined to interfere with such decision. But from the documents produced by the Respondents under Annexure-R/1 series dated 2nd September, 1998 it is seen that the power to relax limit of 5% of direct recruitment vacancies for making compassionate appointments has been vested with the Secretary in the Ministries/Departments of Government of India and that, a norm of 6 to 8 weeks has been recommended to be fixed for providing employment on compassionate ground. It is not in dispute that under ICAR there are many organizations functioning through out the country. It is also not in dispute that the family members were the dependant on the deceased Govt. Servant and after his death, the family members are continuing in indigent/distress condition; for which the Respondents have found the case of the applicant to be a deserving one to be provided with an employment assistance on compassionate ground. By various interpretation given by the Apex Court of India, the right to life is not merely confined to physical existence but it includes within its ambit the right to live with human dignity. It has also proceeded to say that right to live is not restricted

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to mere animal existence. It means something more than just physical survivals. The right to live is not confined to protection of any faculty or limb through which life is enjoyed or the soul communicates with outside world but it also includes the right to live with human dignity and all that goes along with it the bare necessities of life, such as adequate nutrition, clothing and shelter and it includes facilities for reading, writing and expressing in diverse forms freely moving about and mixing and communicating with fellow human being. CRRI, Cuttack is a small organization and persons waiting after being approved for appointment on compassionate ground may not get any appointment for years together which is definitely not the intention of the legislation while issuing the scheme of providing employment assistance. Employment Assistance is provided in order to over come the distress and indigent condition of the family of a deceased Government servant; which they faced after the death of the only bread earner. Employment assistance is not the substitute of the death of the bread earner and such appointment is a solace means of survival of the deceased family .

7. Recently, while making judicial scrutiny of the orders of this Tribunal, in a similar matter, the Hon'ble High Court of Orissa in the case

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of UNION OF INDIA & ORS. Vs. PURNA CHANDRA SWAIN (W.P.(C)

No.13377 of 2003 disposed of on 08-11-2005) observed as under:-

“For the foregoing discussions, we direct that in case any vacancy was existing in any other department during the period when the application for compassionate appointment of the opposite party remained pending and in fact was not considered, he shall be entitled to be considered now, as there is definite provision in the rules that appointment on compassionate ground should be provided in any vacancy existing in the department other than where the deceased employee was serving. Since that provision was not followed in the case of the Opposite Party, he should not be a sufferer for the slackness on the part of the petitioners. Therefore, his appointment is liable to be considered on that ground. It is also to be considered whether the family of the deceased is in distress condition or not and on that ground also the appointment of the petitioner on compassionate ground is liable to be considered. It is also to be seen as to whether any dependants of any of the deceased employee who died after the death of the father of the opposite party were, in fact, given appointment in any department of the Central Government other than that in which the deceased employee was working, and if so, the opposite party was entitled to be considered for appointment on compassionate ground before the appointment of those dependants. The petitioners are directed to implement this order within three months from today”.

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8. Undisputed facts of this case are that the father of the Applicant breathed his last, prematurely, on 29-01-1997 ; while serving as a Senior Clerk under the ICAR/CRRI, Cuttack; leaving behind his widow and two minor daughter and one son(present Applicant). As per the instructions of the Government of India, adopted by the ICAR, in order to remove the distress conditions of the family, the Respondents considered the case of the Applicant for employment on compassionate ground . It appears that the Applicant could not be accommodated (due to want of vacancy under the compassionate appointment quota/ 5% of the direct recruitment vacancies) on the face of the scheme that came into force w.e.f. 09-10-1998. It is seen that at that time, the Government orders (to set apart only 5% of the total vacancy of a year, for grant of employment on compassionate ground) dated 09-10-1998 was not available to be imposed/made applicable to the case of the Applicant. Had the grievance of Applicant been considered in right prospective, he could have been accommodated. Cause of action having been arisen in the year 1997, subsequent instruction dated 09-10-1998 (restricting appointment on compassionate appointment to the tune of 5% of the direct recruitment vacancies) has no application to the case of the Applicant for the same having no retrospective applicant; as per the law laid down bythe Hon'ble Apex Court of India in the case of **Y.V.RANGAIAH**

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AND OTHERS vrs. J. SREENIVASA RAO AND OTHERS (reported in AIR 1983 SC 852) and (b) in the case of **P.MAHENDRAN AND OTHERS Vrs. STATE OF KARNATAKA AND OTHERS** (reported in AIR 1990 SC 405) that executive instruction has no retrospective application.

9. In the light of the discussions made above, it is crystal clear that although according to the Respondent-Department the Applicant deserves to be appointed on compassionate ground but for the reason of the restriction of 5%, he could not be accommodated. The Respondents are, therefore, directed to reconsider the case of the Applicant for providing employment assistance in the light of the discussions made above, within a period of 30 days from the date of receipt of a copy of this order.

In the result, this O.A stands disposed of by leaving the parties to bear their own costs.


(M.R.MOHANTY)
MEMBER(judicial)