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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.196 OF 2002
Cuttack, this the 9th day of July, 2003

JYOSNA RAO.

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APPLICANT.

:VRS.:

DIRECTOR,
Department of SISI &
another.

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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? No.

Y. S. Mohanty
09/07/2003
(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH; CUTTACK.

ORIGINAL APPLICATION NO. 196 OF 2002
Cuttack, this the 9th day of July, 2003.

CORAM:

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

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JYOSNA RAO,
W/o. Late Bhima Rao,
At- Oriya Bazar (Baunsagali),
Dist. Cuttack,
At present : Netaji Nagar,
Patisethy Colony, Gr. No. VII,
PO/PS: Madhupatna,
Dist. Cuttack.

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APPLICANT.

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

: Versus:

1. The Director, Department of SISI & Small Industries Service Institute Vikash Sadan, College Square, Cuttack.
2. The Development Commissioner, Small Scale Industries, Nirman Bhavan, 7th Floor, New Delhi-11.
3. Union of India represented through the Secretary, Ministry of Industry Department of SISI of ARI, New Delhi-11.

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RESPONDENTS.

By legal practitioner : Mr. A. K. Bose,
Senior Standing Counsel.

O R D E R

MR. MANORANJAN MOHANTY, MEMBER (JUDICIAL) :-

Consequent upon sad demise of her husband (Bhima Rao, a Wash Boy working in the Departmental Canteen under the Director of S.I.S.I. at Cuttack) untimely on 04-07-2001, the Applicant (Jyosna Rao) applied for an employment on compassionate ground on 19-09-2001. Her said representation not having been responded she has come up in this Original

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Application under Section 19 of the Administrative Tribunals Act, 1985 with prayer for a direction to the Respondent-Department to give her an employment so that she can over-come her indigent condition. It is the case of the Applicant that, as per Annexure-2 dated 07-03-2002 her case for compassionate appointment was in active consideration; but she has not, as yet, received any orders. During hearing, Mr. D. P. Phalsamant, learned Counsel appearing for the Applicant submitted that the post held by the husband of the Applicant is still lying vacant and, in the said circumstances, the Respondent-Department ought to have considered her case for providing her a compassionate appointment, without any delay; as the sole and whole purport of providing compassionate appointment (as enunciated by the Honourable Apex Court, time and again) is to allow the Dependents of the deceased Government servant to tide over the sudden jerk (in the family) due to the premature death of the sole bread winner.

2. The Respondent-Department have filed a counter contesting the case of the Applicant, as raised in the Original Application, for a compassionate appointment. They have urged two grounds, in the counter, in opposing the prayer (for compassionate appointment) of the Applicant. The relevant portion of the counter (at para-7 thereof) are extracted below for a ready reference:-

*(1) xxx, It is submitted that the Applicant has been granted family pension of Rs. 1607/- per month and she has also been granted lumpsum amount of group insurance of Rs. 17,373/- and DCRG of Rs. 1,00,233/-, G.P.F. Rs. 6,137/- and Leave encashment of

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Rs.153/-, LIC policy of Rs.55,000/-..As per the scheme of DORT the financial status of the dependant of the deceased employee has to be taken into consideration while the case of the compassionate appointment and it is felt that the family is not indigent in the facts and circumstances of the case".

(ii) The deceased family Late Bhima Rao was working as a wash boy in the Tiffin Room of this office and the Tiffin room is on the verge of closure, as it is not giving the desirable service. During the statutory audit from A.G. Office it has been suggested to close the Tiffin room and the copy of the report as in this regard as annexed herewith as Annexure-R/1. Apart from this it has already been submitted that the quota for compassionate appointment is 5% of direct recruitment vacancy and it has already been exhausted and there is no scope to get the appointment. Also as the Tiffin room is going to be closed the vacancy of washboy is not required to be filled up".


3. As to the first objection of the Respondents, raised in the counter, that the Applicant having received terminal benefits (like family pension of Rs.1607/- per month etc) her case cannot be said to be of an indigent one. On the other hand, Mr. Dhalsamant, the learned Counsel appearing for the Applicant strenuously urged that this Tribunal, following the decision rendered by the Hon'ble Supreme Court of India in very many cases in past including the case of BALBIR KAUR AND OTHERS VRS. STEEL AUTHORITY OF INDIA LTD. AND OTHERS (reported in 2002(2)ATT (SC) 255) have held that the terminal benefits cannot be the criterion to adjudge a family (of a prematurely deceased Govt. employee) to be not an indigent one and, therefore, Mr. Dhalsamant prayed that this Tribunal should direct the Respondent Department to reconsider the case of the Applicant, in consonance with the consistent view taken by the Hon'ble

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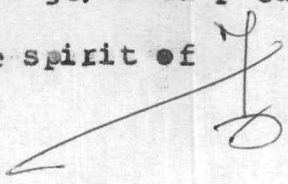
Apex Court of India and that of this Tribunal rendered in the case of (1) MINA KUMARI MOHANTY AND ANOTHER VRS. UNION OF INDIA AND OTHERS (reported in (1994) 2 ATT (CAT) 120; (2) RANKANIDHI SAHU VRS. UNION OF INDIA AND OTHERS (reported in 2002(2)1 CJD (AT) 21 and (3) in the case of SANKARSHAN SAHU VRS. UNION OF INDIA AND OTHERS (reported in 95 (2003) CLT 13 (ATC)).

4. As regards the point raised by the Respondent-Department pertaining to non-availability of 5% quota set-apart for compassionate appointment (i.e. 5% of the direct recruitment vacancy), Mr.A.K.Bose, Learned Senior Standing Counsel for the Union of India submitted that at present 5% quota against direct recruitment (for compassionate appointment) having been exhausted, the Respondent-Department are undone to consider the case of the Applicant for providing her a compassionate appointment. Rebutting this plea of Mr.Bose, Shri Dhalsamant, submitted that this is a technical ground which should not stand on the way of the poor Applicant; inasmuch as the Respondent-Department have not come out with any conclusive evidence in support of their claim to show that 5% compassionate appointment quota vacancies against direct recruitment have since been exhausted nor have they shown their bona fide attempt towards the Applicant, by aducing the vacancy position for the better appreciation of the facts by this Tribunal. Shri Dhalsamant further submitted that the very post in which the husband of the Applicant was working is still vacant and, such post (of wash boy) being essential for a staff canteen, the Applicant can be posted as against that post.



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5. I have considered the rival submissions made by the learned counsel appearing for both the sides. I am entirely in agreement with Mr. Phalsamant, learned Counsel appearing for the Applicant, that this Bench has been, by following the decision in the case of Balbir Kaur (supra) consistently taking a view that terminal benefits cannot be the criterion to adjudge the indigent condition of the family, and, therefore, the plea as taken by the Respondents in this regard is hereby over-ruled. As regards the plea of the Respondents pertaining to non-availability of vacancies to be given to the Applicant (on compassionate appointment basis), I am to note that the vacancy of wash-boy of the Canteen is still vacant; as against which the Applicant can be appointed and that, merely because the Audit party has recorded objection for continuance of the Canteen; the Respondents ought not to have kept the Applicant away therefrom; especially because the very Audit report has suggested to adjust the staff engaged in the Canteen to be deployed elsewhere. At the same time it is not to be forgotten that if 5% quota against the direct recruitment, as urged by the Respondent-Department, is taken into account; in each and every circumstances of the case, an Applicant / person for a compassionate appointment will remain in oblivion to mitigate the hardships caused due to the premature death of the sole bread winner and, therefore, I am of the view that this softerfuge, as adopted by the Respondent-Department, is against the spirit of



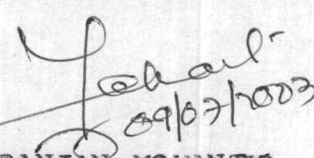
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compassionate appointment. Thus, the second plea of the Respondent-Department is also hereby over ruled.

6. Having regard to the facts and circumstances of the case, I direct the Respondents (particularly Respondent No.1, the Director of SISI at Cuttack) to reconsider the case of the Applicant for providing her a compassionate appointment in the light of the discussions made above, and to provide her an employment on compassionate ground as against the vacancy caused due to the death of her husband (as she has got the necessary qualifications to do the said job) or in any other (Group D posts, within a period of 90 (ninety) days from the date of receipt of a copy of this order.

7. With the above observations and directions this Original Application is disposed of; by leaving the parties to bear their own costs.


(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)