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ORIGINAL APPLICATION NO.408/04

Order dated 12.12.05

One Sapneswar Bhoi was engaged as a postman in Sambalpur Head Post Office. He died prematurely on 06.03.1998 leaving behind his widow, two young sons and two un-married daughters. In order to overcome the immediate distress condition of the family, prayer was made to provide a compassionate employment to the son of said Sapneswar Bhoi. On verification it was found that the family of said Sapneswar Bhoi is in distress; for which it was recommended, on 7.2.2000, to provide a compassionate employment to Applicant No.2, the eldest son of the deceased Postman.

2. Relevant portion of the recommendation dtd.7.2.2000 (Annexure-A/1) is extracted herein below:

- " 1) Late Sapneswar Bhoi, postman at Sambalpur HO, has expired on 6.3.98 while in service. His date of birth was 20.4.1949 and he would have retired from Govt. Service in the normal course on 30.4.2009. Since the official died in harness, this is a fit case for compassionate appointment. In this case the death certificate dtd.28.4.98 issued by the health officer, Sambalpur Municipality was verified and found genuine.
- 2) As per the legal heir certificate issued by the Tahasildar, Jharsuguda in Misc. Case No.212/99 dtd. 23.8.99, Late Sapneswar Bhoi had left behind his widow wife and two sons and two daughters. Out of whom one son and one daughter are minor. The widow wife Mrs. Hirabati Bhoi had sponsored her son Sri Tambhradwaja Bhoi for compassionate appointment in place of his father. The said candidate Sri Bhoi has passed HSC Examination and hence fulfils the required qualification for a post man.
- 3) The family of the deceased official has got 0.54 acres of land from which they are having income of Rs.3000/- per year. There is no other asset for the family except the pension. In addition to this, the family has to bear education of all the four

children and the marriage of two daughters. Therefore the family is in indigent condition.

- 4) All the documents accompanied with this synopsis were verified for the office of issue and found genuine.
- 5) There is vacancy at Sambalpur HO in Postman cadre in which the applicant can be accommodated. The case is recommended. As per post based roster there is no vacancy in compassionate quota in postman cadre in this division. As the family particulars furnished in part-II of synopsis tallied with legal heir certificate issued by Tahasildar, Jharsuguda, there is no need of its verification."

3. Despite such recommendation, the higher authorities/ Circle Relaxation Committee of Orissa Postal Circle rejected the recommendation in question. The said rejection order was communicated under Annexure -A/2 dtd.28.1.02 on the ground that the family had terminal benefit of Rs.54,989/- and family pension at the rate of Rs.1275/- + DR per month. The said rejection order under Annexure-A/2 dtd.28.1.02 was subject matter of the challenge before this Tribunal in O.A.Nb.198/02 which was allowed on 27.9.02 on the ground that the terminal benefit/pension was not to be considered, for determining the indigent condition of a family, at the time of consideration of the case for compassionate appointment. The said view was taken by this Tribunal relying on the decision rendered by the Hon'ble Supreme Court of India in the case of Balbir Kaur and another Vrs. Steel Authority of India Ltd. & Ors. reported in 2002(2) ATT(SC) 255 and that of this Tribunal rendered in the case of Rankanidhi Sahoo Vrs. Union of India and others (reported in 2002(2) 1 C.J.D. (AT) 21) and that of the case of Mina Kumari Mohanty & another Vrs. Union of India and ors. reported in (1994) 2 ATT(CAT) 120.

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4. While allowing the said O.A.No.198/02, the Respondents were directed to reconsider the case of the family of Sapneswar Bhoi within a time frame. It appears the authorities reconsidered the matter but again refused to provide a compassionate appointment in favour of the present applicant No.2 (Tambhradhwa Bhoi) on the ground that vacancies are not available to accommodate the Applicant No.2 by providing him a compassionate employment. In order to refuse granting him compassionate employment, the Respondents have relied on DOPT Circular No.14014/18/2000-Estt. (D) dtd.22.6.01 and DOP Memo No.24-1/2001-SPB-1 dtd.04.07.2001 and DOP Memo No.24-1/99-SPB-1 dtd.26.4.01. By relying on these Government circulars, the Respondents/CRC/CPMG Orissa have disclosed that because of non-availability of vacancy under compassionate quota, the case of the applicant could not receive consideration. They have also disclosed that while considering the matter (during 21.11.01) they gave employment to the most deserving cases and, presently, due to non-availability of adequate vacancies in the compassionate employment quota, they are to regret in the matter.

5. On the face of the rejection order under Annexure-A/4 dtd.21.1.03 (communicating the decision of CRC for re-consideration) the applicants (the widow and son of late Sapneswar Bhoi) filed the present O.A. under section 19 of AT Act, 1985.

6. The Respondents, by filing a counter, have supported their stand as raised in Annexure-A/4 dtd.21.1.03.

In course of hearing, Mr. R. N. Mishra, Id. Addl. Standing Counsel representing the department have disclosed that by a circular issued on 9.10.98, the Government of India fixed 5% of the total vacancy (by DR) for giving employment under compassionate assistance quota and that, thereafter, on various occasions Government circulars were issued repeatedly (warning their various departments of government) to restrict engagement under compassionate quota to the said 5% of the total vacancies (of an year) ^{ment} ~~ment~~ for direct recruitment. Mr. D. P. Dhalsamant, Id. Counsel appearing for the applicant, by relying on the following judgements of the Hon'ble Apex Court of India and that of the ^{Hon'ble} Orissa High Court, pointed out that the Postman named Sarneswar Bhoi having died prematurely on 6.3.98, the circulars governing the field as on that day were ^{only} ~~to be~~ made applicable to the distress family for providing the compassionate appointment and the quota fixed by the Government of India (by virtue of subsequent circulars/guidelines) are not to stand on the way of the department and the applicants for providing a compassionate appointment;—

- a) Y. V. Rangaiah and others Vrs J. Srinivasa Rao and others (reported in AIR 1983 SC 852)
- b) P. Mahendran & Ors. Vrs State of Karnataka & Ors. (reported in AIR 1990 SC 405)
- c) 97 (204) CLT page 532 Gayadhar Sahoo & 3 others Vrs. State Govt. of Orissa decided by the Hon'ble High Court of Orissa on 26.4.91.

7. Having perused the materials placed on record and having heard the Counsel appearing for both the parties, it is to be accepted that for the reason of views expressed

by the Apex Court in the case of Y.V.Rangaiah (Supra) that 'the vacancies, which occurred prior to the new rules came into force, would be governed by the old rules that were existing on the date of vacancy and not by the subsequent rules/guidelines.'

In the case of P.Mahendran (supra) the Hon'ble Supreme Court held it clearly that;

"..... If a candidate applies for a post in response to advertisement issued by Public Service Commission in accordance with recruitment Rules, he acquires right to be considered for selection in accordance with the then existing rules. This right cannot be affected by amendment of any Rule, unless the amending Rule is retrospective in nature."

In the case of Gayadhar Sahoo (supra) the Orissa High Court also held as under:

"We hold that inasmuch as the process for filling up the vacancy, which occurred prior to 3.6.1988, and commenced before Rule 8(2) (b) was substituted by Rule 8(3), we are of the view that the process was to be completed and the vacancy was to be filled up following the provisions contained in Rule 8(2) (b) and not by following the points that has contained in Rule 8(3)."

8. In the present case while refusing to grant compassionate appointment to the Applicant No.2 (Tambradhwaja Bhoi), the Respondents have relied on several circulars which were issued subsequently and, therefore, the impugned order of rejection issued under Annexure-A/4 dtd.21.1.03 is bound to be set aside; which is hereby done.

9. The stand of the Respondents that there was no vacancy is not acceptable because; the report under Annexure-A/1 discloses about existence of a vacancy. That Annexure-A/1 also suggested to provide employment to the Applicant No-2 against the vacancy referred to in

Annexure-A/1. Therefore the Respondents have got no escape but to provide an employment to the Applicant No.2.

10. In the aforesaid premises while setting aside the rejection order under Annexure-A/4 dtd.21.1.03, the Respondents are hereby called upon to give full consideration to the case of the Applicant No.2 for providing him a compassionate employment. The exercise should be completed within a period of 90 days from the date of receipt of this order.

11. Accordingly, this O.A. is allowed. No costs.


12/12/2005
Member (J)