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O.A.No.856 OF 2004.

ORDER DATED: 24-03-2006.

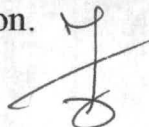
Applicant's father, Prananath Dalai was in employment as the Sub Postmaster of Tangi Sub Post Office under Khurda Head Post Office. Said Sub Postmaster died prematurely while he was in service, on 17-05-2000. The family of the deceased Government servant got some terminal benefits including family pension per month. Applicant's father Prananath Dalai a member of Scheduled Caste, left behind the following legal heirs:-

Satyabhama Dalai- widow  
Pratima Das- married daughter  
Raja Kumar Dalai-Son  
Jayanta Kumar Dalai-Son  
Anita Dalai- unmarried daughter.

After the death of the father of the Applicant, in order to mitigate the hardship caused due to death of the only bread earner of the family, the applicant applied for employment assistance on compassionate ground in order to shoulder the responsibility of the family/remove the distress condition of the family. The said grievance of the Applicant was turned down by the CRC as communicated in letter dated 26.12.2001 on the sole consideration that the family has got Rs. 4.96 lakhs as terminal benefits and also getting family pension of Rs. 3400 + D.R. p.m., it is not a case of indigence. The said decision of the CRC was under challenge in an earlier O.A.No.981 of 2002 and after taking note of various decisions rendered by the Hon'ble Apex Court of India as also by this Tribunal that terminal benefits cannot be taken into consideration while assessing the indigent condition of a family, this Tribunal in its order dated 24.09.2003 quashed the order of rejection dated 26.12.2001 and directed the Respondents to reconsider the grievance of the Applicant for providing an employment assistance to the Applicant.

Respondent Department, pursuant to the directions of this Tribunal reconsidered the case of the Applicant and rejected the grievance as per the letter under Annexure A-9 dated 26<sup>th</sup> February, 2006 on the following grounds:-

- (a) There were three vacancies only in PA cadre for the year 2002 in compassionate quota whereas 32 candidates were in the fray for consideration.



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- (b) In accordance with the instructions contained in DG Posts, New Delhi letter No. 24-1/2001-SPB.I dtd. 4.7.2001 and letter No. 24-1/99-SPB.I dated 26.4.2001 only the most deserving cases were considered as per the availability of vacancy and all other cases including the case of the Applicant were duly considered and rejected due to non-availability of vacancy in PA cadre;
- (c) As per extant instructions circulated vide D.G.Post New Delhi letter No.24-1/99- SPB-I dated 26-04-2001 and No. 24-1/99-SPB-I (Pt.) dated 14.1.2002 the current cases of indigence will get precedence over past cases;
- (d) According to the instructions of the Deptt. of Personnel and Trg. OM No. 42012/4/200-Estt.(D) dated 24.11.2000 read with DG Posts New Delhi letter No.24-1/99-SPB-I dated 08-02-2001, no waiting list should be maintained and compassionate appointment should be recommended within the prescribed limit i.e. 5% of the direct recruitment vacancy approved by the Screening Committee for being filled up;
- (e) Hon'ble Supreme Court vide judgment dated May 4, 1994 in case of U.K.Nagpal versus State of Haryana and others (JT 1994 (3) SC 525 has held that offering compassionate appointment as a matter of course irrespective of the financial condition of the family of the deceased is legally impermissible. Further the Apex Court in case of Himachal Road Transport Corporation versus Dinesh Kumar (JT 1996 (5) SC 319) on May 7, 1996 and Hindusthan Aeronautics Limited versus Smt. A.R. Thirumalai (JT 1996 (9) SC 1977 on October 9, 1996 pronounced the judgment that appointment on compassionate grounds can be made only if a vacancy is available for that purpose.

On judicial scrutiny of the grounds taken by the Respondents/CRC while rejecting the grievance of Applicant, it is clearly evident CRC did not apply its mind while considering the case of the Applicant. The case of the Applicant ought to have been considered against the vacancy stood as on

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17.05.2000; which is the date of death Govt. servant. Recently while making judicial scrutiny of the orders of this Tribunal, the Hon'ble High Court of Orissa in the case of UNION OF INDIA & ORS. Vrs. PURNA CHANDRA SWAIN (W.P.(C) No.13377 of 2003 disposed of on 08-11-2005) **observed as under:-**

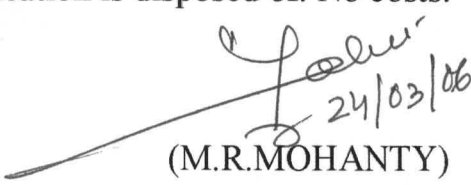
“For the foregoing discussions, we direct that in case any vacancy was existing in any other department during the period when the application for compassionate appointment of the opposite party remained pending and in fact was not considered, he shall be entitled to be considered now, as there is definite 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

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compassionate ground before the  
appointment of those dependants. The  
petitioners are directed to implement this  
order within three months from today”.

That apart, the Respondents are estopped under law to take into consideration any other grounds rather than taken in the earlier order of rejection. In view of this, the impugned order of rejection under Annexure-9 dated 26<sup>th</sup> February, 2004 is hereby quashed and Respondents are hereby directed to asses the indigent condition of the family of the deceased Government servant leaving apart the retrial dues which the family has got and in case it is found that the family is in indigent condition, consider the case of the Applicant for providing employment assistance against the vacancy available at the time of death of the Govt. Servant. The entire exercise should be completed by the Respondents within a period of 30 days from the date of receipt of a copy of this order. With the above observations and directions this Original Application is disposed of. No costs.

  
(M.R. MOHANTY)  
MEMBER (JUDICIAL)