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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 875 of 2004
Cuttack, this the 16th day of February, 2007.

JAYANTA KUMAR MOHANTY APPLICANT.
Versus
UNION OF INDIA & ORS. RESPONDENTS

FOR INSTRUCTIONS

1. Whether it be sent to reporters or not? *yes*
2. Whether it be circulated to all the Benches of the Tribunal or not? *ym*

B.B. Mishra
(B.B. MISHRA)
MEMBER (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 875 of 2004
Cuttack, this the 16th day of February, 2007.

C O R A M:-

THE HON'BLE MR. B. B. MISHRA, MEMBER (ADMN.)

Shri Jayanta Kumar Mohanty,
Aged about 25 years,
S/o. Late Balakrishna Mohanty,
At- Nadigaon, Po-Kudeinadigaon,
Ps-Sor, Dist.-Balasore.

.... APPLICANT.

BY legal practitioner: M/s. S.K. Das,
R.N. Mishra,
S.K. Mishra,
Advocates,

-VERSUS-

- 1 Union of India, represented through its Secretary in the Department of Posts, New Delhi.
2. The Chief Post Master General,
Orissa Circle, Bhubaneswar.
3. Superintendent of Post Offices, Balasore, At/Po/Dist. Balasore.

.... Respondents

By legal practitioner Mr. U. B. Mohapatra, SSC

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ORDER

MR. B.B.MISHRA, MEMBER(A):

Factual matrix of the matter is that the father of applicant Late Balakrishna Mohanty while serving as Postman in Soro Post Office in the district of Balasore/Orissa died prematurely on 27.01.2002 leaving behind the widow/mother, one unmarried daughter/sister, and two sons of which applicant is one of them. In order to meet the hardship caused to the family, the applicant applied for employment on compassionate ground which was rejected by the CRC on the ground that there is no vacancy and both the sons of the deceased employee are major and the liability of the family has not much and this fact was communicated to the applicant under Annexure-3 dated 01.03.2004. On receipt of the aforesaid order of rejection, the applicant submitted an appeal to the Chief Postmaster General, Orissa Circle, Bhubaneswar praying therein to reconsider the grievance of the applicant as the consideration was made based on incorrect facts that there is no liability of the family. No reply on the said representation having been received by the applicant, he has approached this Tribunal in the present

Original Application filed under section 19 of the Administrative Tribunals Act, 1985 praying to quash the order of rejection under annexure-3 and to direct the respondents to reconsider the case of applicant for providing employment on compassionate ground.

2. Respondents have filed their counter stating therein that as per the DOP&T instructions on the subject, only 5% vacancies falling under direct recruitment quota in Gr. C & D vacancies of a particular year should be filled by the applicants seeking employment on compassionate ground. The father of applicant died in the year 2002 and as per approval of the Directorate conveyed vide letter dated 18.09.2003 there were 52 of posts of Postal Assistant, 13 posts of Post man and 12 posts of Gr. D to be filled up under direct recruitment in Orissa circle for the year 2002. Out of the above vacancies, under the compassionate quota of 5% it comes to Postal Assistant -3, Postman-1 and Gr. D-1. There were as many as 32 applicants for postal Assistant cadre, 14 applicants for postman cadre and 20 applicants for Gr. Cadre including 7 old cases. The CRC examined all the case taking into consideration various yardsticks fixed in the instructions of the DGP&T instructions and the CRC only

recommended only the most deserving limited to the number of vacancies available under compassionate appointment quota and rest of the cases were rejected and intimated. It has been stated that there being no infirmity in the matter of consideration and the cases of all the candidates were considered keeping in mind the financial condition of the family, its assets and liabilities, size of the family, number of minor sons and daughters, grown up unmarried daughters, availability of any member of the family and the number of vacancies available under compassionate quota vis-à-vis the circumstances leading to the death of the Government servant and age of the Government at the time of death. By stating so, they have opposed the prayer of the applicant.

3. In the rejoinder filed by the Applicant it has been submitted that there was no fair consideration of his case. Since the deceased left behind a large family out of which two members are physically handicapped and with the income of Rs.500/- per annum from the landed property besides family pension, it is not sufficient to maintain the family consisting of two handicapped person, the applicant himself and the

widow. Therefore, he has prayed for a direction to the respondents to reconsider his case.

4. In course of hearing, Learned Counsel for the Applicant has submitted that the entire saving of the family got exhausted due to the treatment of his father who was suffering from cancer and the marriage of one of his sisters. Since the deceased was the only earning member of his family after his death, the family members are facing a lot of difficulties to meet the minimum day to day requirement. But without application of mind, the grievance of applicant was rejected which needs reconsideration. On the other hand, Learned Senior Standing Counsel for the Respondents has submitted that the scope of judicial review on the administrative action is limited. The Courts and Tribunal can interfere in the matter of consideration if it is done incorrectly or unfairly. Since, the selection has been made correctly in accordance with the norms fixed on the subject, question of interference in the matter does not arise. It has been submitted that there was limited vacancy under the compassionate quota available of the recruitment year 2002. As per the instructions recommendations can only be made against the vacancy. Therefore, the

CRC, considering various aspects of the matter recommended for providing employment on compassionate ground only more deserving cases and rejected all other applications seeking appointment on compassionate ground. There being no infirmity in the matter of selection, he has prayed for dismissal of this OA.

5. I have gone through the Register of the CRC produced by Learned Senior Standing Counsel. Before coming to the conclusion on the submissions made by the learned counsel for both sides, I may reiterate that there would not have been any doubt in the mind of the candidates who have sought for appointment on compassionate ground which has been rejected by the Respondent-Department had the concerned department(s) followed the objective manner of consideration followed by the Ministry of Defence and suggested by this Tribunal time and again and they are as under:

Monthly income of earning member(s), income from property and points to be awarded:

(i)	No income	05
(ii)	Rs.1000 or less	04
(iii)	Rs. 1001 to 2000	03
(iv)	Rs. 2001 to 3000	02

(v)	Rs.3001 to 4000	01
(vi)	Rs. 4001 and above	Nil

No. of dependents:

(i)	3 and above	15
(ii)	2	10
(iii)	1	05

No. of unmarried daughters:

(i)	3 and above	15
(ii)	2	10
(iii)	1	05
(v)	Nil	

No. of minor children:

(i)	3 and above	15
(ii)	2	10
(iii)	1	05
(iv)	None	00

Left over service:

(i)	0-5	02
(ii)	Over 5 & upto 10 years	04
(iii)	Over 10 & upto 15 years	06
(vi)	Over 15 & upto 20 years	08
(vii)	Over 20 years	10

6. Until the above procedure is adopted by the Department while giving consideration to the grievance of applicants seeking employment on compassionate ground, such type of litigation is bound to come for judicial scrutiny. Therefore, it is high time that the Department issued an exhaustive circular/instructions in order obviate the suspicion coming to the mind of common man.

7. Coming to the grievance of applicant, on perusal of the CRC minutes/register, it is seen that the CRC recommended the cases of Radhagobinda Ashe, Bibhdutta Dalai and Sudhir Kumar PAradhan to be appointed against the three vacancies of PA and the name of Kedar Guru as against one vacancy of Gr. D and the name of Rajesh Kumar Ram as against one vacancy of postman. It is revealed that the Committee recommended the above five names taking into consideration the following:

RADHAGOBINDA ASHE-date of death of his father **17.02.2001**

As per synopsis papers widow, one son and five unmarried daughters including one handicapped;

- (1) None of the family members is in employment;
- (2) Income of the Widow Rs.500/- per annum from landed property. The Tahasildar has not included income from family pension;
- (3) Income of the applicant Rs.500/- per annum from landed property and other sources NIL total Rs.500/- per annum.

BIBHUDATA DALAI-date of death of his father **23.05.2002.**

As per synopsis papers widow two sons and four daughters, three are unmarried;

- (1) None of the family members are employed;
- (2) The income of the widow from landed property Rs.6000/- per annum and other sources Rs. NIL;
- (3) The income of the applicant from landed property Rs.3000/- per annum and other sources Rs. NIL.

SUDHIR KUMAR PRADHAN-date of death of his father **"22.08.2003"**

As per synopsis Mother, widow and three sons.

- (1) None of the family members is in employment;
- (2) The annual income of the widow from landed property is Rs.6500/- per annum;
- (3) The annual income of the candidate is Rs.2,600/- per annum from landed property and other source Rs.nil,

KEDAR GURU-date of death of the father "05.03.2002.

As per synopsis papers widow, two sons and one unmarried daughter.

- (1) None of the family members is in employment;
- (2) The annual income of the widow is Rs.1000/- from landed property and Rs.10,000/- from other sources. Total Rs.11,000/- per annum;
- (3) The family pension is not included in it;
- (4) Annual income of the candidate is Rs.1000/- from landed property and Rs.7,000/- from other sources total Rs.8000/- per annum.

RAJESH KUMAR RAM-Date of death of his father-"**19.02.2001**".

As per synopsis widow, six sons and three daughters. The daughters are unmarried.

- (1) None of the family members is in employment;
- (2) Income of the widow is Rs.14,000/- from other sources total Rs.14,000/- per annum;
- (3) Income of the applicant is Rs.14,000/- per annum.

Similarly, so far as the applicant is concerned, the CRC took note of the following:

JAYANTA KUMAR MOHANTY-date of death of his father "27.01.2002".

As per synopsis widow, two sons and two daughters one is unmarried;

- (1) None of the family members is in employment;

- (2) Income of the widow is Rs.1500/- from landed property and Rs.nil from other sources. The Tahasildar has not included income from family pension;
- (3) Income of the applicant is Rs.500/- from landed property and Rs. nil from other sources.

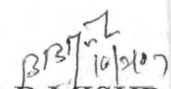
8. From the above it is clear that the case of Sudhir Kumar Pradhan had been considered and recommended by CRC for the vacancies of the year 2002 though his father died on 22-08-2003. Similarly though the father of Rajesh Kumar Ram died on 19.02.2001 and the father of Radhagobinda Ashe died on 17.02.2001, their cases have been considered against the vacancies of the year 2002. When admittedly the case of the applicant was considered by the CRC held on 14.01.2004 like the case of the Rajesh Kumar Ram, and Radhagobinda Ashe, the case of applicant ought to have been considered against the subsequent vacancies till the CRC convened and rejected the case of the Applicant.

9. Similarly, it cannot be said that the consideration made by the CRC is reasonable and fair . No explanation has been given by the Respondents as to how the case of Sudhir Kumar Pradhan received due consideration against the vacancies occurred prior to the death of his

father. Besides in comparison to the liabilities reported by the CRC I find no reason of giving priority to the cases of others vis-à-vis the case of Applicant. That apart, the fact that one son and one daughter(unmarried) of the deceased are physically handicapped had not been taken into consideration while rejecting the case of the Applicant. From this, it is clear that the Respondents have made the unequal becoming equal and thereby the case of the applicant has been rejected to accommodate less deserving candidates.

10. In the said premises, the order of rejection under Annexure-A/3 dated 1st March, 2004 is hereby quashed directing the Respondents to consider the case of the Applicant for providing employment on compassionate ground within a period of 60(sixty) days from the date of receipt of a copy of this order.

11. In the result, this Original Application stands allowed by leaving the parties to bear their own costs.


(B.B.MISHRA)
Member(A)