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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.**

ORIGINAL APPLICATION NO. 1278 of 2004

Cuttack, this the 17th day of January, 2007.

SUDHIR KUMAR NAYAK APPLICANT.
Versus
UNION OF INDIA & ORS. RESPONDENTS

FOR INSTRUCTIONS

1. WHETHER it be sent to reporters or not? *ym*
- i. WHETHER it be circulated to all the Benches of the Tribunal or not? *ym*

(Signature)
(B.B. Mishra)
MEMBER (A)

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ORIGINAL APPLICATION NO. 1278 of 2004

Cuttack, this the 17th day of January, 2007.

C O R A M:-

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

Shri Sudhir Kumar Nayak,
Aged about 46 years,
S/o. Late Madan Mohan Nayak,
Village : Sasanpadar, Post: Sasanpadar,
Via: Golanthara, Dist. Ganjam,
Ex-Branch Postmaster.

.... APPLICANT.

BY legal practitioner: M/s. D.K. Mohanty,
Advocates.

-VERSUS-

- 1 Union of India, represented through its Chief Postmaster General, Orissa Circle, Bhubaneswar, Khurda.
2. Postmaster General, Berhampur Region, Berhampur, Ganjam-3.
3. Senior Superintendent of Post Offices, Berhampur (Ganjam) Division, Berhampur, Dist. Ganjam.

. RESPONDENTS

By legal practitioner **Mr. B. Mohapatra, ASC.**

ORDER

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

Undisputed fact of the matter is that the father of the applicant expired on 26.12.1998, while working as GDSBPM of Sasanapadar BO in account with Golanthara SO under Berhampur Postal Division. To obviate the hardship caused to the family members, the applicant had sought for employment on compassionate ground. The aforesaid prayer of applicant was rejected on the grounds that (i) two brothers of applicant are in service under the Central Government ; and (ii) the deceased had only three month's service prior to his death which he challenged in OA No. 72/1999. This Tribunal after taking note of the submissions raised in the aforementioned Original Application and relying on various instructions available in the field, in its order dated 30.09.2002, while quashing the order of rejection directed the Respondent-Department to reconsider the case of the applicant for providing employment on compassionate ground. When without disclosing the reasons, the case of the applicant was again rejected vide order dated 05.01.2004, he approached this Tribunal in OA No. 250 of 2004 which was disposed of on 09.06.2004 with direction to the respondents to reconsider the case of the applicant within a

period of sixty days. The grievance of the applicant has again been rejected in order dated 30.08.2004 on the following ground:

- (i) Two members of the family are already employed;
- (ii) There is no condition of indigence in the case and also no other liabilities;
- (iii) Applicant is more than 43 years of age and he has managed his affairs till now.

2. Hence by filing the present Original Application under section 19 of the Administrative Tribunals, Act, 1985, the Applicant has prayed for quashing the aforesaid order dated 30.08.2004 (Annexure-A/1) with a direction to provide him an employment on compassionate grounds.

3. By filing counter, the Respondents have taken the same stand which were taken earlier and over ruled by this Tribunal. Therefore, it needs no repetition.

4. Heard learned Counsel for both sides and perused the materials placed on record.

5. Learned Counsel for the Applicant has submitted that though in similar circumstances, employment assistance has been provided, the applicant has been denied the employment as because he has approached this Tribunal time and again. He has also argued that there was no proper consideration of his case inasmuch as even though he has submitted necessary materials to show that the two brothers are residing separately

without rendering any assistance to the family members, yet the respondents rejected the case of the applicant ignoring such materials. Hence, he has prayed for reconsideration of his grievance. On the other hand, Learned Counsel for the respondents has argued that since the family has survived with the means of livelihood till date, as per the decisions of the Apex Court and the scheme for providing employment he has no claim to be appointed. He has also argued that since the employment on compassionate ground is not an alternate mode of appointment and more deserving persons are waiting for appointment, this case needs to be dismissed.

6. Undisputed position of the matter is that the appointment on compassionate ground cannot be a source of recruitment. It is merely an exception to the requirement of law keeping in view the fact of the death of the employee while in service, leaving his family without any means of livelihood. . In such cases, the object is to enable the family to get over the sudden financial crisis. Such appointments have, therefore, to be made in accordance with rules, regulations or administrative instructions taking into consideration the financial condition of the family of the deceased. It is also not in dispute that in the meantime eight years have elapsed from the date of death of the father of applicant. Numerous decisions of the Hon'ble Apex Court passed over a span of nearly one and half decades have laid down and

reiterated the principles which this Tribunal has to apply while considering the question as to whether employment on compassionate ground can be provided after such a long lapse of time. I do not think it is necessary to burden this judgment by referring to all of them except some recent pronouncements in which earlier decisions have been considered and reiterated. The general principle which has been laid down by the Hon'ble Supreme Court summarized in the case of **Umesh Kumar Nagpal v. State of Harayana and others**, (1997) 4 SCC 138. Relevant portion of the aforesaid decisions are quoted herein below:

"It appears that there has been good deal of obfuscation on the issue. As a rule, appointment in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interest of justice and to meet certain contingencies. One such exception is in favour of the dependents of an employee dying in harness and leaving his family in penury and without any merits of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependents of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus, to enable the family to tide over the sudden crisis. The object is; not to give a member of

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such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased and it is only if it is satisfied that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family.....The favourable treatment given to such dependent of the deceased employee in such posts has a rational nexus with the object sought to be achieved, viz. relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased, there are millions of other families which are equally, if not more, destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs of the family engendered by the erstwhile employment which are suddenly upturned.....Unmindful of this legal position, some Governments and public authorities have been offering compassionate employment sometimes as a matter of course irrespective of the financial condition of the family of the deceased..... The decision does not justify compassionate employment either as a matter of course....The only ground which can justify compassionate employment is the penurious condition of the deceased's family....The object being to enable the family to get over the financial crisis".

7. In another case **State of J & K and Ors. v. Sajad**

Ahmed Mir, 2006 SCC (L&S) 1195 applicant approached after long years

of delay, wherein Their Lordships while quashing the order of the Hon'ble

High Court have held that since the family had survived for such a long time

in spite of the death of the employee, there is no need to show exception to the general rule by way of providing employment on compassionate ground.

8. Since in this case it is proved that in spite of the death of the bread earner, the family (has) survived and a substantial period is over, there is no necessity to take leave of the normal rule of appointment and to show favour to one at the cost of several others, ignoring the mandate of Article 14. Hence, I find no merit in this OA which stands dismissed by leaving the parties to bear their own costs.

3/2/76
(B.B.Mishra)
Member(A)