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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.1295 OF 2004
CUTTACK THIS THE 19th DAY OF MAY 2006

Jasobant Nandi Applicant

Vrs.

Union of India and Others..... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ?
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ?

B317n
19/5/07
MEMBER (ADMN.)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.1295 OF 2004
CUTTACK THIS THE 19th DAY OF MAY 2006

CORAM:

.....
HON'BLE SHRI B.B.MISHRA, MEMBER (ADMN.)

Jasoanta Nandi, aged about 28 years, S/o. Sri Sridhar Nandi, illage-Patkura, P.O. Patkura, Dist. Cuttack at present staying at LIG House Building, V.S.S.Nagar, Bhubaneswar, Plot No.D/L 60, At-V.V.S. Nagar, Dist. Khurda.

..... Applicant

Advocate for the Applicant - M/s. A.K.Mishra, M.R.Mohapatra.

Vrs,

1. Union of India, represented through the Secretary, Department of Animal Husbandry and Poultry, Ministry of Agriculture, Krishi Bhawan, New Delhi-110001.
2. Joint Secretary to the Government of India, Ministry of Agriculture, Department of Animal Husbandry and Dairying, Room No. 190-B New Delhi-110001.
3. Director, Central Poultry Breeding, Bhubaneswar, Government of India, At-Nuapalli, Bhubaneswar. Dist. Khurda.

Advocate for the Respondents : Mr. U.B.Mohapatra (Sr. St. Counsel).

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ORDER

MR.B.B.MISHRA, MEMBER(ADMINISTRATIVE):-

Short facts of this case are that the father of the Applicant having been medically invalidated to discharge his normal official duties as Electrical Foreman in the Office of the Central Poultry Breeding, Bhubanewar retired from Government Service voluntarily with effect from 20-01-1998. Thereafter, he submitted representations under Annexure -5 series for providing employment assistance on compassionate ground in favour for the Applicant in order to over come the financial hardship/distress condition of the family. As no orders were passed on the said representations of the father of the Applicant requesting for employment assistance on compassionate ground, the Applicant has approached this Tribunal in Original Application No. 85/2001. The said O.A. No.85/2001 was disposed of on 11-03-2003 with the following directions:-

“Heard Mr. A.K.Mishra, Learned Counsel appearing for the Applicant and Mr. S.B.Jena, Respondents. Reiterating order dated 21-01-2002 of this Tribunal, we further direct that the Applicant may avail of necessary remedy with the Respondent-Department for his selection/appointment under Rehabilitation Assistance Scheme run by the concerned Department. We also direct the Respondent-Department to consider the application of the petitioner as per rules governing the scheme”.

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It is seen from the record that after the disposal of the said Original Application, the grievance for providing employment assistance on compassionate ground in favour of the Applicant was rejected and communicated under Annexure-7 dated 29th September, 2003 which is under challenge in this Original Applicant filed under section 19 of the Administrative Tribunals Act, 1985 with prayer to direct the Respondents to provide employment assistance on compassionate ground either in Gr. C or Gr. D post .

2. Respondents have filed their counter stating therein that the family of the Govt. servant are not in distress condition as the retired Govt. servant received Rs. 4, 59,645/- as terminal benefits apart from monthly pension of Rs. 3,168/- + DA + Rs.100/- towards medical allowance. It has been stated that there was no vacancy under 5% quota meant for appointment on compassionate ground; that the consideration for appointment on compassionate ground is not a matter of right and the same are to be considered as per the instructions dated 09-10-1998 issued by the Department of Personnel and Training, New Delhi and that as per the latest instructions of DOPT dated 05-05-2003 providing employment on compassionate ground in favour of legal heir of deceased/medically unfit Govt. Servant died/retired prematurely can be considered within 3 years

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from such date/retirement. If it is not possible to provide any such engagement within the stipulated period, the case should be treated as finally closed and as the case of the Applicant exceeds three years, he is not entitled to be considered for providing employment on compassionate ground. On the above ground they have opposed the prayers of the Applicant.

3. In this case although counter has been filed on 17th January, 2006 copy of which could not be served on the learned counsel appearing for the Applicant due to his absence on 24-01-2006, 31.1.2006, 07-02-2006, 14.02.2006, 21-02-2006 and finally copy of counter was served on him on 21-02-2006. Even after lapse of more than two and half months, no rejoinder has been filed. Today also learned counsel appearing for the Applicant is absent. No request has been made on his behalf for adjournment. This being a year old case of 2004 I am not inclined to grant any further adjournment in the matter. Mr. U.B. Mohapatra, Learned Senior Standing Counsel appearing for the Respondents who is present in court has been heard and with his aid and assistance I have also perused the materials placed on record.

4. Mr. Mohapatra, learned counsel appearing for the Applicant has reiterated the stand taken in the counter and has submitted there is no case

for providing employment on compassionate ground in absence of any distress condition.

5: It appears from the record that at first instance the grievance of Applicant for providing employment assistance was turned down under Annexure-7 dated 29th September, 2003 on the ground that there was no vacancy within the prescribed 5% ceiling and as per the latest instructions contained in DOPT OM No. 14014/19/2002-Estt.(D) dated 5-5-2003 compassionate appointment cases which are more than 3 years old are to be treated as finally closed. The said decision of the Respondents *prima facie*, having been found to be not sustainable in the present case, this Tribunal while issuing notices to the Respondents in its order dated 31-12-2004 have directed to the Respondents to reconsider the grievance of the Applicant and as it appears, on receipt of the notice, the Respondents again rejected the grievance of the Applicant which reads as under:-

"I am directed to refer to your letter No. CPDO/BBS-6-16/2001-2786 dated 31st March, 2005 on the above subject and to state that the Interim Order dated 31-12-2004 has been considered by the Respondent Department as indicated below:-

Shri Sridhar Nandi, Ex-Electrical Foreman sought compassionate appointment to his second son Shri Jasobanta Nandi after he retired from service on medical invalidation w.e.f. 20.1.1998. At that time his first son, Shri Lalit Kumar Nandi was employed as Architect under the Government of Orissa. Even though Shri Lalit Kumar Nandi was stated to have been living separately, he had

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the obligation to look after his parents, brother and sisters as and when they were faced with difficulties. Shri Sridhar Nandi owned an LIG house and was in receipt of monthly pension apart from the amount of Rs.2.88 lakhs he had received as retirement benefits. The family of Shri Sridhar Nandi was, therefore, not considered as indigent as to warrant compassionate appointment to his second son.

The decisions of the Hon'ble Supreme Court in the case of Y.V.RANGAIAH AND OTHERS V. J.SRENIVASA RAO AND OTHERS AIR 1983 SC 852 and in the case of P.MAHENDRAN AND OTHERS vs. STATE OF KARNATAKA AND OTHERS (air 1990 sc 405) REFERRED TO IN THE Interim order, related to selection/promotion of candidates when the recruitment rules for the posts were revised. The Apex Court held that if the selection process started under the old recruitment rules, it should be completed in accordance with the law as it stood at the commencement. Amendment of rules in between would not invalidate the selection process initiated under the old rules. Likewise, the vacancies occurred prior to amendment of the rules would be filled up under the old rules. However, these Apex Court decisions cannot be squarely applied in the matter o compassionate appointments. Orders were issued by the Government in October, 1998 restricting compassionate appointments to 5% of direct recruitment vacancies in Group C and Group D posts. It was not possible to exceed this limit after October, 1998 on the plea that the request for compassionate appointment which were pending prior to October, 1998 also came within the purview of the 5% restriction. In other words, there was no scope to grant compassionate appointment to all pending cases on the ground that there was no such limit when those requests were received. Like wise the time limit of 3 years to keep a person's name under consideration for offering compassionate appointment prescribed by the government in May, 2003 was applicable to all pending cases at that point of time. Therefore, the Apex Court decisions in the cases quoted

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in the Tribunal's interim order do not seem to have any relevance in the matter of compassionate appointments.

During the lat 5 years, 3 compassionate appointments were made in CPDO, Bhubaneswar in Group D posts ;of Poultry Attendant. All the three cases were death cases and there was no earning member in any of those families. The families of the 3 deceased employees were in indigent circumstances and needed immediate help. With the compassionate appointment of 3 cases, the 5% quota for compassionate appointments already exceeded in CPDO, Bhubaneswar. The two vacancies of Poultry Attendants presently available in the organization do not come under the 5% compassionate quota.”

6. Fact remains that the father of the Applicant took voluntary retirement on medical invalidation w.e.f. 20-01-1998. It is also the admitted fact that ^{there is} scheme of providing employment assistance to one of the dependant family members of the Government servant who took voluntary retirement on medical invalidation. There is no dispute that soon after the voluntary retirement, the father of the Applicant applied for employment assistance in favour of his son. As revealed from t he counter 5% quota and keeping the name for three years in the matter of compassionate appointment came in October, 1998/2003 which are much after the voluntary retirement of the father of the Applicant. It is the case of the Respondents that for the last five years, 3 compassionate appointments were made in CPDO, Bhubaneswar and there is no post available within the ceiling of 5% so as to accommodate the Applicant. There are many class IV categories of posts available in the

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Respondents Department. If there were no Poultry post available under the Respondents, the Authorities could have considered the candidature of the Applicant against any other Class-IV post at that relevant time. It is also not clear from the pleadings when those three posts of Poultry Attendant were filled up and as to whether those cases arose prior to the case of the Applicant. If vacancies were available in any class IV categories at the time when voluntary retirement was allowed to the father of the Applicant, the candidature of the Applicant for providing employment assistance ought to have been taken into consideration by the Respondents as 5% quota in compassionate appointment came into effect only during October, 1998 and the same is not applicable to the vacancies available prior to that date. The Respondents did not correctly interpret the decisions of the Hon'ble Apex Court referred to by this Tribunal in its order dated 31-12-2004. The decisions rendered by the Hon'ble Apex Court in the case of Y.V.Rangaiah and others vrs. J.Sreenivasa Rao and others (AIR 1983 SC 852) reads as under:-

“..... The vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules..... We have not the slightest doubt that the posts which fell vacant prior to the amended rules would be governed by the old rules and not by the new rules”.

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7. This view has also been reiterated by the Hon'ble Apex Court in the case of P.Mahendran and others vrs. State of Karnataka and others (AIR 1990 SC 405); which are reproduced below:-

“....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”.

The Hon'ble High Court of Orissa have also taken the similar view in the case of Gayadhar Sahoo vrs. State of Orissa (OJC No. 811 of 1990 disposed of on 26-04-1991).

8. Therefore, the case of the Applicant ought to have been considered against the vacancies/as per the instructions available for providing employment on compassionate ground available at the time of voluntary retirement of the father of the Applicant. This view is also fortified by the decisions of the Hon'ble High Court Orissa dated 08-11-2005 rendered in **WP(C) No.13377 of 2003(Union of India and others Vrs. Purna Chandra Swain)**; wherein the Hon'ble High Court while reviewing the orders dated **05-09-2003** of this Tribunal (rendered in **OA No. 363 of 2003** of Purna Chandra Swain vrs. Union of India and others) have directed for consideration of the case of the Petitioner,(Shri Purna Chandra Swain) retrospectively in case such appointment has been provided to any other

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person whose father has expired later than the father of the petitioner. Therefore, there was no justification on the part of the Respondent-Department not to consider the case of the present Applicant against the vacancy of the year 1990 and thereafter.

9. In this view of the matter, I hold that the circulars/instructions which came into force after the voluntary retirement of the father of the Applicant ought not to have been taken by the Respondents in turning down the request for providing employment on compassionate ground. Rule/circular/instruction standing as on the date of voluntary retirement ought to have been the determining factor and, therefore, the Respondents are hereby directed to reconsider the case of the Applicant for providing employment on compassionate ground against the class IV vacancies available in the Department, in case such appointment has been provided to any other person whose father has expired/took voluntary retirement later than the father of the petitioner within a period of 120 days from the date of receipt of a copy of this order.

10. In the result, with the aforesaid observations and directions this O.A. is disposed of. No costs.

BBM/12/570
(B.B.MISHRA)
MEMBER (ADMN.)