

**O.A. No. 124/2005.**

**Order dated: 25-09-2006.**

Applicant (Laxmidhar Sahoo) is the second son of Late Trilochan Sahoo, who while working as GDSMD, Mandhatapur Sub Post Office under Puri Postal Division expired prematurely on 05-10-2003 leaving behind his widow, two sons and old mother of 90 years. In order to mitigate the financial hardship faced by the family members after the death of the bread earner of the family, the Applicant applied to the departmental authorities for providing employment assistance; which having been turned down, this Original Application has been filed with prayers to direct the Respondents to provide employment assistance on compassionate ground by quashing the order of rejection.

2. Respondents have filed their Counter opposing the prayers of the Applicant to which the Applicant has also filed rejoinder.

3. Heard Mr. S.K.Patri, Learned Counsel appearing for the Applicant and Mr. P.R.J. Dash, Learned Additional Standing Counsel appearing for the Respondents.

4. Learned Counsel appearing for the Applicant has submitted that the grounds based on which the prayer of the applicant has been rejected are not sustainable in the eyes of law. The Respondents, on the

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basis of statements recorded behind the back of the Applicant have reached the conclusion that there is no liability in the family as the eldest son is in employment and taking care of family. This conclusion has been arrived at on the basis of the statement obtained by the Department from retired Postmaster Rourkela HO, Sub Inspector of Excise Mandhatapur and another person of that locality namely Ananda Chandra Srangi, which have no evidential value under law; nor the said procedure has been provided in any of the instructions governing the field in the matter of providing employment assistance on compassionate ground. He has submitted that before reaching the conclusion that there is no financial liability in the family, neither the Applicant was called upon to produce any document nor the Respondents have obtained any such document from the competent authority i.e. Tahasildar. Persons given such statement had no knowledge with regard to the financial condition and the relationship of the family with the eldest son. He has submitted that before reaching such conclusion no opportunity was afforded to the Applicant. By referring to Annexure-A/2, it has been submitted that while considering the case of the Applicant, the Respondents failed to take note of all the documents more so, the affidavit sworn in by the eldest son stating that he has no relationship with his family and he is staying along with his wife at Harayana. He has, therefore, prayed that the grievance of the Applicant not been considered in a just, fair and



equitable manner, the Respondents may be directed to reconsider the grievance of the Applicant.

5. On the other hand, Learned Counsel appearing for the Respondents has submitted that although the scheme for providing is a beneficial legislation, benefits of the scheme has to be extended only in deserving cases and not in all cases irrespective of the condition of the family. He has submitted that since on local enquiry it was revealed that the family is not in distressed condition, and eldest son who is serving in defence rendering financial assistance to the family, the grievance of the Applicant was rightly turned down.

6. Going through the averments made in the Counter and on scrutiny of the order of rejection, one thing is clear that the Respondents have reached the conclusion on the basis of the statements recorded from the above three persons, without taking into consideration the affidavit under Annexure-A/2 that although the eldest son is employed in defence he is staying separately, without giving any financial support. Settled position of law is that any statement recorded behind the back of a person cannot be utilized against him. Neither the Respondents have given any opportunity to the Applicant at the time of taking the statement, nor before utilizing the same to reach the conclusion that there is no liability in the family and the eldest son is rendering all support to the Applicant.

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7. It is also not out of place to record that, while deciding another similar matter filed by Smt. Manjula Kumari Patra vrs. Union of India and others (OA No. 845 of 2005 disposed of on 13<sup>th</sup> September, 2006) it was noticed that although the family members of one APM (Accounts) got retirement benefits of Rs. 10 lacks his son was provided employment assistance on the plea that the family members are in indigent condition. Similar benefits have also been provided in another case where family was not in indigent condition. Therefore in OA No. 845/05 it was directed as under:-

“I wish I could have quashed the entire process of consideration made by the CRC on 14-01-2004 but with a sense of anguish and heaviness of heart I have to express my disapproval of the manner of consideration made by the CRC. In the result, I have no alternative except to quash the order of rejection communicated to the Applicant under Annexure-A/4 dated 17-09-2004 with further direction to reconsider the grievance of Applicant in the light of the decisions of the Hon'ble High Court of Orissa in the case of **Purna Chandra Swain**(Supra) within a period of 30 (thirty) days from the date of receipt of a copy of this order. Ordered accordingly”.

It is also noticed that while considering a similar matter for providing employment assistance to a deceased family member, the Hon'ble High Court of Orissa in the case of ( **UNION OF INDIA & ORS.**

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**Vrs. PURNA CHANDRA SWAIN (W.P.(C) No.13377 of 2003 )**

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

(emphasis supplied)

8. In view of the above, the order of rejection of the prayer for employment assistance on compassionate ground is hereby



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quashed. The matter is remitted back to the Respondents to reconsider the grievance of the Applicant taking into consideration all the materials placed by him. The Applicant is also given liberty to place any other additional material in support of his claim that the family is still in penury and his brother is separated from his family. While considering the grievance of the Applicant the decisions rendered by the Hon'ble High Court in the case of **Purna Chandra Swain** (supra) may be kept in view. The entire exercise shall be completed within period of ninety days from the date of receipt of a copy of this order.

9. In the result, the OA stands allowed by leaving the parties to bear their own costs.

  
(**B.B. MISHRA**)  
MEMBER (ADMN.)

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