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O.A. No. 125 OF 2005.

Order dated: 31-08-2006.

Undisputed fact of the matter is that Applicant No.1 (Taramani Patra) and Applicant No.2 (Ghanashyam Patra) are the widow and son of Late Ananta Charan Patra who expired on 27-10-2000 while working as Technical Helper of Geological Survey of India (Operation Orissa) leaving behind the widow, three sons and one unmarried daughter. After the death of the Government servant, Applicant No.1 submitted a representation on 09-01-2001 requesting employment assistance on compassionate ground in favour of Applicant No.2 to overcome the distressed condition of the family. The said representation was forwarded by the Respondent No.4 to the Respondent No.3 on 16-03-2001/19-03-2001. Ultimately, the Compassionate Appointment Committee (CAC) in its meeting dated 02-01-2003 recommended the case of Applicant No.2 for appointment in any group C posts on compassionate ground. While waiting for the offer of appointment, under Annexure-A/8 dated 19th

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November, 2004, the Applicant was intimated that since no offer could be made to him within three years due to non-availability of sufficient vacancies, his appeal for providing employment on compassionate ground was rejected. It was further intimated to him that no further correspondence in this regard will be entertained; for which the Applicants has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985 praying to quash the impugned order of rejection dated 19th November, 2004(Annexure-A/8) with further direction to immediately provide employment to the Applicant No.2 on compassionate ground.

2. Respondents while not disputing the factual aspects of the matter, have stated in their counter filed on 6th January, 2006 that as per the instructions of DOP&T issued in OM dated 9th October, 1998 compassionate appointments can be made up-to a maximum of 5% of vacancies falling under direct recruitment quota in any Group 'C' or 'D' within a year and as per the instructions issued by DOP&T in OM No.14014/19/2002-Estt.(D) dated 05-05-2003 claim for

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appointment on compassionate ground can be considered for a maximum period of three years from the date of death/invalidation on medical ground of the Government servant, against the vacancies coming under the compassionate appointment quota. As the name of the Applicant was at Sl. No. 106 of the list maintained by the Respondents for providing employment, the death of the father of the Applicant being 27-10-2000, as there was no vacancy available under the compassionate quota, it was decided to close the case of the Applicant and such decision was intimated to the Applicants under Annexure-A/8. It has been stated that there being no illegality in the action of the Respondents, this Original Application should be dismissed. Applicant has also filed rejoinder which has been taken note of.

3. Heard Mr. Trilochan Rath, Learned Counsel appearing for the Applicant and Mr. D.K. Behera, Learned Counsel appearing for the Respondents.

4. Learned Counsel appearing for the applicant has submitted that the grounds based on which the Applicant No.2 has now been deprived of his claim for employment are

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opposed to the public policy framed by the Government in regard to the compassionate appointment. He has submitted that delay in considering the case of the Applicant being attributable to the Respondents, the family members of the Government servant should not be allowed to suffer; as the family has no other source of income for its maintenance. It has been submitted that once the Government have admitted that the family is in indigent condition and there is need to provide employment to Applicant No.2, they are estopped now to deprive the applicant employment. Therefore, he has prayed for quashing the impugned order under Annexure-A/8. Learned Counsel appearing for the Respondents have opposed the prayer of the Applicant stating that since many candidates are waiting for employment on compassionate ground and there is no vacancies under the compassionate appointment quota, it was rightly decided by the authorities to delete the name of the Applicant No.2 who is at Sl. No. 106 of the said list enabling him to test his fate elsewhere for appointment. He has, therefore, prayed that there being no irregularity or illegality in

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the decision of the authorities, the Tribunal should not interfere in the order under Annexure-A/8.

5. Having heard the Learned Counsel appearing for the parties, perused the materials placed on record including the notes of arguments submitted in this case. It may be recorded that constitutional mandate provides equal opportunity to all the citizens in the matter of public employment and, therefore, there should be no departure from the general rule except under compelling circumstances such as death of the sole bread earner and the consequential sufferance of the family. Once 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. The Tribunals should not confer benediction impelled by sympathetic consideration to make appointments on compassionate grounds when the regulations did not cover and contemplate such appointment. The appointment on compassionate ground cannot be a source of recruitment. It is merely an exception to the requirement of law

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15

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 financial crisis and 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. Equally, it is the rulings of various Courts that consideration must be fair, reasonable and with due application of mind.

6. Keeping in mind the above principles, now it is to be decided as to whether the case of the Applicant No.2 has received due consideration as per the instructions issued by the Government from time to time and if so, as to whether such consideration was just, fair and reasonable. It has been admitted by the Respondents that on 02-01-2003, CAC was convened and recommended the case of the Applicant No.2 for providing employment on compassionate ground and he was kept at Sl.No. 106 of the waiting list maintained by the Respondents. But the name of the Applicant No.2 was deleted in order under Annexure-A/8 dated 19th November, 2004, after lapse of three

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years as per the circular dated 05-05-2003 of the DOP&T.

Relevant portion of the circular of the DOP&T dated 05-05-2003 is quoted herein below:-

“It has, therefore been decided that if compassionate appointment to genuine and deserving case, as per the guidelines contained in the above OMs is not possible in the first year, due to non-availability of regular vacancy, the prescribed committee may review such cases to evaluate the financial conditions of the family to arrive at a decision as to whether a particular case warrants extension by one more year for consideration for compassionate appointment by the committee subject to availability of a clear vacancy within the prescribed 5% quota. If on scrutiny by the committee, a case is considered to be deserving the name of such a person can be continued for consideration for one more year.

The maximum time a person's name can be kept under consideration for offering compassionate appointment will be three years, subject to the condition that the prescribed committee has reviewed and certified the penuries condition of the applicant at the end of the first and the second year. After three years if compassionate appointment is not possible to be offered to the Applicant, his case will be finally closed, and will not be considered again.”

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7. Going through the circular, I find that no where in the above circular it has been provided that in case no appointment is provided to the son/ward of a Govt. Servant within three years, from the date of death of the Govt. Servant, the case should be closed. It provides that a person's name can be kept under consideration for offering compassionate appointment for three years subject to condition that the prescribed committee has reviewed and certified the indigent condition of the applicant at the end of the first and second year and after three years if compassionate appointment is not possible his case will be finally closed and will not be considered again. In the present case, it has been admitted by the Respondents that the CAC recommended the case of the Applicant No.2 only on 02-01-2003 and, therefore, at no stretch of imagination it can be said that three years completed by 19th November, 2004. Besides, the circular in question is not applicable to the case of the Applicant; for the same having no retrospective application, as decided by the Hon'ble Apex Court in the cases of **Y.V.RANGAIAH AND OTHERS vrs. J. SREENIVASA RAO AND OTHERS** (reported in AIR 1983

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SC 852) and (b) in the case of **P.MAHENDRAN AND OTHERS Vrs. STATE OF KARNATAKA AND OTHERS** (reported in AIR 1990 SC 405).

8. Another important fact of the matter is that from the record it is seen that the case of the Applicant No.2 has been considered for providing employment on compassionate ground against the vacancies available as on 02-01-2003 which is the date of recommendation of the Committee. The crucial date of consideration of the case of compassionate appointment has received consideration of 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)** and while disposing of the aforesaid Writ Petition, the Hon'ble Court directed 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

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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)

9. In view of the aforesaid discussions and provisions of various judge-made-laws, I have no option but to quash the impugned order under Annexure-A/8 dated 19th November, 2004 and direct the Respondents to reconsider the

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case of the Applicant No.2 for providing employment on compassionate ground, in the light of the decisions made in the case of **Union of India Vrs. Purna Chandra Swain** (Supra) within a period of 60 (sixty) days from the date of communication of this order.

In the result, this Original Application is allowed in the afore stated terms. There shall be no order as to costs.

B.B.Mishra
(B.B.MISHRA)
MEMBER (ADMN.)