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O.A.No. 653/05

Order dated: 5.8.05

Heard Mr. S.Patnaik, Ld. Counsel for the Applicant and Mr. Bigyan Mohapatra, Ld. Additional Standing Counsel; on whom a copy of this O.A. has already been served and perused the materials placed on record.

Following the premature death of the father of the applicant, representations were made to provide a compassionate employment to one of the members of the family. The said prayer having been turned down under Annexure-4 dated 26.5.04, the Applicant (the second son of the deceased Postal Assistant) submitted a representation (which is available at Annexure-5 dated 21.6.04) seeking a reconsideration to the matter of providing a compassionate appointment. No reply having been received by the Applicant on his representation under Annexure-5 dated 21.6.04, he has filed present O.A. 653/05 under Section 19 of the Administrative Tribunal Act, 1985.

For the reasons given in Annexure-4 dated 26.5.04, issued by the Sr. Superintendent of the Post Offices of the Sundargarh Postal Division, the prayer (made by the widow mother of the Applicant) to provide a compassionate appointment was turned down. The Text of the rejection letter dated 26.5.04 is extracted below;—

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"In pursuance with C.O. Letter No. RE/CRC/2004 dated 10/11.2.2004 it is to intimate that your compassionate appointment case is rejected by the Circle Relaxation Committee as the family has got income from agricultural land to the tune of Rs. 10000/- p.a. apart from the family pension. Both the sons have now become major and there is no other liabilities."

On the perusal of the communication under Annexure-4 dated 26.5.04 (supra) it appears that for the following three reasons, the Circle Relaxation Committee of the Postal Department rejected the claim for compassionate appointment;—

- a) because family pension is being paid;
- b) because the family has got income from agriculture land to the tune of Rs.10000/- p.a. and
- c) because both the sons (of the deceased Postal Assistant and his widow)have become major without liabilities.

The first objection of the CRC(that the family is getting 'family pension')is not sustainable;for the reason of what has been discussed by this Tribunal in the case of Rankanidhi Sahoo vs Union of India and Others (O.A.No. 81/01 decided on 5.3.02) reported in 2002(1) CJD (AT) 21 and in the case of Bindeswar Mehta vs Union of India (O.A. No. 63/01 decided on 10.4.02) reported in Vol. 95 (2003) CLT 21 (ATC). The same view was also taken by the Supreme Court in the case of Balbir Kaur and another vs Steel Authority of India Ltd, and others (Civil Appeal Nos.11881 and 11882 of 1996 decided on 5.5.2000) reported in AIR 2000 SC 1596;wherein it has long

since been decided that terminal benefit granted to the prematurely deceased ~~employee~~ ^{of family of a} family should not be counted for finding out the distress condition of the family.

The second objection of the CRC that the family has got independent source of income (to the tune of Rs. 10,000/- p.a.) is to be considered now. An independent income of Rs. 10,000/- p.a. for a family of three grown up persons is certainly to be considered to be a case of 'below poverty line'. Such an income keeps a share of not even Rs. 300/- per head per month and it is unfortunate that the CRC of Postal Department considered that to be enough while computing the distress condition of the family. Therefore, the second objection of the CRC is hereby overruled.

The sons of the Applicant were minor at the time of premature death of the deceased Postal Assistant, Late A.K.Bage. Since, the Department did not provide compassionate employment at the earliest, they had to suffer the distress condition. Merely, ^{because} they have grown up (and in absence of any material on record to show that they have been engaged elsewhere to earn their livelihood) it was not proper on the CRC to consider the case to be one with absence of liability. The widow and the sons (who have just attained majority) are liability themselves and, for the reason of premature death of the Government servant, their family members have been deprived of their rights under Article 21 of the Constitution of India.

While overruling the third objection of the CRC, it is to be observed that the Department should immediately have ^{ed'} a look to the distress condition of the family of the deceased Postal Assistant, Late A.K.Bage and ^{if} ~~the~~

it does not look nice to say that the family is bereft of any liability after a lapse of five years.

Orderd 5.8.05
Copy of Order
With notice may be
sent to all Respondents
by post and copy
of Order be given
to both the Counsel

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S.O. (J)

In the aforesaid premises, the Respondents are hereby called upon to reconsider the matter/prayer of the Applicant to provide a compassionate employment as made in his representation at Annexure-5 dated 21.6.04; notwithstanding the rejection order communicated under Annexure-4 dated 26.5.04. While doing so, the Respondents should not compute the terminal benefits given to the family of the deceased Postal Assistant, Late A.K.Bage and should also take into consideration about the physical/mental condition of the brother of the present Applicant. The Applicant should place adequate materials before the authorities to show the health/mental condition of his brother.

With the aforesaid observation and direction, this O.A. is disposed-of requiring the Respondents to give reconsideration to the matter within a period of 90 days from the date of receipt of a copy of this order.

Send copies of this order to the Respondents along with copies of the O.A. and free copies of this order be also handed over to the Ld. Counsel appearing for both the parties.

*M. Mohanty
05/08/05*
 (M.R.Mohanty)
 Member (Judicial)