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O.A. No. 748/2005.

Order dated : 30-08-2006.

Applicant No. 1 (Basanti Behera) and Applicant No.2 (Bhaskar Ch. Behera) are the widow and son respectively of Late Dambarudhar Behera who was a regular Group 'D'(Safaiwala) employee of the Postal Department of Government of India posted in the Head Post Office, Balasore. While working as such, expired prematurely on 26-10-2002 leaving behind seven dependant members of his family in indigent condition. Therefore, to overcome the distressed condition of the family, applicant No. 1 made representation on 23.12.2002 to the Postmaster, Balasore Head Post Office, followed by several reminders requesting to provide employment to Applicant No.2 on compassionate ground, in the regular post of the Department in any of the GDS posts. No response having been received on the request of the Applicant No.1, they approached this Tribunal in OA No.377/03 which was disposed of on 27-06-2003 with direction to the Superintendent of Post Offices, Balasore to dispose of the

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representation dated 14.5.2003 of the Applicant No.1. No communication having been received, the Applicants moved this Tribunal alleging noncompliance of the aforesaid directions. After filing of Contempt Petition, the grievance for providing employment was rejected and communicated to the Applicant under Annexure-A/7, dated 10-02-2005; for which the present Original Application has been filed under Section 19 of the Administrative Tribunals Act, 1985 praying for the following relief:-

“to admit this Original Application and upon hearing the Respondents quash the order under Annexure-A/7 and direct the Respondents to reconsider the case of Applicant No.2 for appointment in GDS post under Rehabilitation Assistance Scheme”.

2. Respondents by filing counter have denied to have received the representation of the Applicant dated 23.12.2002(Annexure-A/2)and have stated that after the death of Dambarudhar relaxation papers were collected and sent to the CO vide letter No. B/G-3/Ch-III dated 29-09-2003 for placing the matter before CRC for consideration of the grievance of the Applicants for proving employment on compassionate ground. In the meantime the Applicants

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approached this Tribunal in OA NO. 377/03. However, the grievance of the Applicant was considered by the CRC headed by the Chief Postmaster General, Orissa Circle, Bhubaneswar and rejected on the ground that there is no provision for giving appointment to the wards of Departmental Employees against GDS Posts. Since it is a Departmental case and there is no vacancy in Group 'D' cadre under compassionate appointment quota, no CRC has been convened for consideration of the cases and therefore, the case of the applicant has been noted to be taken up for consideration in the next CRC for departmental candidates.(emphasis supplied). Being aggrieved on this decision of the CRC, the Applicants have moved this Tribunal in the present Original Application. This Tribunal while issuing notice to the Respondents, as an ad-interim measure directed to consider the case of the Applicant for providing employment in GDS posts provided the applicants make representation disclosing their willingness to accept such engagement. On receipt of the representation of the Applicant dated 21-09-2005, the matter was placed before the CRC but the CRC did not accept the grievance of the Applicants for providing

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employment in any GDS post as the Applicant No.2 is neither an approved candidate nor his name is kept in waiting list as per the guidelines of the Department dated 13-09-2002 (Annexure-A/8.). While denying the various allegations made by the Applicants in this OA, they have stated that as the prayer of the Applicants was reconsidered and rejected by the CRC under Annexure-R/1 dated 21-12-2005, this OA be treated as infructuous.

3. Applicant has filed a rejoinder stating therein that the representation of the Applicant No.1 (Annexure-A/2) was received by the office of the Postmaster, Balasore Head Post Office and it was duly entered in the Dak register (vide Sl. No. 5/9 dated 24-02-2002). He has also submitted that had the grievance of the Applicants been considered at the right time, like in the case of others, Applicant No.2 could have been wait listed for appointment. Delay caused for being considered the case of the Applicants being not attributed to them, on that count, the family should not be made to suffer.

4. Heard learned counsel appearing for both sides them at length and perused the materials placed on record.

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5. Before adverting to the points raised by the parties, it would be profitable to note the operative part of the order of rejections of the grievance of the Applicants for providing employment assistance on compassionate ground and they are as under:-

“Operative part of the order dated 10th February, 2005 (Annexure-A/7):-

As per the rule, there is no provision for giving appointment to the wards of Departmental employee against GDS Posts. Since it is a departmental case and there is no vacancy in Group ‘D’ cadre under compassionate appointment quota, no CRC has been convened for consideration of the cases. **The case of the candidate has been noted to be taken up for consideration in the next CRC for Departmental candidates.**

Operative part of the order dated 21st December, 2005 (Annexure-R/1):-

Therefore, **though the undersigned is inclined to take a lenient view in providing compassionate appointment to the applicant,** in view of the relevant rules and instructions, I accept the recommendations made by the Circle Relaxation Committee. The appointment of Shri Bhaskar Chandra Behera in relaxation of recruitment rules in GDS post is not approved”.

6. From the above, it is clear that the case of the Applicant has not been considered by the CRC for assessing the

indigent condition for providing employment on compassionate ground. It is also clear from the letter under Annexure-R/1 that although CPMG is satisfied that this is a case in which the Applicant No.1 should be provided employment in GDS post on compassionate ground, she accepted the recommendation of the CRC; because the name of the Applicant is yet to be considered by the CRC for providing employment on the ground that there is no vacancy in Gr. D post. The Respondents have also admitted in their counter that the case of the Applicants has not been placed in the CRC for consideration.

7. 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 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. In one hand it is the stand of the Respondents that due to non-availability of

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vacancies in Gr. D cadre, the case of the Applicant has not been placed before the CRC and on the other hand, the Respondents rejected the case of the Applicant for being appointed in GDS post on the ground that he is not an approved candidate to be provided employment on compassionate ground. Both the stand of the Respondents runs contrary to each other. It is the specific case of the Applicants that the family is still continuing in indigent condition which is the sole criteria for providing employment on compassionate ground. No instructions/guidelines have been produced by the Respondents showing that the matter for providing employment assistance on compassionate ground can only be placed before the CRC, if there are vacancies. Therefore, non-consideration of the case of the Applicant by the CRC till date for providing employment, virtually deprived him to take the benefit of the Circular for providing employment in any GDS posts. From the order of rejection it is seen that the Respondents considered the grievance of the Applicant prospectively. Similar grievances were under consideration before the Hon'ble High Court of Orissa in the case of UNION OF INDIA & ORS. Vrs.

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

While deciding the matter. Hon'ble High Court of Orissa (in its order dated 08-11-2005) observed 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

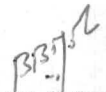
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order within three months from
today".(emphasis supplied)

8. In view of the discussions made above, the Respondents are hereby directed to immediately convene the CRC to consider the case of the Applicants for providing employment assistance on compassionate ground in the light of the decisions made in the case of Union of India vrs. P.C. Swain (supra) and in case it is found that there is no vacancy in Gr. D cadre of the Department, then his case be also considered for appointment in any GDS depending on the recommendation of the CRC. In any event the entire exercise shall be completed within a period of 60(sixty) days from the date of communication of this order.

9. In the result, this OA is disposed of with the observations and directions made above. There shall be no order as to costs.


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