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ORIGINAL APPLICATION NO. 749 OF 2005

BIJAY KUMAR ACHARYA APPLICANTS

Versus

UNION OF INDIA & ORS. RESPONDENTS

(FOR INSTRUCTIONS)

1. Whether it be referred to the reporters or not? *yes*
2. Whether it be circulated to all the Benches of the CAT, or not? *yes*

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

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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.**

ORIGINAL APPLICATION NO. 749 of 2005

Cuttack, this the 27th day of September, 2006.

C O R A M:-

THE HON'BLE MR.B.B.MISHRA, MEMBER(ADMN.)

Shri Bijay Kumar Acharya,
Aged about 30 years,
S/o.Shri Iswar Chandra Acharya,
At: Jada, Po: Kamgan, Via: Bardol,
Dist: Bargarh.

.... APPLICANT.

BY legal practitioner: M/S. S.K.Purohit,
P.Mohapatra,
K.M.H.Niamati,
A.K.Das,
Advocates.

-VERSUS-

- 1 Union of India, represented by Director General of Postal Offices,
New Delhi.
2. The Chief Post Master General, Post Offices,
Orissa Circle, Bhubaneswar.
3. The Superintendent of Post Offices, Sambalpur Divison, Sambalpur.

..... RESPONDENTS

By legal practitioner **Mr.B.Dash, ASC.**

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ORDER

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

Applicant's father Iswara Chandra Acharya was working as Postal Assistant. While in service, in a road accident he became medically incapacitated to discharge his duties. Therefore, he took voluntary retirement with effect from 30-06-2001. As the pension was not sufficient to meet the requirements of the family consisting of six members, the Applicant submitted an application on 15.07.02 seeking employment assistance on compassionate ground to over-come the indigent condition of the family. The said grievance of the Applicant was rejected on the ground that the three sons of the ex-employee are grown up and there were no liabilities and the same was communicated to the Applicant under Annexure-A/3. Thereafter, the Applicant submitted an Appeal to the Respondent No.1 under Annexure-A/4 dated 24-05-2004. No consideration having been received on the appeal of the Applicant, he has approached this Tribunal in the present Original Application filed u/s 19 of the Administrative Tribunals Act, 1985 praying to direct the Respondents to appoint the applicant on compassionate grounds in any available vacancy by quashing Annexure-A/3.

2. Respondents by filing their Counter have stated that the invalid retirement had virtually, no effect on the financial condition of the family since ex employee by virtue of completion of 33 years of service was in receipt of maximum pension. It has been averred that the condition of the family is not indigent enough so as to provide an employment assistance to the applicant in relaxation of the normal recruitment rules. They have stated that there being no liability in the family like marriage of daughters, education of minor children which requires a continued expenditure, the CRC did not find it to be a fit case to be provided with compassionate appointment. The Respondents have also relied on the decisions of the Hon'ble Apex Court made in the cases of LIC of India vrs. Mrs. Asha Ramachandra Ambekar & Anr. (JT 1994 (2) SC 183), U.K. Nagpal vrs. State of Harayana and others (JT 1994 (3) SC 525), HAL vrs. Smt. A. Radhika Thirumalai (JT (9) SC 197) and in the case of Himachal Road Transport Corporation vrs. Dinesh Kumar (JT 1996 (5) SC 319).

3. Heard Leaned Counsel appearing for the Applicant and Mr. B. Dash, Learned Additional Standing Counsel appearing for the Respondents and went through the materials placed on record including the proceedings of the CRC produced by the Respondents on the directions of this Tribunal.

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4. Question of providing employment assistance to the son/ward of an employee who took voluntary retirement on the ground of physically not being fit to discharge his normal duties is not in dispute. Learned Counsel for the Applicant has submitted that the entire family members were fully dependent on the sole income of his father. After his retirement the family members are striving as they have only A1.5 cultivated land, income from which is not adequate for their sustenance. He has submitted that the merely because three sons are grown-up cannot be a ground for rejection of the prayer for employment. No where in the instructions it is provided that where the sons are grown-up no appointment can be provided so also it can be said that as the sons are grown-up there is no indigence in the family. He also explains that the situation of the family worsens if grown-up children remain unemployed. By stating so, he explained that as the indigence of the family was not considered by the CRC, the same cannot be said be fair in nature and, therefore, the matter be remanded back to the authorities for reconsideration.

5. On the other hand, the Learned Counsel appearing for the Respondents has submitted that appointment on compassionate ground is not an alternate mode of appointment. It is a benevolent legislation and can be extended only to the family

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members who are in indigence after the death of the bread-earner of the family and that appointment can only be provided if there is vacancy within the 5% quota earmarked for the above purpose. As the CRC assessed that the conditions of the family are not indigent, and more deserving cases are there, they rightly rejected it.

6. Consideration of the rival submissions shows that neither in the order of rejection nor in the Counter, the Respondents have disclosed that there is no indigent condition of the family. From the order, Counter and the proceedings of the CRC it is established that the applicant was denied employment on the ground that the sons are grown up. Neither in the decisions of courts relied on by the Respondents nor in any of the instructions it has been provided that on such ground employment on compassionate ground can be denied. On perusal of the proceedings of the CRC it is seen that the case of the applicant has been turned down only on the ground of **“grown up children”** and not because there is no indigent condition which is the main object for consideration of providing employment on compassionate ground. This Tribunal while deciding similar matter filed by **Smt. Manjula Kumari Patra vrs. Union of India and others** (O. A No. 845 of 2005 disposed of on 13th September, 2006) 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 are in indigence. Similar benefits have also been provided in another case where family was not in indigent condition. Therefore, it is noticed that universal application of the scheme has been given go-bye and the Respondents are acting in a pick and choose manner in the matter of providing employment on compassionate ground.

7. In order to obviate the scope for such discriminatory, pick and chose manner of consideration for providing employment on compassionate ground, the Bangalore Bench of this Tribunal while dealing with a similar matter of the Postal Department, in the case of **M.MADESHA Vrs. UNION OF INDIA AND OTHERS** (OA No. 183/2005 decided on 09-12-2005) have held as under:-

“12. We have come across a Scheme for compassionate appointment, awarding relative merit points for selection drawn up by the Ministry of Defence in their O.M. dated 9th March, 2001. We should compliment the Ministry of Defence by drawing up a well balanced grading, taking various parameter into consideration, of course, as per the direction available in 2001 (which later stands modified: like consideration of a case of compassionate appointment for three years as per DOPT OM dated 5th May, 2004, non-inclusion of terminal benefits etc. as laid down by the Hon'ble Supreme Court in their decision reported in 2005 SCC (L & S) Govind Prakash Varma vrs. LIC and Others etc. What Ministry of the Defence has done

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is to have a point-based system on a 100 point scale, attributable to various parameters for a comparatively, balanced and *objective* (emphasis added) assessment of requests of deserving candidates for compassionate appointment. To give an instance, in this system, there is a provision for grading monthly income of earning members and income from proper (excluding monthly family pension, income of family members living separately), number of dependents, left over service, etc. The following grading are given for the same:-

Monthly income of earning member(s) and income from property:

(i)	No income	05
(ii)	Rs.1000 or less	04
(iii)	Rs. 1001 to 2000	03
(iv)	Rs. 2001 to 3000	02
(v)	Rs.3001 to 4000	01
(vi)	Rs. 4001 and above	Nil

No. of dependents:

(i)	3 and above	15
(ii)	2	10
(iii)	1	05

No. of unmarried daughters:

(i)	3 and above	15
(ii)	2	10
(iii)	1	05
(iii)	Nil	

No. of minor children:

(i)	3 and above	15
(ii)	2	10
(iii)	1	05
(iv)	None	00

Left over service:

(i)	0-5	02
(ii)	Over 5 & upto 10 years	04
(iii)	Over 10 & upto 15 years	06
(iv)	Over 15 & upto 20 years	08
(v)	Over 20 years	10

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If such a system was drawn up and implemented by the Department of Posts, subjectively, arbitrariness, irrationality and also casual approach and ad-hocism, could have been avoided in determining the eligibility of candidates for compassionate appointment. We suggest that the Department can at least now evolve a system as has been done by Ministry of Defence, so that there will be a systematic and universal approach which is rational and logical, by the Committees formed in all circles". (emphasis supplied)

8. This has again been reiterated by the Bangalore Bench of the CAT in the case of **B.V. Ramachandrappa vrs. Union of India and others** (2006 (3) AISLJ 52).

9. But neither of the parties informed as to whether any such instructions have been issued by the Respondents to root out the scope for favouritism in the matter of providing employment on compassionate ground even within the quota fixed for the above purpose.

10 In view of the fact that the CRC failed to take into consideration the very object of the Scheme i.e. existence of indigent condition, the order of rejection under Annexure-A/3 is hereby quashed and the matter is remanded back to the Respondents to reconsider the case of the Applicant in an objective manner and pass


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appropriate orders within a period of 60 days from the date of receipt of a copy of this order.

11. While parting with this case, I would also advise the Respondent No.1 to take into consideration the observations of the Bangalore Bench of the CAT (quota above) and issue an exhaustive circular in order to give a fair treatment to the grievance of the family members of the deceased Govt. Servants in the matter of providing employment assistance on compassionate ground.

12. In the result, this OA is allowed by leaving the parties to bear their own costs.

Send copies of this order to the Respondent No.1 for his information and necessary action.


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