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O.A. No. 805 OF 2005

Order dated: 23-10-2006.

1. The Applicant calls the question of the order of rejection (dated 20-12-2001 under Annxure-A/4) of his prayer for providing an employment on compassionate ground after the death of his father while working as a Gr. D employee of the Postal Department (Balasore Postal Division). The grounds of challenge of the order are that the Respondents without assessing the indigent condition of the family of the deceased, and by taking into consideration the retrial dues of father of the Applicant held that the family of the deceased is not in indigent condition; for which no employment on compassionate ground shall be provided to the Applicant.

2. The sum and substance of the Counter filed by the Respondents is that the CRC did not find the case of the Applicant deserving one to be provided with an employment on compassionate ground within the prescribed quota of 5%. Hence, the grievance of applicant was rejected and the same was intimated to him under Annexure-A/3. It has also been averred by the Respondents that as per the decisions of the Hon'ble Apex Court made in the case of U.K.

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Nagpal vrs. State of Harayana and others (JT 1994 (3) SC 525) compassionate appointment cannot be granted after a lapse of a reasonable period nor can it be claimed as a matter of right. In relying on the decisions of the Apex Court made in the case of **LIC of India vrs. Mrs. Asha Ramachandra Ambekar & Another** (JT 1994 (2) SC 183), the Respondents have averred that the Tribunal can confer benediction impelled by sympathetic consideration to make appointments on compassionate grounds when the regulations did not cover and contemplate such appointment. On the above grounds, the Respondents have opposed the prayer of the Applicant.

3. Heard Mr. P.K. Chand, Learned Counsel appearing for the Applicant and Mr. U.B. Mohapatra, Learned Senor Standing Counsel appearing for the Respondents and went through the materials placed on record.

4. Learned Counsel appearing for the Applicant submitted that the whole object of granting compassionate appointment is to enable the family to tide over the sudden crises and to relieve the family of the deceased from financial destitution and to help it to get over the emergency. Although the father of the applicant expired prematurely on 23.5.1999, the consideration was made only in

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the year 2001. Relying on the income certificate granted by the Tahasildar Balasore under Annexure-A/7; certifying the income of the family from all sources to be Rs.885.00 per annum, Learned Counsel for applicant has stated that the conclusion of the CRC therefore, cannot be said to be based on record. He has further submitted that the CRC reached conclusion that there is no indigent condition based on the retirement benefits received by the family which ought not to have been taken into consideration as per the law laid down by the Hon'ble Apex Court as also by this Tribunal. Hence he has prayed for quashing of the impugned order of rejection.

5. On the other hand, Learned Senior Standing Counsel appearing for the Respondents submitted that it is not for this Tribunal to assess the financial condition of the family. It has been submitted by him that taking into consideration the size of the family, their source of income and availability of vacancies under compassionate appointment quota, the Committee came to the conclusion that this is not a case where employment assistance can be provided to the applicant. It has further been submitted by him that when the competent authorities, came to the conclusion that there is no hardship, there is hardly any scope for this Tribunal to interfere in

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the order of rejection. Hence, he has prayed for dismissal of this Original Application.


6. From the order of rejection dated 20-12-2001 it is clear that the Committee did not find the family in indigence taking into consideration the terminal benefits and the monthly family pension. Going through the materials placed on record; especially the income certificate under Annexure-A/7 and the submissions advanced by the parties, I do not find any justifiable reason on the conclusion of the Committee that the case is not an indigent one to be provided with the employment on compassionate ground. The uncontroverted income certificate produced by the Applicant goes to show that the annual income of the family from Agrl. is Rs.885/- which cannot be said to be sufficient to hold that the family is not in indigent condition. As is revealed from record, the Committee has taken into consideration the terminal benefits of the family while assessing the indigent condition of the family; which ought not to have been taken into consideration as per the law laid down by the Hon'ble Supreme Court of India rendered in the case of Govind Prakash Verma Vrs. Life Insurance Corporation of India and Others – 2005 SCC (L&S) 590 and in the case of Balbir Kaur &

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Anr. Etc. VRS. Steel Authority of India Ltd. & Ors.(2002) 2 ATT (SC) 255 that terminal benefits extended to the distressed family, are not to be taken into consideration for the purpose of adjudging the distress condition of the family. Further the annual income of Rs. 885/-is not enough to say that the financial condition of the family consisting of two sons, two daughters and the widow is not dire financial condition(Ref: **Smt. Draupadi Behera and another VRS. Union of India and others** reported in 2003 (I) OLR – 45(HC)).


7. Besides, the case of the Applicant ought to have been considered from amongst the candidates available as on that date and as against the vacancies under the quota available as on that date. But the Respondents/Committee considered the case of Applicant along with candidates whose father expired much after the father of the Applicant. Further it is seen that DOP&T has also issued instructions that in case a candidate is not provided employment on compassionate ground in the same department, efforts should be made to adjust him in any other Department. Therefore, it cannot be said that the consideration was in any way logical nor it can be said that the Department is in way right in rejecting the grievance of candidates on the ground that there is no vacancy. This view is gained support by the

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decision of the Hon'ble Apex Court rendered in the case of
UNION OF INDIA & ORS. Vrs. PURNA CHANDRA SWAIN
(W.P.(C) No.13377 of 2003). While deciding the aforesaid matter,
Their Lordships of the 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 order within three months from today”.

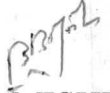
8. For the discussions made above, I find no substantial force in the order of rejection dated 20-12-2001 under
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Annexure-A/4 for providing employment on compassionate ground. Hence the order under Annexure-A/4 dated 20-12-2001 is hereby quashed and as a consequence, the Respondents are hereby directed to re-consider the case of the Applicant in the light of the decisions rendered by the Hon'ble High Court of the Orissa in the case of **Purna Ch. Swain** (Supra) within a period of three months from the date of communication of this order.

9. In the result, this O.A. stands allowed. There shall be no order as to costs.


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