

7

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO . 845 OF 2005
CUTTACK, this the 13th day of September, 2006.

SMT. MANJULA KUMARI PATRA APPLICANTS
Versus
UNION OF INDIA & ORS. RESPONDENTS

(FOR INSTRUCTIONS)

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

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

8

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

ORIGINAL APPLICATION NO. 845 of 2005

Cuttack, this the 13th day of September, 2006.

C O R A M:-

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

Smt. Manjula Kumari Patra,
Aged about 33 years,
Wife of Late Loknath Bisoyi,
a permanent resident of Village
&Post: Hinjilicut, Dist: Ganjam.
Bolangir-767041.

.... APPLICANTS.

BY legal practitioner: Mr.P.K.Padhi, Advocate.

-VERSUS-

- 1 Union of India, represented through its
Director General of Posts (Dak Bhawan),
Sansad Marg, New Delhi-110 001.
2. Chief Post Master General (Orissa Circle),
At/Po: Bhubaneswar, Dist: Khurda-751 001.
3. Sr. Superintendent of Post Offices,
Berhampur Divison,
At/Po: Berhampur,
Dist. Ganjam (Orissa), Pin-760001.
4. Sri Sudhir Kumar Pradhan (Postal Assistnt),
At/Po: Jajpur Road Post Office, Dist: Jajpur.
5. Sri Kedar Guru (Group 'D'), At/Po:Bhubaneswar
(Ashok Nagar), Dist. Khurda, Pin-751 009.

..... RESPONDENTS

By legal practitioner **Mr.U.B.Mohapatra, SSC.**

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ORDER

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

After the premature death of the husband of the Applicant on 21-03-2002 due to illness while in service of Government of India, Postal Department/under Respondent No.3, to sustain the livelihood of herself and two minor children, the Applicant applied to the authorities for providing employment on compassionate ground. As it appears, she being informed under Annexure-A/4 dated 17-09-2004 that her grievance for providing employment has been turned down by the CRC due to want of vacancy in Gr. D cadre, this Original Application under section 19 of the Administrative Tribunals Act, 1985 has been filed praying to quash the order of rejection under Annexure-A/4 with direction to provide employment to the Applicant either in any post of the Department or in any post of GDS in order to over-come the destitute condition of the family. She has claimed that father of the Respondent No.4 died prematurely while working as APM (Accounts) and after his death the family has got Rs.10 lacks towards terminal benefits. But the case of Respondent No.4 was treated as more indigent than that of the Applicant and he was provided with

employment and the case of the Applicant was turned down. It is stated that this was done at the behest of the Assistant Director who is the younger brother of the deceased. Similarly although the family of Respondent No.5 has got terminal benefits he was provided with employment but the case of the applicant was turned down in spite of the fact her condition was far worse than that of the above beneficiaries. By stating so, it has been prayed by the Applicant that since the rejection of the grievance of applicant is not free from bias and favoritism, direction be issued to provide employment to the Applicant to redeem the family from destitution.

2. Respondents have filed their counter stating therein that the case of the Applicant was placed before the CRC meeting held on 14-01-2004. After due consideration her case was not found to be more deserving and due to want of vacancy in Gr. D cadre the grievance of the Applicant for providing employment was rejected and intimated to her. In support of the order of rejection, relying on the decisions of the Hon'ble Apex Court rendered in the cases of U.K.Nagpal vrs. State of Harayana and others (JT 1994(3)SC 525); LIC of India vrs. Mrs. Asha Ramachandra Ambedkar and another (JT 1994(2) SC 183 and in the case of HAL vrs. Smt. A.Radhika Thirumalai (JT 1996 (5) SC 319 the Respondents

12

have averred that the Applicant cannot claim employment on compassionate ground as a matter of right notwithstanding the poor financial condition and date of death of the husband. They have, therefore, prayed for dismissal of the Original Application.

3. Applicant by filing rejoinder has reiterated the stand taken in paragraph 4(iv) of the OA and has stated that the consideration not being fair and reasonable, the order of rejection must be quashed.

4. Learned Counsel appearing for the parties have led emphasis on the stand taken by them in the pleadings.

5. In the matter of providing compassionate appointment to the eligible son/ward of deceased employee is no more res integra. Employment is to be provided to one of the family members of a deceased employee on consideration of the financial condition of the family. But such consideration must be fair, reasonable and free from bias. But from the documents filed in court, it is clear that the Respondents rejected the cases of 32 candidates either on the ground of lack of qualification or want of financial liability in the family. But the case of the Applicant has been rejected on the ground that there is no vacancy in Gr.'D' Category; whereas Respondent Nos.4&5 were appointed although from the un-controverted pleadings it is

12

established that there is no such financial crisis in the family so as to supersede the case of the Applicant. Respondent Nos.4&5 although noticed, did not appear and file the counter,

6. The Respondent-Department have neither controverted the stand taken by the Applicant in paragraph 4 (iv) of the OA nor produced the entire minutes of the CRC showing as to on what basis Respondent Nos.4&5 were treated to be more deserving than the Applicant. Law governing the field is that every allegation of fact in the plaint, if not denied specifically or by necessary implication or stated to be not admitted in the pleading of the defendant shall be taken to be admitted. To say that a defendant has no knowledge of a fact pleaded by the plaintiff is not tantamount to a denial of the existence of that fact, not even an implied denial (Ref: AIR 1967 SC 109- **Jahuri Sah and others vrs. Dwarika Prasad Jhunjhunwala and others**). In the case of **Smt. Kamala Gaind Vrs. State of Punjab and others** (1992(5) 5 SLR 866) the Hon'ble Apex Court have held that "even if it is compassion, unless there be some basis there is no justification for discriminatingly extending the treatment". The settled position of law is that power vested with the authority cannot be used in a pick and choose manner to suit their convenience or to show favouritism to a particular person. If so, then it can safely

be presumed that such action is in abuse of colourable exercise of power creating disharmony in policy and resorting to discrimination against the eligible candidates (Ref: AIR 1997 SC 1451 –**Scheduled Castes and Scheduled Tribes Officers Welfare Council vrs. State of Uttar Pradesh and another**).. From the facts discussed above, it is clearly established that the consideration made by the CRC was neither objective nor fair. Since it has been held that the consideration made was not free and fair, the decisions relied on by the Respondents are of no consequence.

7. That apart, from the records it is seen that although the husband of the applicant expired on **21-03-2002** her prayer was considered in the meeting held on **14-01-2004** and taking into consideration the vacancy position available on the date of the meeting, the grievance of applicant was turned down. In this connection I may record that since the husband of the applicant expired on 21-03-2002, the case of applicant ought to have been considered against the vacancy available as on 21-03-2002 in view of the judge-made-law (**UNION OF INDIA & ORS. Vrs. PURNA CHANDRA SWAIN (W.P.(C) No.13377 of 2003**) of the Hon'ble Orissa High Court. Relevant portion of the aforesaid judgment is quoted herein below:-

“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”.

(emphasis supplied)

8. I wish I could have quashed the entire process of consideration made by the CRC on 14-01-2004 but with a sense of anguish and heaviness of heart I have to express my disapproval of the manner of consideration made by the CRC. In the result, I have

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no alternative except to quash the order of rejection communicated to the Applicant under Annexure-A/4 dated 17-09-2004 with further direction to reconsider the grievance of Applicant in the light of the decisions of the Hon'ble High Court of Orissa in the case of **Purna Chandra Swain**(Supra) within a period of 30 (thirty) days from the date of receipt of a copy of this order. Ordered accordingly.

9. In the result, the OA stands allowed by leaving the parties to bear their own costs.

13/12/2006
(B.B. MISHRA)
MEMBER (ADMN.)