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

**ORIGINAL APPLICATION NO. 32 of 2006**

Cuttack, this the 28<sup>th</sup> day of February, 2007.

**SUBHAKANTA ACHARYA ..... APPLICANT.**  
Versus  
**UNION OF INDIA & ORS. .... RESPONDENTS**

**FOR INSTRUCTIONS**

1. WHETHER it be sent to reporters or not? *gm*
1. WHETHER it be circulated to all the Benches of the Tribunal or not? *gm*

*B.B.Mishra*  
**(B.B.Mishra)**  
**MEMBER (A)**

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CUTTACK BENCH: CUTTACK.

**ORIGINAL APPLICATION NO. 32 of 2006**

Cuttack, this the 28<sup>th</sup> day of February, 2007.

C O R A M:-

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

Shri Subhakanta Acharya, Aged about 21 years, Son of Late S Sashi Bhusan Acharya, resident of Acharya Lane, Kunjakanta, At/Post/Ps: Dist. Dhenkanal, PIN-759 001.

.... APPLICANT.

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

-VERSUS-

1. Union of India, represented by Director General of Posts, Dak Bhawan, Sansad Marg, New Delhi.
2. The Chief Post Master General, Orissa Circle, Bhubaneswar.
3. Senior Superintendent of Post Offices, RMS (N) Division, At-Old Cantonment Road, PO: Cuttack GPO, Dist. Cuttack-753 001.
4. Shri Sudhir Kumar Pradhan, Postal Assistant, Jajpur Road Post Office, At/Po: Jajpur Road, Dist. Jajpur.
5. Shri Kedar Guru, Group D, At/Po: Ashok Nagar Post Offices, Bhubaneswar-751 009, BBSR-9, Dist. Khurdas.

. RESPONDENTS

By legal practitioner ..... Mr. R. N. Mishra ASC. 

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## ORDER

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

Shorn of unnecessary details it would suffice to say that father of the Applicant was a regular employee of the Postal Department working as Head Sorter in Dhenkanal Sorting Office (RMS) under the administrative control of Respondent No.3. He died prematurely on 24.07.2000 leaving behind the applicant and seven other dependent members of which the mother of the Applicant is a patient of mental <sup>un</sup>equilibrium. After his death the family faced ruination as members of the family were fully dependent on the income of the deceased. In order to over come the hardship caused to the family, applicant sought for appointment on compassionate ground. Alleging want of attention to his grievance, he approached this Tribunal in OA No. 826/02 which was heard and disposed of on 25.09.2002 directing the Respondents to give sympathetic consideration to the grievance of applicant. Pursuant to the orders of this Tribunal the CRC met on 10-11/03/2005 and as there was no vacancy falling under the compassionate appointment quota the prayer of applicant to appoint on compassionate ground was rejected and intimated to the Applicant in order dated 30.05.2005 (Annexure-A/6). Being aggrieved by the said decision, the applicant again preferred a representation dated 05.09.2005 (Annexure-A/7) to the Chief Postmaster General, Orissa Circle seeking review of the matter. Thereafter, he has approached this Tribunal in this second round of litigation filed under section 19 of the Administrative Tribunals Act, 1985.

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2. Factual aspects of the matter are not in dispute. However, the Respondents in their counter filed in this case have maintained that as per the instructions of the DOP&T on the subject, 5% of the vacancies falling under direct recruitment quota are to be filled up on compassionate ground. As there was no vacancy in spite of the directions of this Tribunal the CRC could not meet earlier. However on receipt of the vacancy position from the directorate, the CRC met on 10-11/03/2005 and considered the cases of 21 candidates including that of the applicant against the two vacancies under compassionate quota in PA cadre. The CRC keeping in view all the factors such as the financial condition of the family its assets and liabilities like number of minor children and grown up unmarried daughters, availability of any earning member in the family circumstances under which the government servant expired age at the time of death vis-à-vis the vacancies available under compassionate quota, recommended the most deserving and needy cases and remaining cases including the present one were rejected and intimated to the individuals. In support of the plea that the Tribunal cannot direct for appointment on compassionate ground and appointment on compassionate ground can be made only if a vacancy exists they have relied on the decisions of the Hon'ble Supreme Court in the cases of **LIC of India v. Asha Ramachandra Ambekar & Another** (JT 1994 (2) SC 183), **Himachal Road Transport Corporation v. Dinesh Kumar** (JT 1996 (5) SC 319) and in the case of **Hindustan Aeronautics Limited v. Smt. A.Radhika Thirumalai** (JT 1996 (9) 197).

3. In support of the claim that his case was incorrectly considered and there was no proper assessment of the indigent condition of

the family of the applicant, he has submitted that the deceased left behind 8 dependant members out of which the mother of applicant is a mental patient requiring constant treatment and three unmarried daughters. Since there is no other source of income, after the death of his family the entire family is depending on the meager amount of family pension of Rs.3175 plus other allowances which shall be reduced to Rs.1905/- w.e.f. 24.07.2007. The lump sum received towards the retrial dues had been spent towards the marriage of one of his sisters and re-paying the loan incurred during the life time of his father. Only to accommodate the Respondent Nos. 4&5 and three other candidates, his case was not considered as against the vacancies available during 2000 and Respondent Nos.4 and 5 were accommodated in spite of the fact that they are not being indigent. It is his further case that though in order dated 25.09.2002, this Tribunal directed to consider his case, the Respondents intentionally sat over the matter and considered the case only in the year 2005 that too against the vacancies of that year and rejected the case of the Applicant. Therefore, he has prayed for quashing of the selection and appointment of Respondent Nos.4&5, and the impugned order under Annexure-A/6. He has also sought for a direction to the Respondents to reconsider his case for appointment on compassionate ground. It is the case of the Respondents as also during submission that there was no impropriety in the order rejecting the case of the applicant. However, during hearing, Learned ASC Mr.Mishra added that 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. Once it is proved that in spite of the death of the bread earner, the family (has) survived and a substantial period is over, there is no necessity to say goodbye to the normal rule of appointment and to show favour to one at the cost of several others, ignoring the mandate of Article 14. It is also settled law that the High Courts and Tribunal should not confer benediction impelled by sympathetic consideration to make appointments on compassionate grounds. 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. It is further argued that the applicant has a right to claim for consideration and once his case was considered and rejected by the CRC, it needs no interference.

4. Heard the rival submissions of the parties and perused the materials placed on record. On bare assimilation on the fact makes it crystal clear that the father of the Applicant expired on 24.07.2000 and on 25.09.2002 this Tribunal directed to consider the case of the applicant which necessarily mean that the case of the Applicant ought to have received consideration as against the vacancies of the year 2000 or thereafter till his case received consideration by the CRC. Not only that his case ought to have received consideration along with the candidates whose father expired on 24.7.2000 or soon thereafter to avoid the doctrine of inequality. But in the present case, the Respondents considered the case of the applicant as against the vacancies of the year 2005 along with others whose father expired much

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after the father of applicant. It is also revealed that the CRC recommended the names of two candidates as against two vacancies for the reasons as under:

- Sl. No.32:           3- unmarried daughters, 2 -sons and no landed property;
- Sl.No.12           2-unmarried daughters two minor sons and 0.87 Ac land.

5.           As per the legal heir certificate the applicant is having two mother (one disturbed mental equilibrium), 3-unmarried sister, 2-brother(one minor) which cannot be to be in any way better indigent that those two candidates.

6.           It is also seen that the father of Sudhir Kumar Pradhan expired on 22.08.2003 leaving behind his mother, widow and three sons; the annual income of the widow from landed property was Rs.6500/- and annual income of the candidate was Rs.2,600/- from landed property he was considered and recommended by the CRC. Similar is the case of Kedar Guru whose father expired on 05.03.2002. After the death of the father of Kedar Guru, apart from the family pension, the family was in receipt of Rs.1000/- from landed property and Rs.10,000/- from other sources. Total Rs.11,000/- per annum and the annual income of Kedar Guru was Rs.1000/- from landed property and Rs.7,000/- from other sources comes to Rs.8000/- per annum. But both families were considered to be indigent whereas the case of the applicant though arose prior to them was considered later and rejected.

7.           Doctrine of procedural fairness demands that the consideration must be fair and must be made among equals. Unequals cannot be treated equally. The doctrine of legitimate expectation had also

received due consideration of the Hon'ble Apex Court and it has been held that legitimate expectation had both substantive and procedural aspects. Viewed the matter from any angle, it cannot be held that the consideration of the case of the applicant in any way fair and reasonable. In this connection also I would like to place reliance on the decisions of the Hon'ble High Court made in the case of UNION OF INDIA & ORS. Vrs. PURNA CHANDRA SWAIN (W.P.(C) No.13377 of 2003) relevant portion of the directions of the Hon'ble High Court 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”.





8. In spite of notices Respondents 4 and 5 have neither appeared nor filed counter. In ordinary parallels I would have quashed their appointments but in view of the fact that they have been appointed on compassionate ground, I hereby quash the order of rejection under Annexure-A/6 dated 30.05.2005 with direction to the Respondents to reconsider the case of the Applicant in the light of the decisions of the Hon'ble High Court made in the case of Purna Swain (Supra).

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

31/3/17  
(B.B.MISHRA)  
Member(A)

KNM/PS.