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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 416 of 2006
Cuttack, this the 18th day of March, 2008

Madan Mohan Sahu Applicant.
Versus
Union of India & Ors. Respondents

For instructions

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


(C.R. MOHAPATRA)
MEMBER (ADMN.)

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Original Application No. 416 of 2006
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C O R A M:

THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (A)

In the matter of:

Madan Mohan Sahu Applicant.
Versus
Union of India & Ors. Respondents

(For Full details, see the enclosed cause title)

By legal practitioner: M/s. B.S.Triathy, M.K.Rath, J.Pati, Counsel.
(For petitioner)

By legal practitioner: Ms.S.Mohapatra, Counsel.
(For respondents)

O R D E R

MR.C.R.MOHAPATRA, MEMBER(A):

Undisputed fact of the matter is that the father of the Applicant was an employee of the Postal Department. He took voluntary retirement on the ground of being medically invalid on 24.12.1985 and died on 22.11.1992. The grievance of Applicant for providing an employment on compassionate ground was considered and rejected on the ground that his

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father took voluntary retirement at the age of 57 years when he had only 3 years of service left for superannuation and communicated to applicant on 18.07.1995. Applicant challenged the aforesaid order of rejection dated 18.07.1995 in OA No. 219/03 which was disposed of on 03.09.2004 asking the Respondents to reconsider the case of Applicant. Again the said prayer of the Applicant received due consideration by the CRC but the grievance of Applicant was rejected on the ground that there remains no indigent condition and no vacancy in the cadre of Gr. D under compassionate appointment quota so as to be provided with an employment on compassionate ground and the same was communicated to the Applicant in letter dated 09.02.2005 (Annexure-A/A2) which is under challenge in this OA filed under section 19 of the Administrative Tribunals Act, 1985, seeking quashing of the impugned order under Annexure-A/2 with a direction to the Respondents to provide an employment on compassionate ground.


2. While the factual aspects of the matter are not in dispute, it has been maintained by the Respondents in their counter filed on 14th March, 2007 that such compassionate appointment is considered and provided with a view to redeem the family members from the financial hardships caused due to the death of the immediate bread earner of the family provided there

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remains no other means of livelihood of the family. The compassionate appointment is considered on indigent condition of the family, the size of the family, minor children, education of minor children, marriageable daughters, landed properties, other source of income derived by the family members. It is on record that there are only two major sons aged 51 years and 34 years in the family of the deceased official by now excluding two married daughters aged 49 & 42 years. The age of the applicant is 51 years. All the children are quite grown up and they are managing the family for last 20 years. There is no indigency that the family suffers. Besides, there is also no vacancy under compassionate quota in the cadre of Group D for which the applicant had applied. Hence on the reasons cited above, the case of applicant was considered by the CRC and rejected which was communicated to the Applicant under Annexure-A/2.

3. Heard Learned Counsel for both sides and perused the materials placed on record.

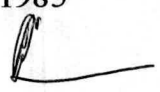
4. Learned Counsel appearing for the Applicant has submitted that it is wrong on the part of the Respondents to state that there exist no financial hardships in the family to be provided with the employment on compassionate ground.



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5. It is the consistent view of the Hon'ble Apex Court that there should be no departure from this general rule except under compelling circumstances such as death of the sole bread earner and the livelihood of the family suffering as a consequence. 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. The High Court and Tribunals should not confer benediction impelled by sympathetic consideration to make appointments on compassionate grounds when the regulations did not cover and contemplate such appointment. 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 sudden 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.

But in the present case it is noticed that the family of the deceased Govt. servant was able to survive for all these years from 1985

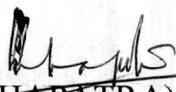


without any support of employment on compassionate ground and that the Applicant is now aged about 55 years. On perusal of the scheme of employment on compassionate ground it is revealed that consideration of distress condition is one of the prime factors for providing employment. Except a bald statement of penury, Learned Counsel for Applicant has produced no material to show the dependency and distress condition of the family. It is also not the case of the Applicant that there was any wrong in the decision making process of the authority thereby causing great injustice to him. The settled position of law is that the Tribunal cannot sit as an appellate authority over the decision of the authorities. It can only interfere, if there is any wrong in the decision making process of the matter which is not the case of the Applicant.

6. In the case of *Indian Drugs and Pharmaceutical Ltd v. Devki Devi*, 2007 (1) AISLJ 224, the Apex Court held that the compassionate appointment is not a right. In the case of *State of J& K v Sajid Ahmed Mir*, 2007 (1) AISLJ 219 the Apex Court observed that when the family could survive in spite of the death of the employee at a belated stage the family should not get employment on compassionate ground. In the case of *National Institute of Technology and another v Miroj K. Singh* (2007 1 SCC (L&S) 668 by the time the employee died the son was a baby, still the

Hon'ble Supreme Court held that compassionate appointment cannot be granted to the son after getting majority more than 15 years after the death of the employee.

7. In the instant case the employee took voluntary retirement on medical invalidation about twenty three years before. At this stage grant of appointment on compassionate ground to the Applicant who is about 55 years of age would be a negation of the scheme. The claim of applicant does not contain any merit. Hence, this OA, being devoid of any merit, is dismissed. No costs.


(C.R. MOHAPATRA)
MEMBER(A)

KNM/PS