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O.A. No. 458 of 2006.

Order dated: 17.01.2006.

Applicant files this Original Application under section 19 of the Administrative Tribunals Act, 1985 challenging the impugned order dated 02.03.2006 (Annexure-A/4) in which his application for compassionate appointment was rejected by the Chief Post Master General, Orissa Circle, Bhubaneswar/Respondent No. 1. He has also sought for a direction to the Respondents to re-consider his case for providing appointment on compassionate ground keeping in mind the averments made in this OA so as the instructions issued in OM No. 14014/6180/Esst (D) dated 30-06-1987 by the Government of India Department of Personnel and Training, New Delhi.

2. It is the case of the Applicant that his case had once been adjudicated by this Tribunal in OA No. 706/2003 (Annexure-A/1) in which this Tribunal passed orders to consider the case of applicant for providing employment on compassionate ground as expeditiously as possible preferably within 120 days. Respondents in compliance to the order of this Tribunal dated 02.12.2005 passed in OA No. 706/2003 held

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the CRC and once again rejected his case on the grounds of non availability of vacancy and relative indigence.

3. In the counter filed by the Respondents it has been maintained that in pursuance of the directions of this Bench, the case of the applicant was duly considered by the Circle Relaxation Committee (CRC) on 17.02.2006. The CRC considered two factors i.e. (i) availability of vacancy & (ii) relative indigence. Since no vacancy exists under compassionate quota, there is no need to consider relative indigence. The Supreme Court in case of **Himachal Road Transport Corporation v. Dinesh Kumar** (JT 1996 (5) SC 319) on May 7, 1996 (9) SC 1977 on October 9, 1996 held that appointment on compassionate grounds can be made only if a vacancy is available for that purpose. The case of the applicant was considered by the CRC and rejected on the reasons cited above and the observation of the CRC was communicated to the Applicant vide letter dated 02.03.2006 (Annexure-R/1).

4. Heard Learned Counsel for both sides and perused the materials placed. Also perused the file (No.RE/CRC/2006) produced by the Learned Additional Standing Counsel as per the directions of this Tribunal dated 01.12.2006. On perusal of the CRC file, it came to the

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light that the name of applicant is at Sl. No.2 of paragraph 2 of the minutes drawn by the CRC met on 17.02.2006 and against his name the following observations have been made:

“Part-II

The CRC also considered the following cases as per direction passed by the Hon'ble Central Administrative Tribunal and Hon'ble High Court of Orissa with the decision noted against each.

1. Dharanidhar Nayak,
OA 951/2005
2. Jitendra Dash
OA No.706/2003.

Approved

CRC has to consider two factors:

- iii. Availability of vacancy;
- iv. Relative indigency.
Since no vacancy exists under compassionate quota, no need to consider relative indigency.
Hence not approved.

5. The basic need to provide employment on compassionate ground is to mitigate the hardship caused due to the death of the Government servant in other words the indigent condition of the family is the prime consideration. But from the note extracted above, it is evident that in spite of the directions of this Tribunal, the case of the applicant received no consideration due to want of vacancy. It is also seen that out of six candidates, candidature of one candidate was approved by the

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CRC, without comparing the indigent condition between him and that of the applicant and surprisingly against the name of the next candidate Jintendra Dash it has been noted that his case is not approved on the ground of lack of indigence which pre-supposes that he was considered against a vacancy but found unsuitable because of want of indigence. It is also seen that the case of others had been rejected due to want of indigence or sons are major to seek employment from open market. Neither vacancy position has been spelt out in the minutes of the CRC nor in the counter filed in this case.

6. From the minutes of the CRC it is also not clear as to whether the case of the applicant received consideration against which year of vacancy. Admittedly the father of the applicant died prematurely in the year 1995 and therefore, as per the law his case ought to have been considered against the vacancy occurred prior to the date of convening the CRC. In this connection 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:

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“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”.

7. From the discussions made above, it is evident that there has been no application of mind in judging the case of the Applicant and the impugned order so far as it relates to applicant is quashed and the
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Respondent No.2 is hereby directed to reconsider the case of applicant taking into consideration his indigent condition keeping in mind the decisions of the Hon'ble High Court made in the case of Purna Chandra Swain(Supra) within a period of 60 days from the date of receipt of a copy of this order.

8. In the result, this OA stands allowed with the observations and directions made above. There shall be no order as to costs.

3/2/22
(B.B.MISHRA)
Member(A)