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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

OA No. 701 of 2006
Cuttack, this the 12th day of December, 2008

Laxmidhar Mallick 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?


(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)


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

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C O R A M:

THE HON'BLE MR.JUSTICE K.THANKAPPAN, MEMBER (J)
A N D
THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)

Laxmidhar Mallick, aged about 32 years, S/o. Late Lokanath Mallick, presently working as DLR in Postal Assistant in Chandinichouk Head Post Office, Chandinichouk, Dist. Cuttack.

.....Applicant

By Advocate : M/s. Sadasiva Patra, D.K.Mohanty.
- Versus -

1. Union of India represented through Chief Postmaster General, Orissa Circle, Bhubaneswar, Dist. Khurda.
2. Senior Superintendent of Post Offices, City Division, Cuttack 15 Cantonment Road, Cuttack-1.

....Respondents

By Advocate : Mr. U.B.Mohapatra & Mr. S.Barik .

O R D E R

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

Undisputed fact of the matter in this case is that consequent to the death of the father of the Applicant, the Respondents under Annexure-A/1 dated 17.09.1997 conveyed the approval for appointment of the Applicant in Postal Assistant (PA) cadre against compassionate appointment quota. But instead of appointment on regular basis, the Respondents provided the applicant engagement on daily wage basis in Chandinichouk Head Post Office on leave vacancy on the ground that there was no vacancy under compassionate appointment quota in PA cadre. The applicant having failed to remedy his grievance for regular

appointment through various representations, has approached this Tribunal seeking direction to the Respondents to offer him regular appointment pursuant to the order under Annexure-A/1 dated 17.09.1997 instead of daily wage basis against leave vacancy.

2. Respondents stand in the counter is that appointment under compassionate ground is only against the vacancy earmarked for the same. As there was no vacancy, adjustment of the applicant pursuant to the order under Annexure-A/1 could not be made effective and hence he was provided with engagement on daily wage basis against leave vacancy as and when required. Merely because he was approved for appointment on compassionate ground he cannot claim any vested right to be appointed. In view of the above, they have prayed for dismissal of this OA.

3. By filing rejoinder the Applicant furnished names of several persons in whose favour regular appointment in PA cadre was provided although the death of their fathers occurred much after the death of the applicant's father. To buttress his stand that he has been discriminated intentionally and deliberately, he has produced materials obtained under RTI Act as Annexure-A/7 series.

4. Contentions raised in the pleadings were highlighted by the Learned Counsel appearing for the respective parties and having heard them at length, we perused the materials placed on record.

5. It is not necessary to repeat all those arguments advanced by the respective parties; because from the record produced by the applicant under Annexure-A/7 it is conclusively proved that there has been gross discrimination thereby miscarriage of justice to the applicant in the matter of providing regular appointment on compassionate ground to the Applicant; because although the death of the father of the applicant and approval for providing employment assistance on compassionate ground to the applicant was prior to the persons named under Annexure-A/7, those candidates were provided regular appointment in the PA cadre of the Postal Department where the applicant has been deprived of the same till date. Law is well settled and needs no emphasis that discretion cannot be used discriminatorily. Since in the present case it seems that discretion has been used discriminatorily, the Respondent No.1 is hereby directed to cause an enquiry as to how a candidate i.e. the Applicant who has been approved earlier and working in the department on DLR basis due to non-availability of vacancy has been deprived of appointment as soon as vacancies were available by filling up of those vacancies through persons whose cases arose much after the case of the Applicant. Such miscarriage

of justice caused to the applicant in the decision making process of executing the order under Annexure-A/1 dated 17.09.1997 needs to be removed forthwith at any rate within a period of 45 days from the date of receipt of copy of this order. In the event of finding fault with any of the officials, Respondent No.1 is free to take action against those erring officials in accordance with Rules.

6. Resultantly, this OA stands allowed to the extent stated above. There shall be no order as to costs.

Kappan
(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)

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