

OA No.803 of 2006

Bilasini Nayak & Another .... Applicants  
Versus  
UOI & Ors. .... Respondents

1. Order dated 19<sup>th</sup> August, 2009.

**C O R A M**

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

This OA has been filed by the widow and son of Late Nilamani Nayak, (who died prematurely on 09.07.2002 while working as Upper Division Clerk in the ARC, Charbatia) challenging the action of the Respondents in not considering the case of Applicant No.2 in proper perspective for providing appointment on compassionate ground. By filing counter, the Respondents have stated that it is not correct to state that the case of the Applicant No.2 has not been considered in its proper perspective. The case of the Applicant No.2 was duly considered but considering the liability and indigent condition of the families of other aspirant candidates within the availability of vacancies under the compassionate appointment quota, Applicant No.2 could not be accommodated. They have also produced copies of the comparative chart of the candidates whose cases were considered by the Committee. By filing copy of the letter dated 2.4.2009 it has been brought to the notice of this Tribunal that during 2003 there were 24 applications as against the earmarked vacancies of two; during 2004 there were 39 applications as against the earmarked vacancies of 2 and during 2005 there were thirty applications as against the earmarked vacancies of 1. The case of Applicant No.2 though considered two times with the liabilities of the family the

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applicant could not be accommodated. However, his case was again considered during 2008 but he could not be adjusted. In view of the above, Respondents prayed for dismissal of this OA.

2. Learned Counsel appearing for the parties reiterated the stand taken in their respective pleadings. Having heard them at length perused the documents placed on record. On perusal of the check list furnished by the Respondents with the counter, I find hardly any infirmity in the decision making process of matter in giving appointment to others on compassionate ground on the ground of being more deserving. However, I concur with the argument advanced by Learned Counsel for the Applicant that there are instructions supported by the decision of the Hn'ble High Court of Orissa that in case there is no vacancy under compassionate appointment quota in the same department the name of the candidate can be sent to other Ministry for consideration. The said is in the case of **UNION OF INDIA & ORS. Vrs. PURNA CHANDRA SWAIN** (**W.P.(C) No.13377 of 2003**). While deciding the matter Their Lordships of the Hon'ble High Court of Orissa in its order dated 08-11-2005 observed as under:-

“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

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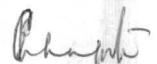
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not be a sufferer for the slackness on the part of the petitioners. Therefore, his appointment is liable to be considered on that ground. It is also to be considered whether the family of the deceased is in distress condition or not and on that ground 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 supplies.)

3. In view of the discussions made above, while not interfering with the impugned order of rejection, the Respondents are directed to send the name of the Applicant to other Ministries/Departments under intimation to the Application for sympathetic consideration for providing employment on compassionate ground. This shall be done within a period of thirty days from the date of receipt of copy of this order.

4. In the result, this OA stands disposed of with the observation and direction made above. No costs.

  
(C.R. MOHAPATRA)  
Member (Admn.)