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Original Application No.808 of 2006

Asma Khaun & Another ... Applicant

Versus

Union of India and Others ... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? *yes*
2. Whether it be circulated to all the Benches of the CAT or not? *NO.*

(B.B.MISHRA)
MEMBER(A)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

O.A.No. 808 of 2006
Cuttack, this the 23rd day of April, 2007

C O R A M:

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

1. Asma Khatun, Aged about 51 years, wife of Late Agha Ahmed, Jholasahi, Post-Buxibazar, Cuttack-1;
2. Agha Hasmat, Aged about 26 years, Son of late Agha Ahmed, Jholasahi, Post-Buxibazar, Cuttack-1.

..... Applicants.

By legal practitioner: Mr.D.K.Mohanty, Advocate.

-Versus-

1. Union of India represented through its Director General of Posts, Government of India, Ministry of Communications, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi-110 001.
2. Chief Postmaster General, Orissa Circle, Bhubaneswar, Dist. Khurda, Pin-751 001.
3. Senior Superintendent, RMS 'N' Division, Cuttack-753 001.

....Respondents.

By legal practitioner: Mr.S. Barik, ASC,

O R D E R

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

Undisputedly, Applicant No.1 is the widow and Applicant No.2 is the son of the deceased Postal employee of Late Agha Ahmed. Said Agha Ahmed was a regular Sorting Assistant working under RMS 'N' Division Cuttack. He expired on 14.01.1987. As Applicant No.1 was

illiterate and none else to take care of the minor children (two daughters and two sons) she made a representation expressing her unwillingness to take up employment with request to keep the opportunity of scheme of compassionate appointment open, till her son attains majority. Her request was accepted and she was intimated vide letter No. B9-11/Ch.II/CH-1 dated 11.05.1988 that as per the instructions from CO vide CPMG Letter No. RE/17-29/87 dated 06.05.1988, she may renew her prayer no-sooner her son (Applicant No.2) attains majority. Applicant No.2 attained majority in 1998 and on 11.06.1998 the lady requested for consideration of the case of Applicant No.2 for employment on compassionate ground. On receipt of the request of Applicant No.1, the Division Office collected the relevant documents i.e. synopsis, brief history, income certificate undertakings etc and sent the same to the Circle Office vide Letter No. B9/11/Ch-11 dated 15/16.09.1998 for according approval. The matter was under correspondence between Division Office and Circle office for a long time and finally, under Annexure-A/1,1 the Applicants were intimated to submit willingness as per the instructions of the CO No. RE/17-29/87 dated 28.11.2000. She submitted her willingness in time which was sent to CO vide Division Office letter No. B9-11/CH-111 dated 19.12.2000. Since this is a belated claim (five years or so), as per the standing instruction dated 28.12.1998,

the matter was referred to the Directorate/Ministry for taking a decision in the matter. The Directorate in letter No. 24-476/2002-SPB-I dated 11.06.2004 (Annexure-R/2) intimated that "the case has been recommended by the circle concerned. Further it is also intimated that the applicant cannot be appointed within one year due to non-availability of vacancy. The case has been considered by the competent authority i.e. Secretary(Posts) and rejected the same. The case does not deserve any sympathetic consideration, as the basic purpose of providing the immediate assistance to the family after the lapse of 16 years is not relevant". Accordingly, the Applicant No.2 was intimated under Annexure-A/2 dated 1st July, 2004 stating that "your compassionate appointment case was considered by the Secretary (Posts) and rejected". Applicant preferred appeal but the same was rejected by referring the letter of the Directorate under Annexure-R/2. Hence this OA.

2. It has been stated by the Respondents in their counter that there is no wrong in the order of rejection of the prayer of Applicant. They have averred that as per the circular of the Department of Personnel and Training No. 14014/5/94-Estt.(D) dated 11.05.1994, the whole object of granting compassionate appointment is to enable the family to tide over the sudden crisis and to relieve the family of the deceased from

financial destitution. But the present claim of compassionate appointment has come much after the death of the deceased Government employee. Besides, they have stated that compassionate appointment can only be made if there is a vacancy under quota. But there was no vacancy under the compassionate quota to accommodate the claim of Applicant. They have maintained that High Courts and Administrative Tribunals cannot give direction for appointment of a person on compassionate ground but can merely direct for consideration of the claim of such appointment. Since the case of the Applicant has received due consideration and was rejected on the grounds there is hardly any scope for interference in the order of rejection. In this connection, they have relied on the decisions of the Hon'ble Apex Court in the cases of **Himachal Road Transport Corporation v. Dinesh Kumar**, JT 1996(5) SC 319, **Hindustan Aeronautics Limited v. Smt. A. Radhika Thirumalai**, JT 1996 (9) 197, **LIC of India v. Asha Ramachandra Ambekar & Another**, JT 1994 (2) SC 183 and in the case of **U.K.Nagpal v. State of Harayana and others**, JT 1994 (3) SC 525.

3. Learned Counsel for both sides resisted their arguments based on the submissions made in the pleadings. I have carefully gone through the records placed by the parties. Now it is to be decided as to

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whether the Respondents were justified in rejecting the claim of applicant on the ground of delay and if delay is over come as to whether the Applicant can be appointed in absence of any vacancy. Before coming to the merit of the matter, I would like to observe that the scheme for employment assistance on compassionate ground is a benevolent legislation made by the Government to see that after the death of the bread earner the livelihood of the rest of the dependent family members does not suffer as a consequence. In this connection, the Government of India has issued various circulars during last decade. But without touching the main stay of judging the financial conditions of the deceased family the grievance of Applicants is rejected. No doubt delay defeats the purpose. But if the delay is condoned, the next question comes for judging the financial conditions of the family of a deceased Government employee. In the present case, it is seen that at the time of the death of the Government Servant, Applicant No.2 was a minor. His mother (Applicant No.1) expressed her inability to take up employment due to illiteracy and there was no other member in the family to take care the minor children. She, therefore, requested to keep the claim open till her elder son attains majority. Such request of the Applicant No.1 was accepted by the Respondent No.2 (Chief Postmaster General, Orissa Circle, Bhubaneswar) and she was intimated by the SSRMS 'N' Division,

Respondent No.3 vide his letter No. B9-11/Ch-II/CH-1 dated 11.5.1988 permitting her to renew her representation when her son Respondent N.2 attains majority. It is not in dispute that no sooner her son attains majority i.e. during 1998, than she preferred representation on 11.06.1998 praying for employment on compassionate ground. From the averments made in the counter it implies that though the Circle Office was convinced this to be a case to be provided with employment on compassionate ground. But for the standing instructions of the Government dated 28.12.1998 vide Annexure-R/1 (since this is a case beyond five years) they referred the matter to the Directorate for consideration. Clause 8(a) of the circular under Annexure-R/2 also empowers the Secretary of the Department/Ministry concerned to accept the belated claim of employment assistant if indigent condition still exists. As regards non availability of vacancy, it is seen that in the counter it has not specifically been stated that at the time of consideration i.e. during 1998, there was no vacancy under compassionate quota. There are instructions that if there is no vacancy the name of the candidate considered for appointment on compassionate ground can be kept in the waiting list. It is also not the case of the Respondents that from 1998 till the order of rejection none was appointed on compassionate ground and/or the financial status of the said appointee is inferior to the present Applicant. Besides on scrutiny it is

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seen that the Respondents rejected the claim of applicant without considering the indigent condition of the family which is the paramount consideration as per the existing instructions of the Government of India. I have gone through the decisions relied on by the Respondents in their counter. I find that in the cases of **Dinesh Kumar** (Supra) and **Smt.A.Radhika Thirumalai** (Supra), the Hon'ble Supreme Court held that appointment on compassionate ground can be made only if a vacancy is available. In the case of **Asha Ramachandra Ambekar and another** (supra) it has been held that Courts/Tribunal can only direct consideration and cannot direct for appointment on compassionate ground. In this case there is no direction for giving appointment to the applicant; nor the decision that there is no vacancy under compassionate ground is genuine. Similarly the decision of the Hon'ble Apex Court in the case of **U.K.Nagpal** (surpa) is of no help to the applicant; because of the fact that the case is different than the present case. In the present case liberty was given to the applicant No.1 to renew her prayer for compassionate appointment after the applicant No.1 attains majority. Circulars under Annexure-R/2 also empowers for condonation of such delay based on which the matter was referred to the Directorate. But the Directorate without considering the indigent condition of the family rejected the claim of applicant on technical ground. In view of the above, it cannot be

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said that the order of rejection is in any way sustainable in the eyes of law.

4. In the light of the discussions made above, I find substantial force in support of the prayer of the Applicants to quash the order of rejection of their claim for providing employment on compassionate ground and to direct the Respondents to reconsider the case of providing employment to Applicant N.2 on the basis of the indigence of the family instead of throwing the claim on the ground of delay. It is so ordered and the Respondents are hereby directed to complete the entire process within a period of 60(sixty) days from the date of receipt of a copy of this order.

5. In the result, this OA stands allowed to the extent stated above. There shall be no order as to costs.

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(B.B.MISHRA)
MEMBER(A)
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