

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH;CUTTACK

ORIGINAL APPLICATION NO.762 OF 2002
Cuttack this the 7th day of April, 2004

N.K. Nanda

...

Applicant(s)

- VERSUS -

Union of India & Ors.

...

Respondent(s)

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? *Yes.*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? *Yes.*

M.R. Mohanty
07.04.2004
(M.R. MOHANTY)
MEMBER (JUDICIAL)

12
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 762 OF 2002
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CORAM:

THE HON'BLE SHRI M.R. MOHANTY, MEMBER (JUDICIAL)

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Nayan Kumar Nanda, S/o. Kunjabihari Nanda
aged about 27 years, C/o. Sri D. Ghose,
Bethel, At/PO-Charbatia, Dist-Cuttack

...

Applicant

By the Advocates

M/s. S. Misra-1
S. N. Misra
B. Dash
B. N. Misra
N. K. Das

- VERSUS -

- AFR
1. Union of India through Comptroller and Auditor General of India, 10 Bahaduraah Zafar Marg, New Delhi-110 002
 2. Accountant General (A&E), Orissa, At/PO/PS-Bhubaneswar, Dist-Khurda
 3. Deputy Accountant General (Admn), Orissa, Office of the A.G. (A&E), Orissa, Bhubaneswar At/PO/PS-Bhubaneswar, Dist-Khurda

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Respondents

By the Advocates

Mr. A. K. Bose, S.S.C.

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O R D E R

MR. M. R. MOHANTY, MEMBER (JUDICIAL): Ranjan Kumar Nanda, while serving as Senior Accountant in the Office of the Accountant General (A&E), Orissa (Bhubaneswar) met with a Road Accident and died prematurely on 21.04.1995, leaving behind his old ailing parent, two brothers (including the present Applicant) and two un-married sisters. While seeking a compassionate employment (to overcome the sudden distress condition of the family) the Applicant, Nayan Kumar Nanda, furnished necessary documents, on 26.09.1995.

7

before the Respondents-Department. Three and half years thereafter, the Respondents rejected the said claim of the Applicant by holding that the financial condition of the family was sound and the said action of the Respondents became the subject-matter of challenge before this Tribunal in O.A.No.401 of 1999 and, on analysis of the matter, this Tribunal held that the finding of the Respondents-Department (pertaining to the financial status of the deceased family) to be not correct and, in the said premises, by its order dated 20.06.2001 (Annexure-1 to this O.A.) the Tribunal asked the Respondents-Department to consider, within sixty (60) days, to provide an employment to the Applicant on compassionate ground. Since the Respondents-Department did not give any consideration within the stipulated period, the said action was the subject matter of a Contempt Petition (No.43/2001) before this Tribunal. The Respondents-Department, belatedly rejected the claim of the Applicant on 18.10.2001; which is the subject-matter of challenge in the present Original Application under Section 19 of the Administrative Tribunals Act, 1985.

2. The Contempt Proceeding (No.43/2001) was, however, dropped on the face of the explanations given by the Respondents-Department (pertaining to delay in complying the order dated 20.06.2001 of this Tribunal) and un-qualified apology tendered by them. However, while parting with the said case, orders to the following extent were passed :-

"Learned Senior Standing Counsel Mr.A.K. Bose clarifies that by communication dated 18.10.2001 compassionate appointment to the Applicant has totally not been denied. Since 5% of the Direct recruit vacancies are only set apart for compassionate appointment, the applicant's case

shall receive due consideration no sooner a vacancy within 5% quota shall be made available.

In view of this clarification given by learned Senior Standing Counsel Mr. Bose, the Opp. Parties herein and the Respondents in O.A.No.401/99 are hereby directed to provide compassionate appointment to the Applicant no sooner a suitable vacancy is available. They should take sincere effort expeditiously in this regard".

It is informed in the Bar that above said order of this Tribunal (based on the concession of the State Counsel is the subject matter of challenge by the Respondents in a Writ-application (O.J.C.No.5394/2002) now pending in the Hon'ble High Court of Orissa.

3. In filing a counter in the present O.A.No.762 of 2002, the Respondents have disclosed that the claim of the Applicant (whose brother died on 21.04.1995) of the year 1995 is not available to be granted; because of (a) introduction of 5% vacancy rule for compassionate employment and (b) introduction of three (3) years waiting list rules for those who are seeking employment on compassionate ground.

4. At the hearing it has been pointed out (by both the parties) that following to premature death of the Govt. servant during 1995, the Applicant sought for a compassionate employment in the same year and 5% vacancy for compassionate employment came during 1997/1999 and maximum three years waiting list for those who are seeking compassionate employment was introduced in the year 2003.

5. Law has been well settled by now that the vacancy, which occurred prior to ^{coming into force of} the amended rules, would be governed by the old rules and not by the amended rules; as has been held in the cases of Y.V.Rangaiah & Ors. vs. J.

Srinivasa Rao and Others (reported in AIR 1983 SC 852) and of P. Mahendran and Ors. Vs. State of Karnataka & Ors. (reported in AIR 1990 SC 405). The same view was also taken by the Hon'ble Orissa High Court (R.C. Patnaik-J in a Division Bench) in the case of Gayadhara Sahoo Vs. State of Orissa and others (OJC No. 811/1990) decided on 26.4.1991). In the case of P. Mahendran (supra) it was held as under:-

"If a candidate applies for a post ... he acquires right to be considered for selection in accordance with the then existing Rules. This right cannot be affected by amendment of any Rule, unless the amending Rule is retrospective in nature".

6. In the present case, the subsequent Rules (introducing 5% of the total vacancy marked for compassionate employment and introducing waiting list for maximum period of three years) are not to affect the prospect of the Applicant/to provide him a compassionate employment and, therefore, the hypertechnical objection (as raised by the Respondents-Department, from time to time) are hereby over-ruled and the Respondents-Department are hereby asked to provide a compassionate employment to the Applicant within a period of ninety days.

7. A similar case, came-up before a Division Bench of the Hon'ble Delhi High Court (J. Devi Vrs. Union of India and others reported in 2003(1)E.S.C. 636) and in that case a cost of Rs. 10,000/- was imposed; while asking the Respondents to provide compassionate employment; notwithstanding the subsequent Rule of 5% reservation for providing such employment. In the present

case, the Respondents-Department initially rejected the claim on a ground which was held by this Tribunal to be not sustainable. In the next round, the Respondents-Department raised the question of new Rule of 5% vacancy for compassionate employment, and, in this 3rd round, they have taken the stand of three years waiting list, which goes to show the mala fide/negative mind of the Respondents-Authorities. Therefore, while allowing this case, a cost of Rs. 7,000/- (Rupees Seven thousand only) is hereby imposed on the Respondents to be paid to the Applicant.

AFD

Manoranjan Mohanty
(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)

07/04/2004