

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO.958 OF 2002  
Cuttack this the 17th day of October/02

Dillip Kumar Padhi

...

Applicant(s)

-VERSUS-

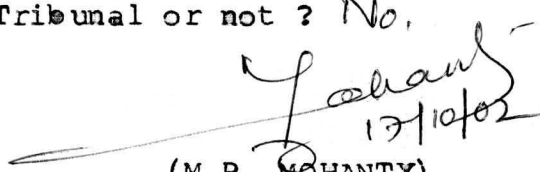
Union of India & Others

...

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 ? No.

  
(M.R. MOHANTY)  
MEMBER (JUDICIAL)

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO.958 OF 2002  
Cuttack this the 17th day of October, 2002

CORAM:

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

....

Sri Dillip Kumar Padhi, 29 yrs.,  
S/o. Late Kartik Chandra Padhi,  
Vill/Post-Debidol, P.S: Nauagaon  
Dist: Jagatsinghpur-754 109

...

Applicant

By the Legal Practitioners:

Mr. P.K. Padhi

-VERSUS-

1. Union of India represented by its  
Chief General Manager, Telecom (BSNL)  
At/PO-Bhubaneswar, Dist-Khurda-751 001
2. Sub Divisional Engineer (Telegraph)  
Central Telegraph Office, C.T.O. Compound  
PO-Cuttack G.P.O., Dist-Cuttack-753 001

...

Respondents

By the Legal Practitioners:

Mr. S.B. Jena,  
Addl. Standing Counsel  
(Central)

-----  
O R D E R

MR. M.R. MOHANTY, MEMBER (JUDICIAL): Heard Shri P.K. Padhi, *ld*  
Advocate appearing for the Applicant, and Shri S.B. Jena, *ld*.  
Addl. Standing Counsel (on whom a copy of O.A. has been served)  
appearing for the Respondents/Department and perused the  
records.

2. Applicant's father Kartika Chandra Padhi, while  
working as a Telegraph Overseer (Operative) in the Office  
of Central Telegraph Office, Cuttack (under Res. No.2)  
died prematurely on 30.11.1997; as is seen under Annexure-1  
(Death Certificate) of the Original Application. The said  
late Padhi left behind his legal heirs (widow, 2 daughters

*J*

and a son/Applicant) as is seen from the Legal Heir Certificate dated 24.12.1997 (Annexure-2). No heed having been paid to the prayer of the Applicant (made to the Respondents) for a compassionate appointment, the present Applicant, Shri Dillip Kumar Padhi, had approached this Tribunal in Original Application No.621/02; which was disposed of on 10.07.2002, with the following observations/directions:-

" Applicant applied for compassionate appointment on the death of his father late Kartik Ch. Padhi, who was working under the Respondents as Telegraph Overseer (Operative) at C.T.O., Cuttack, in order to overcome the sudden jerk caused in the family due to the death of the immediate bread-earner of the family. No heed having been paid to the request of the applicant for providing such appointment on compassionate ground, the applicant has come up in this Original Application with a prayer to the Respondents to provide him compassionate appointment. It is seen from the Annexure-3 that late Kartik Ch. Padhi left behind his widow, two daughters and one son. It is submitted by the Advocate for the Applicant that the family is in indigent condition. It is submitted by the Advocate for the Applicant that the death of father of the applicant occurred prematurely on 30.11.1997 and even though the applicant is striking his head at the doors of the Respondents no tangible result has come out as yet.

In view of the above, it is no use to keep the matter pending especially when this is an application for compassionate appointment pending with the Respondents since 30.11.1997. In the said premises, this Original Application is disposed of with a direction to the Respondents to consider the case of the applicant for providing appointment on compassionate ground treating this Original Application as a part of the representation under Annexures-2 and 5 and pass a reasoned and speaking order within a period of two months from the date of receipt of a copy of this order".

3. Now by order dated 2.9.2002 under Annexure-5, the Asst. Director Telcom(HRD), Office of the Chief General

7  
6

Manager, Orissa, Bhubaneswar has intimated the Applicant that his (Applicant's) name can only be kept in the Waiting List, because 5% of Group C vacancies can only be given on compassionate appointments. The grounds set forth by the Respondents under Annexure-5 dated 2.9.2002 are based on orders of the Government of India in the Ministry of Personnel Public Grievances & Pensions (Deptt. of Personnel & Training) issued vide letter No.14014/6/94-Estt.(D) dated 9.10.1998. It is the case of the Advocate for the Applicant that the father of the Applicant having died on 30.11.1997 and the Telecom High Power Committee having strictly recommended the case of the Applicant for compassionate appointment in a Group C post, the subsequent circular/order/executive instruction of 9.10.1998 is not to cover the case of the Applicant.

4. In support of his contention as aforesaid, Shri P.K.Padhi, Advocate for the Applicant placed into service the several decisions of the Apex Court of India and that of the High Court of Orissa. In AIR 1983 SC 852 (Y.V.Rangiah and Others Vs. V.J.Srenivasa Rao & Ors.) the Hon'ble Supreme Court of India held that "the vacancies, which occurred prior to the amended rules, would be governed by the old rules and not by the amended rules". In AIR 1990 SC 405 (P.Mahendran & Others v. State of Karnataka and Ors.) the Hon'ble Supreme Court of India held that "if a candidate applies for a post in response to advertisement issued by Public Service Commission, in accordance with recruitment Rules, he acquires a 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". The same view was taken by the Hon'ble High Court of Orissa in the case of Debendranath Samantray v. Director of Industries & Ors. (decided by a Full Bench) (reported in 1975 (Vol.XLI) CLT 763) and in the case of Gayadhar Sahoo vs. State of Orissa (O.J.C. No.811/90, decided on 26.4.1991). In the case of Debendranath Samantray (Supra) the Full Bench of the Hon'ble High Court held that "Government has no lawful authority to prejudicially affect the Civil Rights of a Government servant retrospectively by a mere executive instruction". This view, of the Full Bench of Orissa High Court, was taken by relying on the decision of the Apex Court <sup>rendered</sup> in the case of Ex. Major N.C. Singhal v. Director General, Armed Forces Medical Services, New Delhi and Another (reported in AIR 1972 SC 628).

5. Back to the problem in hand, it is the right stand of the Applicant that his father having breathed his last prematurely, while still in service, on 30.11.1997; the executive instructions issued (by the Deptt. of Personnel & Training) on 9.10.1998 cannot stand in his way to get a compassionate appointment outright.

6. In the aforesaid premises, having heard the learned counsels of both sides and having given my anxious consideration to the facts of the case and law governing the field, the order of the Respondents drawn under Annexure-5 dated 2.9.2002 is hereby set aside; and, as a consequence, the Respondents are directed to

give due consideration to the case/grievances of the Applicant as it stood on 30.11.1997, i.e., the date of premature death of his father and provide him an employment on compassionate ground, without keeping his name in the waiting list. While doing so, the Respondents should keep in mind that the Applicant, in this O.A. has alleged that one Sanghamitra Sethi, one Shri Bhoi, one Shri Jena and another one Shri Padhi, whose fathers/guardians breathed their last after the death of the Applicant's father, have already been provided with compassionate appointments by the present Respondents; notwithstanding the Government of India Circular dated 9.10.1998. Therefore, the Respondents should also try their best to remove the discrimination; if any, <sup>that</sup> has been shown to the present Applicant. The direction, as aforesaid, should be complied by the end of December, 2002.

7. In the result, this O.A. is disposed of in aforesaid terms, with no order as to costs.

*M. R. Mohanty*  
7.10.2002  
(M.R. MOHANTY)  
MEMBER (JUDICIAL)

Bjy/