

O.A. No.196 of 2007

ORDER DATED 20<sup>th</sup> NOVEMBER, 2007

Coram:

DR. K.B.S. RAJAN, MEMBER(J)

Order dated 02.03.06 of the Chief Postmaster General, Orissa Circle, Bhubaneswar (Annexure-R/1) gives a birds eye view of this case. The same is extracted below:-

"This regarding compassionate appointment of Sri Jitendra Dash, Son of late Saktidhar Dash, Ex-SPM Chandikhol SO who expired on 10.04.1995 while in service. He left behind 02 widows, 02 major sons and one married daughter. Earlier the compassionate appointment of Smt. Puspalata Dash, the daughter of the late official was considered by the CRC which met on 21.11.2001 and rejected as it was a case of more than 05 years and not a case of immediate assistance.

Then Sri Jitendra Dash, S/o Parbati Dash (2<sup>nd</sup> wife of the ex-employee) filed OA No.706/2003 before the Central Administrative Tribunal with the prayer to direct the Respondents to consider his case for compassionate appointment. The Hon'ble Tribunal vide their order dtd. 02.12.05 in OA No.706/2003 has directed to consider the case of the applicant for providing an employment on compassionate ground within 120 days.

In pursuance of the aforesaid direction of the Central Administrative Tribunal, Cuttack Bench, Cuttack the case of the applicant for appointment on compassionate ground was duly considered by the Circle Relaxation Committee met on 17.02.2006.

The CRC considered two factors.

- (i) Availability of vacancy
- (ii) Relative indigency

Since no vacancy exists under compassionate quota, there was no need to consider relative idigency. The Supreme Court in case of Himachal Road Transport Corporation Vrs. Dinesh Kumar (JT 1996(5) SC 319) on May,7,1996 and HAL Vrs. Smt. A.R. Thirumalai (JT 1996(9) SC 1977 on October,9,1996 pronounced the judgement that appointment on compassionate grounds can be made only if a vacancy is available for that purpose.

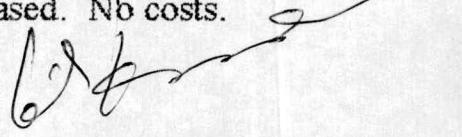
In view of the foregoing facts, the case of the applicant for compassionate appointment was considered by the Circle Relaxation Committee and its recommendation was against the recruitment due to want of vacancy under Compassionate appointment quota. This recommendation has been accepted by the undersigned.

Sd/-

Indira Krishna Kumar, Chief Postmaster General  
Orissa Circle Bhubaneswar-1"

2. Mr. B.B. Pattnaik, Ld. Counsel for the applicant submitted that as per order dtd. 09.04.2007 the same reason has been given and as such effectively no consideration was given to the case by the CRC.
3. Heard Mr. B.B. Pattnaik, Ld. Counsel for the applicant and Mr. D.K. Behera, Ld. Counsel for the respondents and perused the documents. Under the latest instruction while workout 5% vacancy, it should not be restricted to 5% of the optimization of direct recruitment vacancy but 5% of actual vacancies. In this regard DOP&T O.M. No.14014/19/2002-Estt.(D) dated 05.05.2003 is relevant.

4. The respondents vide Annexure-R/5 seem~~s~~ to have not applied the latest order as above all subject. But considered the case keeping in view Annexure-R/5 O.M. dated 22.06.2001. Consideration on comparative basis of the financial stability has to be done in case of compassionate appointment and in the order of merit a line shall have to be drawn up to the total number of vacancies earmarked for compassionate appointment. In the instant case this does not seems to have been considered. The fact as contained in order dated 02.03.06 and 09.04.07 extracted above also confirms that a complete look at the case including comprising of financial status has not so far been taken in the case of the applicant. The applicant certainly is entitled to such a consideration and depending upon the degree of indigency, subject to availability of vacancies the case of the applicant has to be decided. The respondents are therefore directed to consider the case of the applicant on the next Circle Relaxation Committee meeting in accordance with the rules providing necessary points on each item such as number of dependent, assets and liabilities, unmarried daughters and period available from the date of ~~dismissal~~<sup>demise of</sup> till the date of superannuation of the deceased. No costs.

  
MEMBER (JUDICIAL)