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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.334 OF 2007
Cuttack this the 26th day of November, 2008

Smt. Jharana Behera and another Applicant

Vrs.

Union of India and others Respondents

FOR INSTRUCTIONS

- 1) Whether it be referred to the Reporters or not?
- 2) Whether it be sent to the P.B of CAT or not?

(C.R. MOHAPATRA)
ADMINISTRATIVE MEMBER

(A.K. GAUR) 25.11.08
JUDICIAL MEMBER

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CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.334 OF 2007

Cuttack this the 26th day of November, 2008

CORAM:

HON'BLE SHRI A.K.GAUR, JUDICIAL MEMBER
AND

HON'BLE SHRI C.R.MOHAPATRA, ADMINISTRATIVE MEMBER

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1. Smt.Jharana Behera, aged about 50years, W/o.LateDhruba Charan Behera
2. Sri Kishore Mumar Behera, aged about 28 years, S/o. late Dhruba Charan Behera,
Both are in the Villate-Tulasipur, Baurisahi (Muslim Sahi), PS-Bidanasi, Dist-Cuttack-753008

...Applicants

By the Advocates: Mr.D.K.Mohanty

-VERSUS-

1. Union of India represented through its Director General of Posts, Ministry of Communications, Department of Posts, Dak Bhawan, New Delhi-110 001
2. Chief Post Master General, Orissa Circle, Bhubaneswar, Dist-Khurda
3. Dy.Director of Accounts (Postal), Department of Posts, Mahanadi Vihar, Cuttack-753004

...Respondents

By the Advocates: Mr.S.Barik

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ORDER

MR.A.K.GAUR, JUDICIAL MEMBER:

Being aggrieved by the order dated 29.12.2006 (Annexure-A/5) rejecting the prayer for compassionate appointment, the applicants have filed this Original Application wherein they have prayed for quashing the impugned rejection order (Annexure-A/5) and for direction to Respondents to reconsider the case for compassionate appointment.

2. The facts in brief are that the father of applicant No.2 died on 17.7.2005 leaving behind his widow, three sons and one unmarried

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daughter. On 30.12.2005, a representation was made to the Respondents by applicant No.1 stating therein that the elder son of the applicant No.1 was already separated from the family when her husband was alive, one grown up daughter is unmarried and her 3rd son is studying in the school and as such her request for compassionate appointment in favour of her 2nd son, i.e., applicant No.2 may be considered and allowed. The grievance of the applicants is that vide order dated 29.12.2006, the Respondents, without considering their grievance as set out in the representation, rejected the prayer of the applicant No.1. It is the further contention of the applicants that the very aim of providing employment assistance to a family member of a deceased Government employee is to redeem the family from distress/indigent condition caused due to sudden death of the immediate breadwinner of the family. It has also been contended on behalf of the applicants that in order to alleviate the financial hardships to overcome the destitute condition of the family and to shoulder the onerous duties left behind deceased, the Respondents ought to have considered the request of the applicant No.1 for considering the case of the applicant No.2 for compassionate appointment. But the Respondents have not acted fairly in rejecting the grievance of the applicant No.1. The action of Circle Relaxation Committee (in short, 'CRC') as an instrumentality of the State in refusing compassionate appointment to the applicant No.2 is wholly arbitrary and unsustainable in law.

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3. The Respondents, in order to controvert the facts enumerated in the O.A., by filing their counter reply, have submitted that the case of the applicant No.2 for appointment to the post of Postman on compassionate ground was considered along with 18 other applicants. The case of Kum.Sasmita Pradhan was approved by the competent authority on the ground that the deceased employee left behind him five unmarried dependant daughters, out of which three are minor and one is physically handicapped. The case of the applicant could not be considered on the ground that the applicant was not found more indigent in comparison to the selected candidate. In the meeting held on 14.11.2006, the C.R.C. examined all the cases taking into consideration the financial condition of the family, its assets and liabilities, size of the family, number of minor sons and daughters, grown up unmarried daughter and the number of vacancies available under compassionate quota vis-à-vis the circumstances leading to the death of the Government servant and age of the Government servant at the time of death. It is submitted by the Respondents that the case of the applicant has rightly not been recommended due to the reason that the applicant No.2 was not found more indigent in comparison to the selected candidate. The decision of the C.R.C. was communicated to the applicant No.2 by the Respondent No.2 vide its letter dated 11.12.2006(Annexure-R/5). The Respondents have also compared the indigence of the applicant No.2 as well as the selected candidate and observed that the family of the

applicants consists of widow, three sons and one daughter. The first son of the deceased employee is presently working as Assistant Manager, Electrical at Pattamundai Grid and all three sons are grown up. So the need to support the mother no longer exists. The financial status of the deceased family is also favourable, because the applicant No.1 received the terminal benefits as follows:

Family pension Rs.6675.00
D.C.R.G. Rs.3,50,000
G.P.F. balance Rs.4,743.00
C.G.E.I.S. Rs.51,986.00
Encashment of leave Rs.1,56,200.00
Total: Rs.5,71,039.00

4. We have heard Shri S.R.Mishra, learned counsel for the applicants and Shri S.Mishra, holding the brief of Shri S.Barik, learned Addl.Standing Counsel.

5. It has been contended by the learned counsel for the applicants that the C.R.C. has no jurisdiction to reject the case of the applicants for appointment on compassionate grounds. While rejecting the grievance of the applicant No.1, the points raised in the representation have not been looked into by the CRC and the CRC considered the case of the applicants in a hasty manner and without application of mind. The order of rejection by the CRC is not a speaking order.

6. On the other hand, the learned counsel for the Respondents vehemently urged and submitted that this Tribunal cannot confer benediction impelled by sympathetic consideration and in support of this

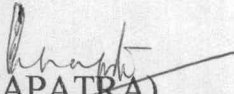
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plea, he placed reliance on 1994 SCC (L&S) 737 (L.I.C. vs. Asha Ramachandra Ambekar). He also placed reliance on 27(1994) ATC 174 (U.K.Nagpal vs. State of Haryana) in order to suggest that compassionate appointment must be made according to Rules and administrative instructions. He also argued that the deceased employee died on 25.7.2005 and the family could survive even after a lapse of more than three years. In the case of Commissioner of Public Instructions vs. K.R.Vishwanath, 2005(7) SCC 772, it has been held by the Hon'ble Supreme Court that once it is proved that in spite of death of breadwinner the family survived, no appointment on compassionate ground could be ordered. The learned counsel for the Respondents also placed reliance on the decisions of the Hon'ble Supreme Court rendered in 2006 (7) SCC 350, Union Bank of India vs. M.T.Latheesh, and Civil Appeal No. 6415 of 2002, decided on 30.9.2002 (Union of India v. Joginder Sharma) in order to buttress the contentions that limiting or ceiling 5% vacancies is purely administrative discretion not open to judicial review and the findings arrived at by the CRC are not open to judicial review.

7. We have given our thoughtful considerations to the pleas advanced by the learned counsel for the parties and we find that the CRC, after careful analysis of the case of the applicant No.2, has not found him more indigent than the one selected by the competent authority.

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8. In view of our aforesaid observation, we find no merit in this O.A., which is accordingly dismissed, leaving the parties to bear their own costs.


(C.R. MOHAPATRA)
ADMINISTRATIVE MEMBER


(A.K. GAUR)
JUDICIAL MEMBER

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