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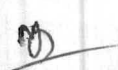
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 422 of 2007.
Cuttack, this the 15th May, 2008.

Jyostna Rao Applicants
-Versus-
Union of India & Ors. Respondents.

FOR INSTRUCTIONS

1. Whether it be sent to reporters or not?
2. Whether it be circulated to all the Benches of the Tribunal or not?


(JUSTICE K.THANKAPPAN)
MEMBER (JUDICIAL)

19

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 422 of 2007
Cuttack, this the 15th May, 2008

C O R A M:-

THE HON'BLE MR. JUSTICE K.THANKAPPAN, MEMBER(J)

Jyostna Rao, aged about 35 years, Wife of late Bhima Rao, C/o.Niranjan Das, Room No. 59, At-Jagannath Lane, PO-Arunodaya Market, Ps-Purighat, Town/Dist. Cuttack.

... Applicant

By legal practitioner -M/s.P.K.Lenka, P.Lenka, Counsel.

-V e r s u s-

1. Union of India represented through its Secretary, Ministry of Industry, Department of Small Industries Service Institute of ARI, New Delhi-II.
2. Development Commissioner, Ministry of Small Scale Industries, Government of India, Nirman Bhawan, 7th Floor, New Delhi-II.
3. Joint Development Commissioner, Ministry of Small Scale Industries, Government of India, Nirman Bhawan, 7th Floor, New Delhi-II.
4. Director, Department of Small Industries Service Institute, Ministry of Small Industries, Government of India, Vikash Sadan, College Square, Cuttack-3.

.... Respondents

By Legal practitioner- Mr. S. B.Jena, ASC.

O R D E R

MR. JUSTICE K. THANKAPPAN, MEMBER (J):

Challenging the order under Annexure-A/7, dated 21st March, 2006 by which the prayer of Applicant for providing appointment on compassionate ground has been rejected, this Original Application U/s.19 of the A.T.Act, 1985 has been filed by the Applicant seeking following directions:



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- "(i) Admit this Original Application;
 - (ii) Call for the records from the office of the respondents;
 - (iii) After hearing the parties further be pleased to issue direction ^{to the Respondents to give an appointment under compassionate ground in any Group D post available under the department or in any other department of the Central Government to} ~~to the Respondents to give an appointment under compassionate ground in any Group D post available under the department or in any other department of the Central Government to~~ ^{Government to} ~~give an appointment to the applicant under compassionate Government to~~ protect the distress family from starvation by quashing Annexure-A/7.
 - (iv) Pass such or such other order as may be deemed just and proper in the facts and circumstances of the case."

2. Short fact of the matter is that the Applicant is the wife of one Bhima Rao who died in harness on 04.07.2001, while working as Wash Boy in the departmental canteen of the Office of the Respondent No.4 [Director, Department of Small Industries Service Institute, Ministry of Small Industries, Government of India, College Square, Cuttack-3]. Death of said Bhima Rao and submission of application seeking employment assistance on compassionate ground by the Applicant under the scheme of employment assistance have not been disputed by the Respondents. However, by Annexure-A/7 order dated ^{21st March, 2006} ~~04th July, 2001~~ the claim of the Applicant was rejected on the following grounds:

"(b) Compassionate appointments can be made only to Group 'C' or Group 'D' posts. It can be made up to a maximum of 5% of the vacancies falling under direct recruitment quota in any Group C or Group D posts. The ceiling of 5% of direct recruitment vacancies for making compassionate appointment

23

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should not be exceeded. Administrative Department or the Nodal Department (DoPT) has no power to relax the 5% quota. The 5% quota of compassionate appointment in Group C and D Posts in SISI, Cuttack and SIDD has already exhausted. Thus, no post is presently available for compassionate appointment.

(c) The CAT, in its order dated 9.7.2003, has observed that vacancy of Wash Boy of the canteen is still vacant as against which the applicant can be appointed. According to extant instructions, direct recruitment should be limited to 1/3rd of the direct recruitment vacancies arising in a year subject to further ceiling that this does not exceed 1% of the total sanctioned strength in the Department inclusive of attached and subordinate offices. The remaining vacancies meant for DR will stand abolished. The annual direct recruitment plan also requires the approval of the Screening Committee headed by the Secretary of the Administrative Ministry. In view of this all the vacant posts cannot be filled as a matter of routine.

(d) The applicant has received all the terminal benefits due to her, such as, family pension of Rs.1697/- per month, lump-sum amount of Group Insurance of Rs.17373/- DCRG of Rs.180233/-, GPF Rs. 6137/-, LIC Policy of Rs.55, 900/- etc."

3. It is noted that prior to the present Original Application, the Applicant has approached this Tribunal in OA No. 196 of 2002. This Original Application was allowed by this Tribunal. Thereafter, the Respondent-Department took up the matter before the Hon'ble High Court of Orissa, Cuttack in WP (C) No. 10118 (C) of 2003. After considering the arguments of the parties, the Hon'ble High Court of Orissa as per the order dated 13.01.2006 dismissed the aforesaid Writ Petition

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observing that "we, therefore, without interfering with the findings of the Tribunal with regard to entitlement of the opposite party-applicant for consideration of her case for compassionate appointment, clarify the operative part of the order of the Tribunal and direct that the case of the opposite party-applicant shall be considered for compassionate appointment keeping in mind her educational qualification and suitability to any post available under the department. Such decision for compassionate appointment be taken within a period of three months from the date of communication of this order." Even after the orders of the Hon'ble High Court, the Respondents have passed the order under Annexure-A/7 rejecting the claim of Applicant on the aforesaid grounds.

4. This Tribunal heard the Learned Counsel appearing for the parties and perused the materials placed on record. Learned Counsel appearing for the Applicant emphatically submitted that the reasons stated in Annexure-A/7 rejecting the claim of applicant are not tenable in the light of the findings entered into by this Tribunal in the previous order which was confirmed by the Hon'ble High Court of Orissa in WP (C) No. 10118 of 2003. Learned Counsel for the Applicant further submits that it would be ^{ob} ~~even~~ ^{evident} from the counter affidavit filed

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for and on behalf of the Respondent-Department in the Writ Petition before the Hon'ble High Court of Orissa that there were eight vacancies existing during 2002 in the department. Subsequently, many more vacancies have been made available in the Department and, therefore, rejection of the case of applicant on the ground of non-availability of vacancy under 5% quota of compassionate appointment is unjustified. Per contra, Learned Counsel appearing for the Respondents submits that though the Hon'ble High Court not disturbed the findings reached by this Tribunal, the Hon'ble High Court has modified the operative portion of the order of this Tribunal to the extent that if there are vacancies available in the compassionate appointment quota the case of the Applicant should be considered as against the availability of vacancies. 5% quota meant for compassionate appointment quota has been exhausted in the recruitment year 2001. However, as per records made available to this Tribunal, it is seen that after 29.1.2001 there was no direct recruitment in the department and vacancies are still there. If so on considering the judgment of the Hon'ble High Court of Orissa and the findings reached by this Tribunal it is only proper for the department, Respondents to consider the grievance of applicant afresh to give an appointment o

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compassionate ground. By placing reliance on the instruction of the DOP&T dated 5.5.2003, Learned Counsel for the Applicant submits that there has been no proper consideration of the case of the Applicant. The instruction of the DOP&T dated 5.5.2003 reads as under:

"If in the first year the request for compassionate ground of a case cannot be given due to non-availability of regular vacancy based on financial condition of the family, the consideration should be extended by one more year subject to availability of a clear vacancy within the prescribed 5% quota. Such consideration for offering Compassionate Appointment will be three years subject to the condition that the prescribed committee had reviewed and certified the penurious condition at the end of the first and second year. If compassionate appointment cannot be granted even in the third year, the case will be closed and will not be considered again.

5. It is noted by this Tribunal that after 2001 no recruitment was made in the Department. It is also the case of the Applicant that as per the admission on the part of the Respondent-Department in the Writ Petition, there has been no consideration of the case of the Applicant and/or of the matter the consideration which has been made is no consideration. Be that as it may, in the light of the above instructions, the case of the Applicant needs consideration for three years namely for three recruitment years from the date of making the application for



compassionate appointment. It is noted that the case of Applicant was rejected by Annexure-A/7 only on the basis of recruitment conducted during 2001 that means the Applicant is entitled for consideration of his application for two more recruitment years.

6. In the light of the discussions made above, the Respondent No. ²~~4~~ is hereby directed to consider the case of the Applicant for providing employment on compassionate appointment and pass appropriate orders as early as possible. Even though there is no specific time is stipulated for such consideration of the case of Applicant it is the duty of the Respondent No.4 to see that in the next recruitment years itself the case of Applicant for employment on compassionate appointment should receive due consideration.

7. With the observations and directions made above, this OA stands allowed. There shall be no order as to costs.

K. Thankappan
(JUSTICE K.THANKAPPAN)
MEMBER (JUDICIAL)