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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.451 of 2007
Cuttack, this the 6th day of April, 2009

D.Sukhamaya Mohanty Applicant
Versus
Union of India & Ors. Respondents

FOR INSTRUCTIONS

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


(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)


(C.R. MOHAPATRA)
MEMBER (ADMN.)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.No.451 of 2007
Cuttack, this the ^{06th} day of April, 2009

C O R A M:

THE HON'BLE MR.JUSTICE K.THANKAPPAN, MEMBER (J)
A N D
THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)

Shri Jayanta Kumar Mohanty, aged about 28 years, son
of Late Balakrishna Mohanty, Village-Nadigaon, PO-
Kudeinadigaon, PS-Soro, Dist. Balasore.

.....Applicant

By Advocate : M/s. Sameer Ku. Das, S.K.Mishra
- Versus -

1. Union of India represented through its Secretary in the Department of Posts, New Delhi.
2. Chief Postmaster General, Orissa Bhubaneswar, Dist. Khurda.
3. Superintendent of Posts Offices, Balasore, At/Po/Dist.Balasore.

....Respondents

By Advocate - Mr.U.B.Mohapatra

O R D E R

Per- MR.C.R.MOHAPATRA, MEMBER (A):-

This is the second round of litigation filed by the Applicant; Shri Jayanta Kumar Mohanty challenging the order under Annexure-A/7 dated 26.04.2007 rejecting his prayer for employment on compassionate ground after the death of his father Late Balakrishna Mohanty. Consequently, he has also

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✓ sought direction to the Respondents to provide him employment on compassionate ground.

2. The fact not in dispute is that the father of the Applicant was a Postman in the Department of Post. He died prematurely on 27.01.2002 leaving behind widow, one unmarried daughter and two sons (applicant is one of them). The department did not find it feasible to provide employment to the Applicant on compassionate grounds as stated in the order of rejection dated 2.3.2004 (Annexure-3) that (i) want of vacancy; and (ii) both the sons are major and the liability of the family is not much. This was challenged by the applicant in OA No. 875/2004. This Tribunal after taking various factors into consideration, in order dated 16.02.2007 disposed of aforesaid OA with the following directions:

“8. From the above it is clear that the case of Sudhir Kumar Pradhan had been considered and recommended by CRC for the vacancies of the year 2002 though his father died on 22.08.2003. Similarly though the father of Rajesh Kumar Ram died on 19.02.2001 and the father of Radhagobinda Ashe died on 17.02.2001 their case have been considered against the vacancies of the year 2002. When admittedly the case of the applicant was considered by the CRC held on 14.01.2004 like



the case of the Rajesh Kumar Ram and Radhagobinda Ashe, the case of applicant ought to have been considered against the subsequent vacancies till the CRC convened and rejected the case of the Applicant.

9. Similarly, it cannot be said that the consideration made by the CRC is reasonable and fair. No explanation has been given by the Respondents as to how the case of Sudhir Kumar Pradhan received due consideration against the vacancies occurred prior to the death of his father. Besides, in comparison to the liabilities reported by the CC, I find no reason of giving priority to the cases of others vis-à-vis the case of the Applicant. That apart the fact that one son and one daughter (unmarried) of the deceased are physically handicapped had not been taken into consideration while rejecting the case of the applicant. From this, it is clear that the Respondents have made the unequal becoming equal and thereby the case of the applicant has been rejected to accommodate less deserving candidates.

10. In the said premises, the order of rejection under Annexure-A/3 dated 1st March, 2004 is hereby quashed directing the Respondents to consider the case of the Applicant for providing employment on compassionate ground within a period of 60 (sixty) days from the date of receipt of a copy of this order.”

Thereafter, the Respondents passed the order under Annexure-A/7 dated 26.04.2007 which is under challenge in this OA. It reads as under:

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"The Screening Committee approval to fill-up the vacancy for the yer 2002 was communicated vide Dte letter No.60-16/2002-SPB.I, dtd.18.9.2003. Although father of Sri Sudhir Kumar Pradhan expired on 22-8-2003, the synopsis papers were received on 31.10.2003 and his case was put up before the CRC with the other cases for consideration on 14.01.2004. There is no rule that the wards of the deceased officials shall be considered against the vacancy of the year of death of their parents. Moreover, the applicant had neither submitted any document nor mentioned in synopsis papers regarding physical handicap of his brother and sister.

In pursuance of the direction of the Hon'ble Central Administrative Tribunal, the Circle Relaxation Committee, which met on 26.04.2007 reconsidered the case of the applicant for compassionate appointment.

At present, there is no vacancy in Group C and D cadre under compassionate appointment quota, hence relative indigency could not be examined by the CRC. Therefore, the applicant was not considered for appointment under compassionate ground. As per DOPT letter No. 14014/6/94-Estt (D) dated 10.09.1998; the compassionate appointment can be made only if regular vacancies meant for that purpose are available. The Hon'ble Supreme Court in case of Himachal Road Transport Corporation v Dinesh Kumar on 7.5.1996 & HAL v A.R.Thirumalai on 9.10.1996 have also held that appointment under compassionate ground can be made only if a vacancy is available for the purpose. Due to want of vacancy Circle Relaxation Committee did not

recommend the appointment of Sri Jayant Kumar Mohanty under compassionate ground.

The recommendation of the Circle Relaxation Committee has been accepted by the under signed."

When the aforesaid impugned under came up under judicial scrutiny of this Tribunal, by filing counter the Respondents have tried to justify the grounds taken in the counter.

3. We have given our thoughtful consideration advanced by the parties in support of their pleadings and perused the materials placed on record.

4. It is well settled principle of law that the state action indisputably must be fair and reasonable. Non arbitrariness on its part is a significant facet in the field of good governance. Although providing employment on compassionate ground is a benevolent legislation yet the discretion conferred upon the state cannot be exercised whimsically or capriciously/discriminatorily.

5. In this connection it is profitable to rely on a decision of the Hon'ble High Court of Orissa reported in **2002**

(1) **OLR 243** wherein it has been held by their Lordships that “ a judicial decision of Courts/Tribunal is not available to be tinkered by the State Government or the Executive Branch. The Executive Branch of Government bears a great responsibility for upholding and obeying the judicial orders. Respect for law and its institution is essential in our democratic set up as the constitution enjoins the rule of law. By-passing the orders of the Court amount to willfully circumventing the decisions in indirect manner and as such, the authority or officer is liable to Contempt of Court. No authority can claim immunity from Contempt Liability”.

6. On a bare perusal of the impugned order under Annexure-A/7, we are constrained to observe that it gives an impression that the Respondents have acted like an authority over this Tribunal. At first instance it was observed that “at present, there is no vacancy in Group C and D cadre under compassionate appointment quota, hence relative indigency could not be examined by the CRC” and on the other hand it has been observed that “therefore, the case of Applicant is rejected”. As such the consideration was no consideration

since this Tribunal has specifically directed that "it is clear that the case of Sudhir Kumar Pradhan had been considered and recommended by CRC for the vacancies of the year 2002 though his father died on 22.08.2003. Similarly though the father of Rajesh Kumar Ram died on 19.02.2001 and the father of Radhagobinda Ashe died on 17.02.2001 their case have been considered against the vacancies of the year 2002. When admittedly the case of the applicant was considered by the CRC held on 14.01.2004 like the case of the Rajesh Kumar Ram and Radhagobinda Ashe, the case of applicant ought to have been considered against the subsequent vacancies till the CRC convened and rejected the case of the Applicant", **the Respondents ought not to have ignored the direction by passing an order that "there is no rule that the wards of deceased officials shall be considered against the vacancy of the year of death of their parents."**

7. Further it is stated that as per the latest instructions of the DOP&T the cases of compassionate appointment need three times consideration by the CRC; which was not adhered to by the Respondents while rejecting

the case of the Applicant. Accordingly, the order under Annexure-A/7 dated 26.04.2007 is hereby quashed. It is held that the case of the Applicant needs to be considered by the Respondents in the light of the directions given by this Tribunal earlier three times keeping in mind that one of the dependent members of the deceased ~~are~~ physically handicapped. As a result, this OA stands allowed with the observations and directions made above. No costs.

Kappan
(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)

Chakraborty
(C.R. MOHAPATRA)
MEMBER (ADMN.)