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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.521 OF 2007
Cuttack this the 31st day of March 2009

CORAM:
HON'BLE SHRI JUSTICE K.THANKAPPAN, JUDICIAL MEMBER

Pravat Kumar Mohanty, aged about 37 years, Son of Parsuram Mohanty & brother of late Pradyumna Kumar Mohanty, Ex-Post Man of Sahid Nagar Post Office, Bhubaneswar – resident at Bhangarpur, PO-Bhatapatna, Dist-Balianta, Dist-Khurda

... Applicant

By the Advocates: M/s. P.K. Mohapatra
S.K. Nath

-VERSUS-

1. Union of India represented through D.G.Posts, Dak Bhawan, New Delhi
2. Chief Post Master General, Orissa, P.M.G.Square, Bhubaneswar
3. Sr.Superintendent of Post Offices, Bhubaneswar, Dist-Khurda
4. Director of Post Offices, G.P.O., Bhubaneswar, Dist-Khurda

... Respondents

By the Advocates: Mr.S.B.Jena, A.S.C.

ORDER

HON'BLE SHRI JUSTICE K.THANKAPPAN, JUDICIAL MEMBER:

One of the four brothers of Pradyumna Kumar Mohanty, a deceased Postman of Saheed Nagar Post Office, Bhubaneswar, has filed this Original Application, being aggrieved by the order dated 20.12.2006 (Annexure-A/8) whereunder which his claim for appointment on compassionate grounds has been rejected. He has prayed to quash the said impugned order under Annexure-A/8 with direction to the

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Respondents to consider his case for appointment under the scheme for compassionate appointment.

2. Admittedly, the deceased Postman was survived by his parents and four other adult brothers along with one unmarried sister. After the death of the postal employee, the applicant filed an application for compassionate appointment under the extended scheme for such appointment, i.e., to the near relatives other than the widow/widower/son/unmarried daughter, etc. The Department considered all the documents filed by the applicant and passed Annexure-A/7 order on 24.5.2005 indicating that there being no vacancy in the cadre of Postman/Gr.D to accommodate the applicant, his case would be considered in the next C.R.C. Thereafter, the Department as per order dated 20.12.2007 (Annexure-A/8) communicated to the applicant as under:

“Not in indigent condition in comparison to selected candidate. Not recommended”.

3. Since the case of the applicant has not been considered on merit and there being conflicting findings ended by the Circle Relaxation Committee with regard to indigent condition of the family and the manner in which the application for compassionate appointment has been dealt by the Respondents, the applicant has filed the present O.A. with the prayer as aforementioned.

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4. This Tribunal heard Shri P.K.Mohapatra, learned counsel for the applicant and Shri S.B.Jena, A.S.C. through Shri U.B.Mohapatra, SSC for the Respondents and also perused the various case laws of the Hon'ble Supreme Court, Hon'ble High Court and the Tribunals on the subject for the purpose of considering the present O.A.

5. The main contention of the learned counsel for the applicant is that since the family of the applicant was fully dependant on the deceased employee, it is to be construed that the family is not having any income at present. Further, the learned counsel submitted that the finding ended by the C.R.C that the family is not indigent is not based on any record or evidence. The learned counsel placed reliance on the income certificate issued by the Tahasildar concerned produced along with the counter reply at Annexure-R/2. Further, the learned counsel for the applicant submitted that in spite of the direction issued by the DoP& T as per Office Memorandum dated 5.5.2003, the case of the applicant has not been considered for three consecutive recruitment years under the scheme. Hence, the learned counsel submitted that Annexure-A/8 is liable to be set aside by this Tribunal by allowing the O.A.

6. Resisting the above contention and relying on the counter reply filed, the learned counsel for the Respondents submitted that the case of the applicant has already been considered properly by the C.R.C. and the Committee, in the first instance, arrived at the finding that there being no

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vacancy, the case of the applicant would be considered in the next C.R.C. On the second occasion, having considered the income certificate and other documents produced by the applicant, the C.R.C. found that the family of the applicant is not indigent as the brothers are having their own income. The learned counsel for the Respondents invited attention of this Tribunal to the various judgments of the Hon'ble Supreme Court pronounced hitherto on the subject and contended that the O.A. being devoid of merit, is liable to be dismissed.

7. On anxious consideration of the materials placed before this Tribunal and on hearing the counsel for the parties, the question to be decided by this Tribunal is whether the rejection of the claim of the Applicant as per Annexure-A/8 is just and proper.

8. The scheme for compassionate appointment introduced by the Government of India is being applied to Railway Boards, Public Sector Undertakings and such other institutions, with certain modification or without modification, as the case may be. But the main thrust and the idea of such a scheme being introduced by the Government of India is to render financial assistance to the family of the deceased Government employee dying in harness with a view to getting over the immediate financial crisis due to sudden death of the breadwinner of the family. In order to avail of the benefit under the scheme, various factors have already been considered by the Apex Court hitherto and the concepts

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those have been inculcated by such judicial pronouncements are – financial condition of the family, belated approach, right to appointment in public service under the scheme and also right to be considered as mandated under Article 16 of the Constitution of India. The very same principle or the object on which the scheme has been introduced is to provide financial assistance or to tide over the sudden financial jerk in the family of a deceased employee for the time being and if so, after lapse of years, the question of considering such applications or approaches for compassionate appointments does not arise as it would defeat the very purpose behind it. However, there are exceptional circumstances where applications supported with convincing materials for compassionate appointments may be considered even after the lapse of some years. Also it is the settled position of law that the object of compassionate appointment is defeated by the efflux of time which can be taken as a ground to reject the application for such appointment. Further, it is to be noted that if the family has been surviving and/or continuing for years together after the death of the deceased employee, hardly there exists indigent condition unless it is established by material evidence. In this context, the income certificate produced by the applicant before the Department would show that the family of the deceased employee consists of old parents, four adult brothers and one unmarried sister, having an income of Rs.17,000/- per annum from agricultural land and

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10
other sources. But this fact has neither been disputed or controverted by the applicant by producing any other evidence. The applicant is only harping on the point that the family was depending on the deceased employee, who passed away way back in 2001. The other point to be considered is that the application had been considered by the CRC for the first time even though there was no vacancy to accommodate the applicant and without having regard to the indigent condition. In this context, it is to be noted that as per the notification of the Department of Personnel & Training, 5% of Direct Recruitment quota is fixed under the Scheme for compassionate appointment and this is not applied in case of promotion. In the above circumstances, the finding of the Department that there being no vacancy to accommodate the applicant for the first time during 2005 is not out of place and based on materials. The applicant has not made any attempt to show that there was any vacancy coming under the 5% quota fixed by the DoP&T before this Tribunal. In the above circumstances, the limited quota has to be filled up by such candidates coming under the compassionate appointment scheme. Further, it has to be noted that as per the orders of the DoP&T dated 5.5.2003, the applications of such applicants coming under this category can be considered for three times where it is found that such applicants are entitled for consideration for such appointment. Three times mean in respect of three consecutive Direct Recruitment years. In this context, it

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has to be noted that the application of the applicant has already been considered two times. Prior to the order dated 5.5.2003, the DOP&T had issued another order in 1998 ordering that such applications shall be circulated among other Department for exploring the possibility of providing employment assistance within one year and this order has been superseded by order dated 5.5.2003 by the reason that each Department will have such applications and this is why that circular is of no avail. It is also to be noted that it is the settled position of law enunciated by the judgments of the Hon'ble Supreme Court from time to time, compassionate appointment cannot be claimed as a matter of right and it is an exceptional appointment to public posts. Hence, the prescription of time limit, the financial conditions and other allied conditions will determine the justifiability of a claim. The further question to be considered is whether the applicant could be considered for the 3rd time in view of abovementioned DoP&T circular or not. As per the instructions issued by the DoP&T, if an applicant is found eligible to be considered under the scheme for compassionate appointment, his application can be considered for three times. But in this case, the applicant's family is not

68

found indigent to claim the benefit under the scheme. Viewed from this angle, the applicant is not eligible to be considered for the 3rd time.

9. For the reasons discussed above, the O.A. being devoid of merit is dismissed. No costs.

K. Thankappan

(K. THANKAPPAN)
JUDICIAL MEMBER