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OA No.294 of 2008
Udayanath Kahali Applicant
Versus
Union of India & Others Respondents

2. ORDER DATED: *30th March, 2010*

CORAM
THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (ADMN.)

Fact of the matter is that the father of the applicant while working as Notice Server under the ITO Keonjhar, Orissa in the Department of Income Tax died prematurely on 09.05.1997 leaving behind his widow, two sons; present applicant is one of them and one married daughter. It is the contention of the applicant that his father was the only earning member of his family and after his death the family is in great financial distress. To overcome such a situation he made representation. But in letter under Annexure-9 dated 5/8th October, 2001 it was intimated to the mother of the Applicant by the Chief Commissioner of Income Tax, Orissa Region, Bhubaneswar that there is no vacancy under the quota of compassionate appointment and as such the request of providing employment assistance on compassionate ground would be considered whenever a regular vacancy under the quota would arise. Applicant alleges that thereafter no communication has been made either to him or to his mother in spite of representation under Annexure-10 dated 20.01.2008. Hence, it has been alleged by the Applicant that although thereafter several persons have been provided employment on compassionate ground his case has received no consideration. Therefore, he has approached this Tribunal in the present OA with prayer to direct the Respondents to adhere to the promises made to the mother of the applicant through letter under Annexure-9 by way of providing appointment on compassionate ground.

2. Heard Learned Counsel for the Applicant and Mr. Bigyan Mohapatra, Learned ASC appearing for the Respondents and perused the materials placed on record.

3. Before coming to the merit of the matter, I would like to record my displeasure in the manner of taking interest by the Learned Counsel for the Applicant in conducting the present case. As it reveals from the records, on 09.05.1997, the father of the Applicant died and his mother was intimated by the Respondents that there is no vacancy under the quota and as such the request of providing employment on compassionate ground would be considered as and when regular vacancy under quota would arise through letter dated 5/8th October, 2001. Even if it is taken that the representation under Annexure-8 and 10 reached the Respondents reiterating his grievance the same are dated 8.2.2007 and 20.01.2008. Applicant filed the OA on 25th July, 2008. The matter was first listed for consideration on the question of admission on 8th August, 2008. This Tribunal having not been convinced about any *prima facie* case to issue notice to the Respondents, on request of the Learned Counsel for the Applicant, adjourned the matter to be taken up when moved. Since 8th August, 2008 the matter remained ⁱⁿ the cold storage as no action was taken by the Learned Counsel for the Applicant to produce any documents requiring this Tribunal to interfere till 29.03.2010. Such a scenario of the matter proves that the family was solvent and there was no need of any appointment on compassionate ground. Law is well settled that compassionate appointment cannot be claimed as a *matter of right* and the main consideration is the indigence of the family. Time without number by following the decisions of the Hon'ble Apex Court, this Tribunal has held that there should be no departure from the general rule *except under compelling circumstances* such as death of the sole bread earner and the livelihood of the family



suffering as a consequence. Once it is proved that in spite of the death of the bread earner, the family (has) survived and a substantial period is over, there is no necessity to ignore the normal rule of appointment and to show favour to one at the cost of several others, ignoring the mandate of Article 14. The Tribunal should not confer benediction impelled by sympathetic consideration to make appointments on compassionate grounds when the regulations did not cover and contemplate such appointment. The appointment on compassionate ground cannot be a source of recruitment. The object is to enable the family to get over the sudden financial crisis. Such appointments have, therefore, to be made in accordance with rules, regulations or administrative instructions taking into consideration the financial condition of the family of the deceased. In the present case according to the Applicant the death of his father occurred in the year 1997. In spite of the passage of near about THIRTEEN YEARS the family could survive. Applicant is also aged about 42 years by now. In the case of **Indian Drugs and Pharmaceutical Ltd v. Devki Devi**, 2007 (1) AISLJ 224, the Apex Court held that the compassionate appointment is not a right. In the case of **State of J& K v Sajid Ahmed Mir**, 2007 (1) AISLJ 219 the Apex Court observed that when the family could survive in spite of the death of the employee, at a belated stage the family should not get employment on compassionate ground.

4. For the reasons stated above, I see no merit in this OA. Hence, this OA stands dismissed at this admission stage by leaving the parties to bear their own costs.

5. Send copies of this order along with copies of the OA to the Respondent.


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