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O.A.No.336 of 2008
Cuttack, this the 13th day of January, 2010

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

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It is the case of the Applicant that his farther was a permanent employee of the ARC, Charbatia working as a Cook. While working as such he breathed his last prematurely on 25.09.99 leaving behind his widow, two sons, one unmarried daughter and his dependent mother. Applicant is one of the sons of the deceased. After the death of the government servant, his family faced insurmountable difficulties in absence of any earning member in the family. The family pension received by the widow was not sufficient to meet the day to day requirements of such a large family. To mitigate the financial hardships caused, family members sought employment in favour of the applicant on compassionate ground. But no consideration was given to such request for employment on compassionate ground although employment was provided to many of the family members of prematurely died Government servants in the ARC. Therefore, the Applicant approached this Tribunal in OA No.720 of 2006 seeking direction to the Respondents for employment on compassionate ground. It is alleged that though this Tribunal in its order disposed of the matter with direction for giving consideration to the case of the Applicant, Respondents instead of giving consideration affirmatively, rejected the claim of the applicant in a routine manner and communicated the result thereof to the applicant under Annexure-A/10 dated 09.05.2008. This order of rejection under Annexure-A/10 is challenged by the Applicant in this second round of litigation filed under section 19 of the A.T. Act, 1985 on various grounds including the one that as per the instruction of DOP&T dated 05.05.2003, the Respondents ought to have considered his case three times

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instead of seizing his fate by giving one consideration and, therefore, he has prayed to annul the order of rejection under Annexure-A/10 and to direct the Respondents to provide him employment assistance on compassionate ground.

2. Respondents, in their reply, opposed the contentions of the Applicant on the ground that one cannot claim appointment on compassionate ground as a matter of right and such appointment is provided taking into consideration various factors provided vacancy exists under the 5% quota meant for appointment on compassionate appointment under direct recruitment Group C & D posts. As candidates having more liability of the family after the death of the Government Servant are available, accommodation of the Applicant within the vacancy meant for compassionate appointment could not be effected. Accordingly, his case was rejected by the Committee constituted for consideration of the cases of candidates. Further it is maintained by the Respondents that the stand of the Applicant that his case ought to have been considered three times as per DOP&T instruction dated 05.05.2003 is not at all correct. As per said instruction of the DOP&T dated 05.05.2003 one forfeits his right to be considered for appointment after three years. Accordingly, by relying on various decisions of the Apex Court, the Respondents opposed the contentions of the Applicant and have prayed for dismissal of this OA.

3. This was also the arguments advanced by Learned Counsel appearing for respective parties and having given in-depth consideration to the submissions, perused the materials placed on record. On scrutiny of the order of rejection under Annexure-A/10 with reference to the pleadings of the parties I see no infirmity in the order of rejection under Annexure-A/10 and necessarily, question of quashing the above order does not arise. However, on going through the DOP&T instruction dated 05.05.2003, I see some force in

the contention of the Learned Counsel for the Applicant that his case ought to have received consideration three times instead of closing the matter in one consideration out come of which is the order under Annexure-A/10. This was also the view taken by this Tribunal in many similar cases decided earlier and no justifiable reason has been brought to the notice of this Tribunal to take a contrary view to the view that the consideration must be three times as per the DOP&T circular dated 5.5.2003.

4. For the reasons stated above, while holding that there is no infirmity in the order of rejection under Annexure-A/10 dated 09.05.2008 requiring interference by this Tribunal, it is ordered that the case of the Applicant as per DOP& T instruction dated 5.5.2003 deserves consideration two more times which the Respondents shall do without any loss of time.

5. In terms of the observation and directions made above, this OA stands disposed of. No costs.


(C.R. MOHAPATRA)
Member (Admn.)