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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.395 of 2008
Cuttack, this the 16th day of December, 2009

Amiya Kumar Nayak 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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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)

Amiya Kumar Nayak, aged about 38 years, S/o.Alekh
Charan Nayak, At-Darada, Po/Via-Borikina, Dist.
Jagatsinghpur.

.....Applicant

Legal practitioner :M/s. B.R.Sarangi, L.Bhuyan,Counse
- Versus -

1. Union of India represented through the Chief Commissioner of Income Tax, Government of India, Wayakar Bhawan, Rajaswavihar, Bhubaneswar, Dist. Khurda.
2. Assistant Commissioner of Income Tax, Headquarters (Administration), Wayakar Bhawan, Rajaswavihar, Bhubaneswar, Dist. Khurda.
3. Commissioner of Income Tax (Appeals), Cuttack, Stoney Road, Po. Chandinichowk, Cuttack.
4. Income Tax Officer (Headquarters) [Admn.], Bhubaneswar, Dist. Khurda.

....Respondents

Legal Practitioner :Mr. R.C.Behera, Counsel

O R D E R

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

It appears from the record that on examination of the representation of the Applicant to go on voluntary retirement on medical ground under Rule 38 of CCS (Pension) Rules, 1972 together with the Medical Certificate furnished by the CDMO, Cuttack, the competent authority vide his letter under Annexure-A/4 dated 18/13th September, 1998 accepted the request of voluntary retirement of the applicant and directed the subordinate authority to relieve him from his duty immediately. After the order under Annexure-A/4, the father of the applicant through representation under Annexure-A/5 dated 2nd November, 1998 sought appointment in favour

of his son (Applicant) on compassionate ground. As it appears from record that vide order under Annexure-A/6 dated 31st March, 1999 applicant was relieved from his duty on voluntary retirement on medical invalidation under rule 38 of CCS (Pension) Rules, 1972 with effect from 31.03.1999. As it further appears, there being no response to the series of representations reiterating the request for appointment on compassionate ground, the Applicant approached this Tribunal in OA No.390 of 2007. In order dated 23rd October, 2007, this Tribunal, without expressing any opinion on the merit of the matter, disposed of the OA No.390 of 2007 with direction to the Respondents to consider and dispose of the representations of the Applicant. The Respondents considered and rejected the grievance of applicant for providing appointment on compassionate ground under Annexure-A/12 dated 17th March, 2008 on the plea that the father of Applicant retired on medical invalidation under Rule 38 of CCS (Pension) Rules, 1972 on 31.3.1999 i.e. after attaining the age of 55 years and as such, in terms of the rules the applicant is not entitled to appointment on compassionate ground.

2. By filing the present OA, while praying to quash the order under Annexure-A/12 he also seeks direction to the Respondents to provide him an appointment on compassionate ground on the ground that the competent authority had accepted and allowed the applicant's father to go on voluntary retirement on medical invalidation under Rule 38 ibid rules immediately vide order under Annexure-A/4. But the Commissioner of Income Tax, Cuttack did not for the reasons best known to him, allow the applicant's father to go on voluntary retirement soon after the order under Annexure-A/4. By the time the order under Annexure-A/4 was issued, the father of the applicant was below 55 years. Had the father of the applicant been relieved soon after the order under Annexure-A/4, the Respondents ought

not to have taken their dominant position in rejecting the grievance of applicant on the ground that as the father of the applicant attained 55 years, under the rules the applicant is not entitled to compassionate appointment.

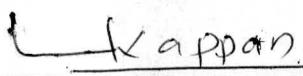
3. Respondents have made all out efforts to substantiate the ground of rejection. It has been contended that the father of applicant worked till 31.3.1999 without raising any objection. It has further been stated that the father of the applicant had made no representation as averred in this OA nor raised any objection for his continuance after the order under Annexure-A/4. It has also been contended that as by the time of voluntary retirement the father of the applicant was 55 years and the case of applicant does not come within the four corner of the rules/Government of instructions on the subject, his case was rightly rejected and communicated to him under Annexure-A/12. Accordingly, Respondents have prayed for dismissal of this OA. By filing rejoinder, the Applicant has more or less reiterated his stand taken in the OA.

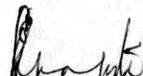
4. Learned Counsel appearing for both sides have reiterated the stand taken in their respective pleadings and having heard them at length perused the materials placed on record. Learned Counsel for the Applicant drew our attention to the order of rejection under Annexure-A/12 to state that the authority has straightaway rejected the grievance of applicant without considering the fact that for no fault of his father in regard to going on voluntary retirement at a subsequent date, he should not be made to suffer and accordingly, Learned Counsel for the Applicant has prayed for remittance of the matter to the authority for reconsideration by taking into consideration all the facts in their totality as narrated above. We also notice that the authority rejected the grievance of applicant straightaway without considering the fact that it was not within the domain of his father to retire unless he is relieved by his authority pursuant to the order under Annexure-A/4 and, as such this is a

case which needs exercise of discretionary power for providing employment on compassionate ground. For the aforesaid reason we feel ends of justice would be met if we quash the order under Annexure-A/12 and remit the matter back to the Respondents for giving a fresh look to the grievance of applicant by taking into consideration the situation narrated above within a period of 45 days from the date of receipt of the order. Ordered accordingly.

5. In the result, this OA stands allowed to the extent stated above.

There shall be no order as to costs.


(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)


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