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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION No.541/2010
this the 6th January, 2017

Smt. Manadata Patra & Anr...Applicants
VERSUS
Union of India and OthersRespondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? *Yes*
2. Whether it be referred to CAT, PB, New Delhi for being circulated to various Benches of the Tribunal or not ? *Yes*


(R.C.MISRA)
MEMBER(A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION No.541/2010
this the 6th day of January, 2017

CORAM

HON'BLE SHRI R.C.MISRA, MEMBER(A)

1-Smt. Manadata Patra aged about 56 years W/o Late Gostha Chandra Patra,

2-Susen Kumar Patra aged about 36 years, S/o Late Shri Gostha Chandra Patra

Both are residents of Daiganbadia, P.S. Kuliana, District Mayurbhanj.
...Applicants

By the Advocate : Shri S. Patra-I

-VERSUS-

1-Union of India represented through Director General, Department of Posts, Dak Bhawan, New Delhi - 110 001.

2-Chief Post Master General, Orissa Circle, Bhubaneswar, District Khurda.

3-Director of Postal Services (HG), O/o Chief Postmaster General, Orissa Circle, Bhubaneswar, Dist. Khurda.

4-Superintendent of Post Offices, Mayurbhanj Division, Baripada, District Mayurbhanj.
...Respondents

By the Advocate : Shri S.Behera

O R D E R

R.C.MISRA, MEMBER(A) :

The applicants in this O.A. are wife and son of late Shri Gostha Chandra Patra, who was an employee of the Department of Posts, and who died in harness on 14.08.2006. The applicants have approached the Tribunal praying for the following reliefs :

"(i) The Original Application be allowed.

(ii) The orders dtd. 25.8.2008 and 9.9.08 (Annexure-7) and 10.6.10 and 16.6.10 under Annexure - A/9 series and the recommendation of CRC dtd. 12.12.2011 and order dated 30.12.2011 under Annexure-10 be quashed.

(iii) Respondents be directed to approve the case of applicant No. 2 to give appointment to the applicant No. 2 under compassionate basis.

(iv) Any other order(s) may be passed giving complete relief to the applicant in the interest of justice and equity."

2. Briefly stated, the facts of the case are that late Shri Gostha Chandra Patra was a GDS employee in the postal department and expired on 14.08.2006, while he was still in service. He left behind his widow, who is applicant No. 1 and, four children including applicant

No. 2, in this O.A. It is claimed by applicants that two elder sons of the family were living separately with their own families, and the daughter had been married, at the time when late Shri Gostha Charan Patra expired. When distress called suddenly on the family at the time of demise of employee, the applicants were reduced to indigent condition, without getting any assistance from the elder employed sons. In this hour of distress, applicant No. 2, with the consent of applicant No. 1, made an application praying for rehabilitation assistance to the respondents. The respondent No. 4 intimated applicant No. 2 by a letter dated 09.09.2008 that the Circle Relaxation Committee met on 7/8.8.2008, and after consideration of the application did not find applicant No. 2 suitable for compassionate appointment on the ground that two sons in the family were already employed, and there was agriculture income of Rs. 12000/- per annum. Thus, being aggrieved by the order of rejection of the prayer, the applicants approached the Tribunal by filing **OA No. 103/2010**. This OA was disposed of by the Tribunal by an order dated 18.03.2010 in which a direction was issued to respondent No. 4 to entertain fresh representation from the applicants within a period of 15 days, and place the same before the circle relaxation committee in its next meeting for consideration. A direction was also passed to the respondents to communicate their decision in a well-reasoned order to the applicants. In obedience to such directions, applicants submitted fresh representation, and after consideration of the same, the respondents No. 2 and 4 intimated applicant No. 2 that the case of the applicant was not approved by the Circle Relaxation Committee which met on 17.05.2010. There are two orders enclosed to this O.A. One is order dated 10.06.2010 passed by respondent No. 2. The second is communication dated 16.06.2010 sent by respondent No. 4 to applicant No. 2. Both these orders are under challenge in this O.A. There is another order of the respondent No. 2 dated 30.12.2011 which

is also impugned in this O.A. While issuing notice, the Tribunal on 22.09.2010 gave an interim order that pendency of the O.A. shall not stand in the way of respondents to consider the case of the applicant for providing an appointment on compassionate ground, keeping in mind the Department of Personnel & Training Circular that each case should receive consideration on at least three occasions. In obedience to that order, respondent No. 2 reconsidered the matter and intimated to the applicant vide an order dated 30.12.2011 that the circle relaxation committee again considered the matter on 12.12.2011, and rejected the prayer of the applicant. This order was brought under the purview of the Tribunal by way of an amendment. Aggrieved by the rejection of the prayer for compassionate appointment as communicated in these orders, the applicant approached the Tribunal in this second round of litigation.

3. The respondents in their counter-affidavit have pleaded that the prayer of applicants was considered in the CRC on 17.05.2010. The CRC observed that the family of the deceased GDS employee consists of the widow and three major sons, two out of them being employed. There was no essential need of the family, like marriage of a daughter ^{or} ~~on~~ education of any minor child. The family was not in an indigent condition and therefore, the CRC did not recommend appointment of applicant No. 2 on compassionate ground. A speaking order dated 10.06.2010 was accordingly communicated to applicant by respondent No. 2 in compliance of orders of the Tribunal in OA No. **103/2010**. This order has been challenged in OA No. 541/2010 which is under adjudication. As per the interim direction of the Tribunal, the prayer for compassionate appointment was re-considered in the CRC held on 12.12.2011, and again it was rejected because the Committee did not find the case 'as hard and deserving' in terms of parameters prescribed in the Postal Directorate letter No. 17-17/2010-GDS, dated 14.12.2010 and 01.08.2011. It is further submitted by respondents

that the CRC observed that two married and employed sons were living separately, and the applicants were living together. The family had no liability of marriage of daughter and education of minor children. The applicants had annual income of Rs. 12,000/-. Applicant No. 1 was paid ex-gratia gratuity and severance allowance of Rs. 48,000/-. Therefore, the averment that applicants reached the point of starvation, was never a fact. The objective of the scheme of compassionate appointment was to grant compassionate appointment to a dependent family member of an employee who died in harness, leaving the family without any means of livelihood. Therefore, a balanced and objective assessment of the financial condition of the family has to be made by the CRC taking into account its assets and liabilities and all other relevant facts, such as presence of earning members, size of the family, age of the children, and the essential needs of the family. The case of the applicant has been examined by the CRC as per the guidelines taking all facts and circumstances into consideration and, has not been recommended on merit.

4. Having heard learned counsels for both sides, I have also perused the records. Both sides have also filed their written notes of argument. The applicants in their written notes of submission have submitted that deceased employee was a GDS employee having a low income. The two major sons are employed at a lower level and are living separately, rendering no assistance to applicants. The respondents are alleged to have conducted no enquiry into the family condition of the applicants, as per the rules and instructions of the Department. The applicants further allege that they possess only 20 decimals of land yielding them annual income of Rs. 2000/-. The respondents have, therefore, given an inflated picture of agricultural income. The family had taken loans for daughter's marriage and

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therefore, indigent condition of applicants persists. The respondents have thus not properly assessed the financial condition of the family.

5. On the other hand, respondents in their notes of submission, have argued that the case of applicants was considered by the CRC as per the departmental guidelines, and that application for compassionate appointment was rejected on merit. In view of these arguments that are advanced by learned counsels of both parties, the issue for determination for the Tribunal is, whether the applicants' case was properly considered by the CRC, and whether the order of rejection needs to be interfered with. While addressing this issue, it will be appropriate to state the position of law on compassionate appointment as enunciated by the Hon'ble Supreme Court. The following observation of the Hon'ble Apex Court in ***Union of India and Ors. Vs. Shashank Goswami and ors.***, is to be noted :

"10. As a rule, public service appointment should be made strictly on the basis of open invitation of applications and merit. The appointment on compassionate grounds is not another source of recruitment, but merely an exception to the aforesaid requirement taking into consideration the fact of the death of the employee while in service, leaving his family without any source of livelihood."

Therefore, it is evident that the applicants do not enjoy any vested right for employment on compassionate ground in the Department. The respondents would consider such application within the four walls of the scheme formulated for the purpose.

6. In the present case, the CRC has considered case of applicant three times, and they have also duly complied with the directions of the Tribunal. However, respondents came to a finding that condition of family was not found be indigent, and therefore did not deserve compassionate appointment. The argument of applicants is that the fact that elder employed sons were living separately, was not considered by respondents. However, respondents seem to be aware

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of this fact, as revealed from the counter. The respondents in their speaking order stated that the family does not have urgent requirements like education of minor children and marriage of a daughter, a fact that is accepted by applicants. Applicants have attempted to reassert their indigent condition by mentioning a lower agricultural income, and some hand loans taken when the daughter of applicant No. 1 was married off. However, these facts are to be verified by the CRC. It is an undisputed fact that CRC considered these details three times, and there seems to be no scope for any further verification and consideration. The CRC has also to consider several applications in respect of financial condition and alleged indigent conditions of the families, so that they come to an objective finding on merit of individual cases. These are functions of the executive authority, and unless any violation of rules and instructions is noticed, the Tribunal would have no reasonable ground to interfere.

7. The Tribunal would not be justified to direct the respondents that applicant in an OA should be given an employment on compassionate appointment. Such a direction would be outside the authority of the Tribunal. However, the Tribunal can issue direction for consideration of such cases as per the departmental guidelines. In the present case, in obedience to the direction of the Tribunal, the respondents have reconsidered the matter, and in fact, as per the interim direction in the present OA, the respondents considered the matter again, in order to satisfy the guideline for three times consideration. Regarding the scope of interference of the Tribunal against the background of such facts, the following ^{observation} ~~observation~~ of the Hon'ble Apex Court in the case of the **Chief Commissioner, Central Excise & Customs, Lucknow & Ors. Vs. Prabhat Singh** in CA No. 8635 of 2012, decided on 30.11.2012 is considered apt and relevant.

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"Courts and Tribunals should not fall prey to any sympathy syndrome, so as to issue directions for compassionate appointments, without reference to prescribed norms. Courts are not supposed to carry Santa Claus's big bag on Christmas eve, to disburse the compassionate appointment, to all those who seek a Court's intervention. Courts and Tribunals must understand that every such act of sympathy, compassion and discretion, wherein directions are issued for appointment on compassionate ground, could deprive a really needy family requiring financial support, and thereby push into penury a truly indigent, destitute and impoverished family. Discretion is therefore ruled out. So are misplaced sympathy and compassion."

8. The above decision of the Hon'ble Apex Court outlines precisely the limits within which the Tribunal shall consider and adjudicate such matters. The term 'compassionate appointment' does not imply that there will be a free showering of compassion. It is a scheme formulated by a department with the objective of redressing the distress conditions of a family in which the bread-winner has suddenly expired. But there are constraints^{te} imposed by such factors as availability of posts under the quota earmarked for the purpose, the guidelines that have to be followed, as well as the relative assessment of indigent condition claimed by various applicants. An elaborate mechanism has been set up for such consideration. There is a CRC, and there are also provisions of inquiring and ascertaining the socio-economic status of applicants. The Tribunal, very obviously cannot supplant this mechanism with any alternative mechanism and procedure. The intervention of the Tribunal will be called for in a situation where it is prima facie made out that the case of applicant has not been given fair and objective consideration. Therefore, in a case where the prayer of the applicant has been considered adequate number of times, and where a case could not be made out that there was an^R infraction of rules and guidelines, the Tribunal would be loath to interfere. To re-emphasize an obvious legal position, the applicant in such matters cannot knock on the doors of Tribunal with a view to enforcing any right of employment in the respondent-department. He can only seek directions from the Tribunal to the respondents for a sincere, judicious, and equitable consideration of his prayer for compassionate

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appointment in keeping ^{with} the provisions of the scheme. When I consider the prayer in this O.A. as against the principles as stated above, I do not feel convinced that applications ^{ns} have succeeded in making out a case, requiring any further intervention by the Tribunal.

9. Thus, as explained in detail in the above paragraphs, I find this O.A. to be devoid of merit. The O.A. is, therefore, dismissed, with no order as to costs.

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[R.C. Misra]
Member(A)

