

7

OA No.128 of 2009
Bhaktabandhu Jena ... Applicant
Versus
Union of India & Others Respondents

2. ORDER DATED: 26th March, 2010

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


Applicant, in this Original Application filed under section 19 of the Administrative Tribunals Act, 1985, seeks to quash the order under Annexure-8 dated 18.07.2008 and 5.2.2009 and to direct the Respondents to provide him appointment on compassionate ground. Respondents filed their counter opposing the prayer of the Applicant. But no rejoinder has been filed by the Applicant. Heard rival submission of the parties and perused the materials placed on record.

2. Fact of the matter is that father of the applicant expired in August, 1982 leaving behind his widow, 3 unmarried daughters and the applicant who is the only son. Within three months of his demise, the widow applied for appointment on compassionate ground. At that relevant time she was 38 years of age. Respondents considered the case of the widow and offered her employment on compassionate ground in July, 1995. By that time she was 50 years of age and as such by making application she requested for consideration of the case of his son (applicant) for appointment on compassionate ground. Thereafter, Respondents called for certain documents from the applicants on receipt of which they considered the case of the applicant but regretted for providing any appointment on compassionate ground. The said order of rejection was assailed by the Applicant by filing Original Application No. 773 of 2005. Respondents have come forward in their counter that they have maintained a priority list based on the evaluation of marks in various aspects limiting the appointment to the extent of

availability of vacancies under the compassionate quota. As the applicant's case did not come within the vacancies available under the quota, his case was rejected and intimated to him. Applicant's contention in that OA was that the Respondents while considering the case of the applicant did not take into consideration that the deceased had two unmarried daughter and had it been taken into consideration the case of the applicant would have been placed above in the priority list and his case would have come within the vacancies available under the quota. Accordingly, in order dated 10th January, 2008, this Tribunal directed reconsideration of the case of the applicant by taking into consideration that the deceased had two unmarried daughter. As it appears, the Respondents reconsidered the matter and rejected the case of the applicant under Annexure-A/8 dated 5th February, 2009 on the ground that the deceased had three daughters and all are married by the time even this Tribunal directed for reconsideration of the case of the Applicant and that the family had received 9975/- as terminal benefit and the widow is receiving Rs.1,783/- family pension plus Dearness Allowance. The Respondents besides stating other grounds in support of their order of rejection by filing copy of the letter of the ADM, Ganjam, Chhatrapur as Annexure-R/2 have strengthened their stand that the deceased had left behind three daughters and all of them married even by the time the Respondents considered and rejected the grievance of applicant which was subject matter of consideration in earlier OA.

3. 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 1982. In spite of the passage of near about two decades the family could survive. Applicant is also aged about 35 years by now. This itself proves that the family was solvent. Though it is not necessary but for the sake of clarity it is stated that 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. For the reasons stated above, I see no merit in this OA. Hence, the OA stands dismissed by leaving the parties to bear their own costs.


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