

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

OA No. 657 of 2011

Smt. Padma Badatya & Anr. Applicant

Vs

Union of India & Others. Respondents

For the Applicant - Mr. P. K. Padhi, Counsel
For the Respondents - Mr. U. B. Mohapatra, SSC
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Order dated: 28th September, 2011

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

AND

THE HON'BLE MR. A. K. PATNAIK, MEMBER (JUDL.)
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After hearing Learned Counsel for both sides, the prayer made in MA No. 858 of 2011 to prosecute the OA No. 657 of 2011 jointly stands allowed and MA No. 858 of 2011 is accordingly disposed of.

2. Applicant No.1 is the wife and Applicant No.2 is the son of Late Pitambar Badatya, who while working as GDSMD of Subalaya Branch Post Office died on 25.06.2006. Consequent thereof employment assistance on compassionate ground in favour of Applicant No.2 was sought and the said request having been turned down and intimated to the Applicant in letter dated 17.05.2010, the

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Applicants approached this Tribunal in OA No. 397 of 2010. The reason of rejection assigned in the letter dated 17-05-2010 was as under:

“The family consists of the widow 52 years and one son 27 years. The Applicant is not dependent. There are no liabilities like marriage of daughter and education of minor children. Not in indigent condition. Hence not approved.”

3. However, OA No. 397 of 2010 was disposed of by this Tribunal on 29.07.2010. Relevant portion of the order dated 29.7.2010 is quoted herein below:-

“Shri Jena submits that the case of the applicant for compassionate appointment has been considered only once and rejected though there are instructions of the DOP&T to the effect that cases of such nature are to be considered thrice and hence he submits that the applicant will make a fresh application invoking the provisions of the DOP&T letter dated 5.5.2003 to the concerned authority within a period of fifteen days and therefore, the present OA maybe permitted to be withdrawn with liberty to make a fresh representation as stated above. The prayer is allowed and if such a representation is made within fifteen days hence, the Respondent No.2 shall consider the same in terms of the DOP&T circular, as referred to above and pass a reasoned and speaking order within 45 days of receipt of the representation.

4. As a matter of fact, copy of the order of this Tribunal was received by the Respondent on 09.08.2010 and the applicants had

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submitted representation on 03.08.2010 which was received by the Respondents on 05-08-2010. Thereafter, Respondent No.2 issued order under Annexure-A/4 dated 20.09.2010.

5. Being aggrieved by the said order dated 20.09.2010, the Applicants have once again moved this Tribunal in the present OA wherein they have sought direction to the Respondents to reconsider the case of the Applicant No.2 for providing compassionate appointment in any GDS post commensurate with his educational qualification. Relevant portion of the order dated 20.09.2010 is extracted herein below:

“As per DOPT letter No. 14014/19/2002-Estt.(D) dated 05.05.2003, the one year limit prescribed for grant of compassionate appointment is often resulting in depriving genuine cases seeking compassionate appointments, on account of regular vacancies not being available, within the prescribed period of one year and within the prescribed ceiling of 5% of direct recruitment quota. It has, therefore, been decided that if compassionate appointment to genuine and deserving cases, as per the guidelines prescribed is not possible in the first year, due to non-availability of regular vacancy, the prescribed Committee may review such case to evaluate the financial conditions of the family to arrive at a decision as to whether a particular case warrants extension by one more year, for consideration for compassionate appointment by the committee, subject to availability of a clear vacancy within the prescribed 5% quota. If no scrutiny by the Committee, a case is considered to be deserving, the name of such a person can

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be continued for consideration for one more year. The maximum time a person's name can be kept under consideration for offering compassionate appointment will be three yrs, subject to the condition that the prescribed Committee has reviewed and certified the penurious condition of the applicant at the end of the first and second year. After three years, if compassionate appointment is not possible to be offered to the applicant, his case will be finally closed and will not be considered again.

Provisions of the DOPT letter under reference – if compassionate appointment to genuine and deserving cases as per the guidelines contained in the rule is not possible in first year due to non-availability of regular vacancy, the prescribed committee may review such cases to evaluate the financial conditions of the family to arrive at a decision as to whether a particular case warrants extension by one more year for consideration for compassionate appointment by the committee subject to availability of a clear vacancy within the prescribed 5% recruitment under compassionate quota – is applicable only in respect of the wards of the deceased/invalid Departmental employees. In case of compassionate appointment of the wards of the GDS officials, there is no limit of 5% recruitment under compassionate quota and the case which are considered indigent by the Circle Relaxation Committee (CRC) are approved for compassionate appointment against GDS vacant posts.

In the instant case, the meeting of the Circle Relaxation Committee (CRC) held on 17-05-2010 has carefully considered the case of the Applicant and rejected on the following grounds as the case was not found indigent.

- i. The family consists of the widow 52 years and one son 27 years;
 - ii. The Applicant is not dependent;
 - iii. There are no liabilities like marriage of daughter and education of minor children;
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iv. Hence, the family is not considered to be in indigent conditions.

Since, the limit of 5% recruitment is not applicable in case of Compassionate Appointment arising out of death of GDS officials and case of the applicant has been rejected by the Circle Relaxation Committee (CRC) on the ground of not finding the family to be indigent, the DOPT letter under reference is not applicable in the instant case."

6. The contention of the Applicants' counsel is that the Respondent No.2 is not the authority to consider and reject the prayer of the applicant as has been done in the instant case. The Respondent No.2 should have placed the matter before the CRC as the CRC is to decide on the materials placed by the applicant through fresh representation. It is the contention of the Applicants' Counsel that the conclusion about indigence in the family because applicant No.1 is aged about 52 years, and one son is aged about 27 is based on no logic. According to the Applicants' Counsel the deceased was the only earning member in the family. There is no provision for payment of family pension after the death of a GDS employee. The family has no other source of income. As such, the view of the Respondents that there is no indigence is not based on record and after the death of the GDS employee, the family members are still continuing in indigence and in a state of penury. Further contention of the applicants'

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Counsel is that there is no mention in the DOPT instruction dated 5.5.2003 that the instruction is not applicable to the GDS employees and, therefore, the view expressed by the Respondent No.2 in this regard is based on conjecture and surmises and such a decision is not sustainable. Accordingly, Applicants' Counsel has reiterated the prayer made in this OA.

7. On the other hand, Mr. Mohapatra, Learned SSC appearing on notice for the Respondents has vehemently opposed this contention of the applicants Counsel. His stand is that it is not for this Tribunal to sit as an appellate authority over the decision of the competent authority made in regard to the existence of the indigence condition of the family. The CRC decision is based on the circumstances e.g. after taking into consideration the size of left out members of the deceased, landed property, liability etc. As such, it cannot be said that the decision of the CRC is based on no material. He has also contended that GDS employees being not at par with the employees working in the Department of Posts, the DOPT instruction has no application to them. Hence he has prayed to dismiss this OA.

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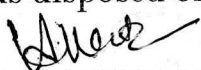
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We find substantial force in the contention of the Applicants' counsel that the order is bereft of any reason as to under what basis the CRC came to the conclusion that there is no indigence. Similarly, we find great flaw in the order under Annexure-A/4 as the same was rejected by the Respondent No.4 instead of placing the matter before the CRC who is competent to decide whether the case of the applicants needs review. Prima facie, we also find no reason to hold that the instruction of the DOPT dated 5.5.2003 has no application to the GDS employees as in a number of cases in the past taking into the above circumstances this Tribunal issued direction for consideration of the family members of the deceased GDS employees three times and at no point of time the Respondents' Department have come forward that this circular is not applicable. For the reasons stated above, as submitted by Learned Counsel for the Applicant, without expressing any opinion on the merit of the matter, the Respondent No.2 is hereby directed to place the case of the applicants before the next meeting of the CRC who should consider the matter afresh and Respondent No.2 shall communicate the decision of the CRC in a well reasoned order within a period of thirty days of the meeting of the next CRC.



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9. With the observation and direction made above, this OA stands disposed of at this admission stage. No costs.


(A.K. PATNAIK)
Member (Judl.)


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

