

18

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

O. A. No.786 of 2011
Cuttack this the 10th day of April, 2015

Malaya Patnaik & Anr.Applicants

Vs.

Union of India & OthersRespondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not?✓
2. Whether it be referred to PB for circulation?✓


[A.K.PATNAIK]
Member (J)

19

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

Original Application No. No. 786 OF 2011

Cuttack this the 10th day of April, 2015

CORAM
HON'BLE MR. A. K. PATNAIK, MEMBER (JUDL.)

.....

1. Smt. Malaya Patnaik aged about 46 years, W/o Late Tirupati Venket Raman Patnaik, Ex-APM, Accounts, Sambalpur, HPO.
2. Miss Moushami Patnaik, aged about 25 years D/o Late Tirupati Venket Raman Patnaik, Ex-APM, Sambalpur HPO.

Both are permanent resident of Village/Post Haripuram (Balligam), Via-Somepnta, Ps. Manjusa (AP) at present residing at Jagruti Nagar, Kanisi Hat – 761008, District Ganjam, Odisha.

...Applicant

(Advocates: M/s G.K. Behera, D.R. Mishra)

VERSUS

UNION OF INDIA represented through –

1. The Chief Postmaster General, Orissa Circle, Bhubaneswar, Dist. Khurda.
2. Sr. Superintendent of Post Offices, Berhampur Division, Berhampur (Gm) – 760 001.
3. Superintendent of Post Offices, Sambalpur Division, Sambalpur.

... Respondents

(Advocate: Mr. M. K. Das)

ORDER

A.K. PATNAIK, MEMBER (JUDL):

The widow (Applicant No. 1) and daughter (Applicant No.2) of Late T.V.R. Patnaik have filed this Original Application stating therein that Late Patnaik while working as APM Accounts under the Respondents died prematurely on 21.5.1996. On 29.12.1998 the CRC

[Signature]

20

approved the case of the Applicant No. 1 for appointment on compassionate ground in PA cadre. On 03.06.1999 she was asked to submit her willingness for absorption in APS and she had submitted the same. On 22.03.2001 she was asked to submit her willingness whether she is willing to serve in any other Ministry / Department. She also submitted her willingness. Again on 20.11.2001 she was asked to submit her willingness whether to be absorbed in GDS. On 14.07.2004 she was informed that as she did not furnish option for GDS her request cannot be considered due to want of vacancy in PA cadre. Hence she made representation on 28.12.2004. Further case of the applicant is that on 13.12.2001, Shri D. Mohanty who was approved for appointment on compassionate ground in Bhadrak division was appointed in Berhampur Division. On 20.02.2004 the case of Shri S.K. Pradhan was approved against the vacancy of 2002. In the meantime, as applicant No. 2 got majority, therefore, by making representation dated 23.09.2005 a prayer was made to provide appointment in favour of Applicant No. 2. In compliance of the order of this Tribunal one Shri D. Sahu was provided appointment on compassionate ground in the year 2008. On 22.08.2008 another representation was submitted seeking employment on compassionate ground. Again in compliance of the order of the Hon'ble High Court of Orissa, Shri Umesh Ch. Patnaik was provided appointment on compassionate ground. Applicants submitted another representation dated 5.7.2011 reiterating their prayer for appointment on compassionate ground. Thereafter, alleging inaction, the Applicants

W. Aller

21
have filed this Original Application on 24th October, 2011 praying to declare that the action of the Respondents in not considering the case of Applicant No. 2 for employment assistance on compassionate ground is bad in law and to direct the Respondents to consider the case of the applicant for appointment on compassionate ground in PA cadre.

2. Respondents in their counter resist the claim of the applicants and have prayed that this OA being devoid of any merit is liable to be dismissed. In the above context, it has been stated that Late T.V.R. Patnaik while working as APM (A/cs), Sambalpur HO expired on 21.5.1996. His widow (Applicant No.1) applied for appointment on compassionate ground. At that point of time her educational qualification was HSC Pass. Her case was duly considered by the CRC met on 04.02.1997 and approved for appointment in the cadre of Postman/Stamp Vendor. She was allotted to Sambalpur Division for appointment but she did not join there. Instead of joining there, she requested for reallocation to Berhampur Division which is her native place. In the meantime she passed the +2 examination held in the year 1998. Hence, she has claimed for appointment in PA cadre. Her case was again considered by the CRC met on 16.12.1998 and approved for appointment in PA cadre subject to satisfactory verification of documents and availability of vacancy in compassionate quota. She was allotted to Berhampur Division. As there was no vacancy in PA cadre in Berhampur Division she could not be appointed and, therefore, her name was kept in the waiting list.

Alles

While the matter stood thus, as per the letter of the Directorate dated 08.02.2001 maintenance of waiting list was discontinued. Hence the candidates who were approved for appointment including applicant No. 1 but could not be appointed due to non-availability of vacancies under the quota, as per the letter of the Directorate dated 25.07.2001 she was requested to exercise her option for appointment in GDS as a onetime measure. But she did not exercise her option and, therefore, she (Applicant No.1) was intimated vide letter dated 28th December, 2004 that as she did not exercise her option for absorption in GDS post, her request for appointment cannot be acceded to due to want of vacancy which having not been challenged this OA is not maintainable.

3. Heard Learned Counsel for both sides and perused the records. Learned Counsel for the applicants submitted that due to existence of indigent condition of the family, after the death of the only bread earner the CRC approved the case of Applicant No. 1. Though others were provided appointment, she could not be appointed due to dearth of the vacancy under the quota. Subsequently, when vacancy was available she could have been appointed in the cadre of PA. But she was not provided such appointment whereas other approved candidates were given appointment. In the meantime applicant No. 1 became old and, therefore, appointment was rightly sought in favour of applicant No. 2 which ought to have been considered by the Respondents which having not been done, the applicants are entitled to the relief claimed in this O.A.

V. A. Lee

4. Mr. M.K. Das, Learned Additional CGSC appearing for the Respondents, on the other hand, contended that the applicant was allotted Sambalpur Division. She did not join there and has prayed for allotment to Berhampur Division. Her case was duly considered but due to non-availability of the vacancy in Berhampur Division she could not be appointed. While the matter stood thus, maintenance of waiting list was discontinued and as a onetime measure willingness was sought from the applicant whether she is willing to join in GDS. But she did not avail of the opportunity. In spite of no appointment on compassionate ground the family has been able to survive for fifteen years by the time this OA was filed. It has been stated that appointment on compassionate ground cannot be claimed as a matter of right nor it can be said to be an another source of recruitment rather it is merely an exception to the recruitment rules by taking into consideration the fact of the death of employee while in service leaving his family without any means of livelihood. The whole object is to enable the family to get over sudden financial crisis caused to the family members after the death of the only earning member. He has contended that appointments on compassionate ground is subject to the rules, regulations or administrative instructions and taking into consideration the financial condition of the family of the deceased that too against the vacancy available under the quota. Since the family of the deceased survived for such a long time without any appointment any direction to provide appointment would tantamount to depriving another person who is really in need of appointment on compassionate



241

ground. As such, there is no reason to interfere in the matter at this stage. Delay and laches has been taken as one of the arguments in support of the prayer of the Respondents.

5. I have considered the rival contentions of the parties. There can be no dispute that every appointment to public office must be made by strictly adhering to the mandatory requirements of Articles 14 and 16 of the Constitution of India. An exception by providing employment on compassionate ground has been carved out in order to remove the financial constraints on the bereaved family which has lost its sole bread earner. Mere death of a Government employee in harness does not entitle the family to claim compassionate employment. The competent authority has to examine the financial condition of the family of the deceased employee and it is only if the Committee is satisfied that without providing employment, the family will not be able to meet the crisis then a job is to be offered to the eligible member of the family. The consistent view that has been taken by the court is that compassionate employment cannot be claimed as a matter of right it being not a vested right. Be that as sit may be, admittedly, though the case of the applicant No. 1 was rejected in 2004 she did not challenge the same then and there not even in this O.A. She was offered appointment to Sambalpur Division but she did not join there in one pretext or another. By now eighteen years have elapsed from the date of the death of the father of the applicant No. 2. Her case was also not approved for appointment on compassionate ground. When the family survives in absence of any such appointment for all these

[Signature]

25

7

years, I do not see any ground to issue any such direction as prayed for by the applicants in this OA especially when the scheme clearly provides that appointment on compassionate ground is subject to the financial condition of the family of the deceased and it is only fulfilment of the condition that without employment, the family will not be able to meet the crisis a job is to be offered to the eligible member of the family. For the discussions made above, I find no merit in this OA which is accordingly dismissed by leaving the parties to bear their own costs.


[A.K.PATNAIK]
Member (J)

j