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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

O.A.No. 16 of 2010

Cuttack, this the 25th day of August, 2010

Jhunalata Jena Applicant
-Versus-
Union of India & Others Respondents

C O R A M

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

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Applicant is the wife of Late Suresh Kumar Jena, who was working as Laboratory Attendant, Central Poultry Development Organization (ER), Bhubaneswar and died prematurely on 06-07-2008 while in service, due to cancer. According to the Applicant he was the only bread earning member of his father and left behind his widow (Applicant), one son and his mother. Successive representations submitted by her seeking appointment on compassionate ground did not yield any result, she has approached this Tribunal in OA No. 157 of 2009 seeking direction to the Respondents to provide her appointment on compassionate ground. In order dated 25.5.2009 this Tribunal disposed of the said OA No.157 of 2009 with direction to the Respondent No.2 to consider the pending representation of the Applicant within a period of one month. Thereafter, Respondent No.3 in letter under Annexure-A/5 dated 13th July, 2009, communicated the decision of Respondent No. 1 expressing the reason for rejection of her representation for providing employment on compassionate ground. The said letter of rejection communicated to the Applicant under Annexure-A/5 is under challenge in this Original Application filed under Section 19 of the A.T. Act, 1985. The relevant portion of the reason of rejection is quoted herein below:

“In view of the foregoing, it may kindly be seen that your application for compassionate appointment has already been considered and due to non-availability of any more existing/anticipated vacancies, it is not possible to grant

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compassionate appointment to you in place of your husband late Shri Suresh Kumar Jena."

2. In placing reliance on the decisions of the Hon'ble Apex Court rendered in the cases of **Himachal Road Transport Corporation v Dinesh Kumar** (JT 1996 (S) SC 139) and **Hindustan Aeronautics Limited v Smt. A.Radhika Trirumalia** (JT 1996 (9) SC 197) in the counter the Respondents contest the case of the Applicant *inter alia* stating that consideration of employment on compassionate ground is not a vested right of a member of the family of the deceased Government Servant so as to seek such appointment irrespective of the date of death of the employee; in other words after lapse of time of the death of the employee concerned. Further stand of the Respondents is that the very object of the scheme is to tide over the financial crisis faced by the family after the death of the bread earner. According to the Respondents the case of the applicant vis-à-vis others was duly considered in terms of the DoP&T OM dated 09.10.1998 but due to non-availability of the adequate number of vacancy under compassionate appointment quota the case of the Applicant was rejected and reason of rejection was duly intimated to her. Hence, the Respondents have prayed for dismissal of this OA.
3. Heard reiteration of the averment made in the respective pleadings of the parties and perused the materials placed on record. Law is well settled that judicial review of an order issued by competent authority is to the extent of the decision taking process of the matter but not certainly not on the decision itself as this Tribunal being not the Appellate Authority cannot sit over the decision duly taken by the competent authority in terms of the existing Rules or instructions on the subject. Keeping in view the long standing law stated above, I examine the grounds taken by the respective parties in the pleadings. It is recorded that although appointment on compassionate ground is a benevolent legislation, yet it is trite law that

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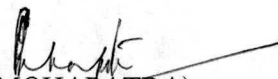
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Administrative Tribunals cannot confer benediction impelled by sympathetic considerations in complete disregard to the facts as in the instant case. The appointment on compassionate ground is not another source of recruitment but merely an exception to the requirements taking into consideration the fact of the death of employee while in service leaving his family without any means of livelihood. In such cases the object is to enable the family to get over the sudden financial crisis. But such appointments on compassionate ground have to be made in accordance with the rules, regulations or administrative instructions taking into consideration the financial condition of the family of the deceased. Employment to the dependant of a government servant dying in harness in preference to anybody else is to mitigate hardship caused to the family of the deceased on account of the unexpected death of the bread earner while in service. To alleviate the distressful condition of the family, such appointments are permissible on compassionate grounds provided one must come with clean hands and situation does really warrant the same. It cannot be provided as a matter of routine or cannot be claimed as a matter of right. At the same time I may state that as the appointment on compassionate ground has direct nexus with the right to life enshrined under Article 21 of the Constitution of India and to mitigate the hardship caused due to sudden demise of the bread earner of the family, there should not be much delay in giving consideration to such request of a family member of the deceased as it would tantamount to denial of economic and social justice as enshrined in the Constitution. In the instant case, it is noticed that the competent authority after assessing/evaluating the financial conditions/indigence/liability/viability of each of the candidates recommended more deserving case in comparison to the Applicant. This was also the condition for considering the candidatures of the candidates provided in the DoP&T instruction dated 09-10-1998.

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10 Therefore, I find no irregularity or illegality in the decision making process of the matter nor in the order of rejection under Annexure-A/5. Hence the order of rejection under Annexure-A/5 is hereby maintained. At the same time, I find that the Respondents while denying appointment to the applicant in adherence and accordance of the DoP&T instruction dated 09-10-1998 omitted to follow the DoP&T instruction dated 5.5.2003 which provides for consideration of the candidature of the candidates seeking appointment on compassionate ground for three occasions and, therefore, the case of the Applicant deserves consideration for two more occasions by the Respondents and ^{they may} communicate their decision to the Applicant within a reasonable period.

4. For the reasons stated above, this OA is partly allowed. There shall be no order as to costs.


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