

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

O.A.No.985 of 2013
Cuttack this the 15th day of ~~October~~, 2017

Hiranyabala Singha & another...Applicants

-VERSUS-
Union of India & Ors....Respondents

FOR INSTRUCTIONS

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

Mr
(DR.MRUTYUNJAY SARANGI)
MEMBER(A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.985 of 2013
Cuttack this the 13th day of ~~October~~, 2017

CORAM:

HON'BLE DR.MRUTYUNJAY SARANGI, MEMBER(A)

1. Hiranyabala Singha, aged about 60 years, W/o. late Uma Shankar Singha
2. Sapan Kumar Singha, aged about 30 years, S/o. late Uma Shankar Singha

Both are At/PO-Bhandarikuli, PS-Raibandia, Dist-Balasore, Odisha

...Applicants

By the Advocate(s)-Mr.D.K.Mohanty

-VERSUS-

Union of India represented through;

1. The Director General of Posts, Ministry of Communication, Dept. of Posts, Sansad Marg, Dak Bhawan, New Delhi-1
2. The Chief Post Master General, Orissa Circle, Bhubaneswar, Dist:Khurda-751 001.
3. The Superintendent of Post Offices, Balasore Division, Balasore-7563 001
4. The Inspector of Posts, Jaleswar West Sub-Division, Jaleswar-756 032

...Respondents

By the Advocate(s)-Mr.S.Behera

ORDER

DR.MRUTYUNJAY SARANGI, MEMBER(A):

Applicants have filed this O.A. under Section 19 of the A.T.Act, 1985 praying for quashing the order dated

23.12.2011(A/5) and the order dated 26.8.2015(A/9) rejecting the application for compassionate appointment and to direct the respondents to consider applicant no.2 in any GDS Post.

2. Facts of the matter, as they appear from the O.A., are as under:

Applicants are respectively the wife and son of one Shri Uma Shankar Singha, who died on 22.7.2009 while he was still in service as GDSMC, Bhandarikuli B.O. under Hatiguda H.O. in Balasore District. On the death of his father, Applicant No.2 submitted an application along with all relevant certificates to the Postal Authorities for providing compassionate appointment. His application was rejected on 23.12.2011 by the Circle Relaxation Committee (CRC). Applicant No.2 filed O.A.No.65 of 2012 before this Tribunal which in its order dated 22.11.2012 disposed of the O.A. directing the respondents to consider the applicant's case two more times as per Circular No.14014/19/2002-Estt.(D) dated 5.5.2003 and communicate the decision to the applicant in a well reasoned order. On 25.6.2013, the Superintendent of Post Offices, Balasore Division (Res.No.3) directed the Inspector of Posts, Jaleswar West Sub Division (Res.no.4) to collect the calculation sheet of the family of the applicant with all supporting documents. Applicant No.2 submitted his details along with an affidavit filed by his widow sister living with her son in the applicant's family. On 30.7.2013, the CRC again rejected the case of the Applicant No.2

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without taking note of the affidavit and informed the applicant that he secured 39 merit points. It is the applicant No.2's contention that his merit point is 52 and therefore, the CRC has erred in calculating his eligibility for compassionate appointment.

3. Applicants have based their prayer on the following grounds:

- i) The number of dependents members in the family is more than 3 consisting of the widowed sister of applicant No.2 and her son, who was eight years old at the time of filing of the O.A. The benefits received by the family were below Rs.25,000/-. The educational qualification of applicant no.2 is 10+2 and therefore, the total points earned by him will be 52 instead of 39.
- ii) Applicants' family is in severe indigent condition. The deceased had a land of 73 dec. growing only rain fed crop. His father had incurred huge debt to meet the marriage expenses of four sisters of the applicant and the family had borrowed money for the father's chronic illness.
- iii) The financial benefits received after the death of the father were spent on repaying the loan. The income of the family has been calculated mechanically on the presumption of some landed property owned by the family.
- iv) Due to the penurious condition of the family, applicant is deserving of a compassionate appointment by calculating the total merit points as 52 instead of 39.

4. Respondents in their counter filed on 10.07.2014 have contested the claim of the applicants. It is their contention that as per the instructions contained in Postal Directorate's letter No.17-17/2010-GDS dated 1.8.2011, hard and deserving cases would mean cases over and above 50 merit points. As per the

Memo dated 14.12.2010 (A/10) the applicant scored only 32 relative points in a 100 point scale. His case was considered by the CRC meeting held on 12.12.2011 and was rejected on the ground that he scored less than 50 merit points out of a 100 point scale. He was considered for the second time in the CRC meeting held on 26.09.2012/01.10.2012 along with other cases and his case was again rejected since he scored only 39 merit point. Again, in compliance with the direction of this Tribunal, applicant's case was considered by the CRC on 30.7.2013 for the 3rd time. This time also the applicant secured only 39 merit points and the CRC did not recommend his case for appointment on compassionate grounds. Respondent No.2 in his letter No.CRC/17-01/GDS/2011 dated 26.08.2013 passed a reasoned and speaking order rejecting the case of the applicant. The applicant had received an amount of Rs.48,000 as terminal benefits, Rs.13372/- towards savings fund and Rs.4372/- towards insurance fund. The annual income of the family is Rs.29,700/- as per the Income Certificate duly issued by the Tahasildar, Jaleswar, as submitted by the applicant (R/5). Applicant's sister Smt.Kabitra Singha is married and residing at Saradiha PO-Ashabandha as mentioned in the application for compassionate appointment by the applicant. As per the guidelines issued by the DOP&T O.M.No.1401/6/94-Estt(D) dated 9.10.1998 and the Postal Directorate's letter No.37-4/2013-SPB-I/C dated 4.2.2013 (R/7), the married daughter

and son are not considered as dependents. Respondents have submitted that as per their calculation, the total merit point of the applicant comes to 39 only and therefore, he is not eligible for compassionate appointment. According to respondents, applicant no.2's case has been considered thrice in CRC held on 12.11.2011, 26.9.2012/1.10.2012 and 30.7.2013 and since he had secured only 39 merit points, his case has not been recommended for compassionate appointment.

Respondents have cited the judgment of the Hon'ble Supreme Court in *Life Insurance Corporation of India vs. Mrs.Asha Ramachandra Ambekar and Ors. JT 1994 (2) 1931*) and have stated that the High Courts and Administrative Tribunals cannot give direction for appointment on compassionate grounds, but can merely direct consideration of the claim for such an appointment.

5. Applicant has filed a rejoinder to the counter-reply on 15.5.2017 in which he has reiterated that the family is in severely indigent condition and the elder daughter of the family Kabita Singha who became widow on 28.9.2009 lives with the applicant's family with her eight years old son. Applicant has reiterated all the points mentioned in the O.A. and has renewed his plea for compassionate appointment. He has reaffirmed that the total merit points come to 52 instead of 39. It is his contention that since there are several GDS vacancies available throughout Orissa, he may be given a compassionate

appointment. He has also pleaded that his case may be considered in any other Department where vacancy exists. He has cited the judgment of the Hon'ble Supreme Court in case of ***Canara Bank & Ors. vs. M.Mahesh reported in 2015 AIR SCW 3212*** to put forth his argument that the executive order cannot have retrospective effect. He claims that since he had submitted his application in time, his case could be considered under the prevalent rules and he may be given the job on compassionate grounds.

6. Heard the learned counsel for the parties and perused the documents submitted by them. This is a second round of litigation. The applicant had earlier filed O.A.No.65 of 2012 and this Tribunal in its order dated 22.11.2012 disposed of the said O.A. with the following direction.

"I have considered the rival submissions of the parties and perused the records. Law is well settled in a plethora of judicial pronouncement that the order of rejection must disclose the detailed reasons in support of the grounds taken in the order of rejection. Order dated 23.12.2011 speaks that the case of the applicant was rejected on the grounds of non-availability of vacancy and that the applicant was not found more indigent in comparison to the others. No details about the vacancies, number of candidates considered and how the authorities reached the conclusion that the applicant was not more indigent in comparison to the others have been furnished. However, it has been stated by the Respondents that the applicant was not found more indigent in comparison to others out of the vacancies against which the case of the applicant along with others was considered. This means that the applicant was indigent however he could not

be provided appointment due to the want of vacancies. Be that as it may, as per the Circular No.14014/19/2002-Estt.(D) dated 05.05.2003, the case of the applicant ought to have been considered three times but it is seen that his case has received only one consideration. In view of the discussions made above, Respondents are directed to consider the case twice more and communicate the decision in well reasoned order to the applicant.

With the aforesaid orders and directions, the O.A. stands allowed to the extent indicated above".

7. Applicant's case was considered for the 3rd time based on the additional documents submitted in the CRC meeting dated 30.7.2013. The CPMG, Orissa Circle has passed the following orders on 26.8.2014.

"In accordance with the direction of the Hon'ble CAT, Cuttack Bench, Cuttack, the case of Sri Sapan Kumar Singha was put up before the CRC, which met on 30.07.2013 for reconsideration along with other cases for the third time.

This time also as the applicant secured only 39 merit points in the 100-point scale based on various indigency-related attributes fixed by the Department, the CRC held on 30.07.2013 could not recommend the case finding the case 'not hard and deserving' as per the instruction contained in Directorate letter No.17-17/2010-GDS dated 13.04.2012 which indicates that the hard and deserving would mean cases over and above 50 merit points.

In accordance with the norms of the Department, I accept the decision of the Circle Relaxation Committee, which meant on 30.07.2013 in this case and reject the case of the applicant for compassionate appointment this time also.

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This reasoned & speaking order issued in obedience to Hon'ble CAT's order dated 22.11.2012 in O.A.No.65/2012".

8. The issue of compassionate appointment has been extensively dealt with in a catena of judicial pronouncements.

In the case of **Mukesh Kumar vs. Union of India & vrs.**, **(2007) 2 SCC (L&S) 926** the Hon'ble Supreme Court has remitted the applicant's case back to the Central Administrative Tribunal for fresh consideration since no indication was available on how the the departmental authorities had arrived at the conclusion that the family was not in indigent condition.

In **Syed Khadim Hussain vs. State of Bihar & Ors., (2006) 9 SCC 195**, the Hon'ble Apex Court had held that the rejection of the applicant's application was not justified as at the time of rejection appellant had attained above 18 years of age, although at the time of filing the application his age was around 13 years.

In **Govind Prakash Verma vs. Life Insurance Corporation of India & ors. (2005) 10 SCC 289**, the Hon'ble Apex Court had held that the scheme of compassionate appointment is over and above whatever is admissible to legal representatives of the deceased employee as benefits of service which they get on death of the employee. Hence compassionate appointment cannot be refused on the ground that any member of family had received such benefits. In **Balbir Kaur &Anr. Vs. Steel Authority of India Ltd. & Ors. (Civil Appeal No.11881/1996)** and **Smt.T.K.Meenakshi and Anr. Vs. Steel Authority of**

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India Ltd. & Ors (Civil Appeal No.11882/1996), 2002 LAB

I.C. 1900, the Hon'ble Supreme Court had held that benefit of compassionate appointment cannot be negative on ground of introduction of scheme assuring regular monthly income to a disabled employee or dependents of deceased employee. In

Sudhir Sakharam Joshi vs. Bank of Maharashtra & Rnr.

2003(1) Mh.L.J. the Nagpur Bench of Hon'ble High Court of Bombay had directed the respondents to give an appointment to the petitioner in clerical cadre since his application for compassionate appointment was rejected without assigning any valid reasons. The Hon'ble High Court had held the fact that retiral benefits given to the deceased cannot be a good ground for such rejection and no material was produced to show that any detailed inquiry was made in order to determine the financial condition of the deceased family. Similarly in **Rajani**

(Smt.) Anr. Vs. Divisional Controller of M.S.R.T. Corporation, Bhandara & Ors. 2003-IV-LLJ (Suppl) NOC-

474, the Hon'ble High Court of Bombay had ordered grant of compassionate appointment even, if necessary, by creating supernumerary post to the wife of an employee compulsorily retired on medical ground since such compassionate appointment was denied for more than 10 years resulting in grave injustice to the family of the said employee. In **Arun**

Kumar vs. Union of India & ors. 2002 LABI.C. 3196, the Hon'ble Himachal Pradesh High Court had held that grant of

family pension or the fact that the family of the deceased employee was receiving benefit under various welfare schemes cannot be a ground to deny compassionate appointment. In **Smt.M.Reddamma vs. APSRTC & Ors., WP No.23759/1995 dated July 17, 1996**, the Hon'ble High Court of Andhra Pradesh had gone to the extent of issuing a writ of mandamus to appoint the petitioner in a suitable post within three weeks on the ground that the Apex Court and the High Court have held that the appointment on compassionate grounds should be provided to the dependents of the deceased employee immediately after the death of the bread-winner to enable the family to tide over the sudden crisis and denial of appointment even after a lapse of six years of making representation amounts to disobedience of the mandate of the Apex Court without any satisfactory explanation for the delay. In **Mona (Smt. & Anr. Vs. Municipal Corporation of Delhi & Others (WP No.4952/1994 dated 11.07.1996)**, the Hon'ble High Court of Delhi had quashed the impugned order denying compassionate appointment on the ground that relevant record justifying denial of appointment was not produced. In **Swati Chatterjee vs. State of West Bengal & ors. (W.P.S.T. No.21/2010 decided on 02.02.2010)** the Hon'ble Calcutta High Court had held that wife of the deceased employee was entitled to compassionate appointment and family pension being one kind of deferred payment and earned by deceased

cannot be a valid ground for denying compassionate appointment. In O.A.No.,2060/2008 this Tribunal in its order dated 22.1.2009 had considered the OA in the matter of compassionate appointment and held that the respondents cannot reject the application for compassionate appointment on the that the applicant did not apply within a period of five years. It was held by this Tribunal that the applicant was a minor at the time of the death of his father and deserved to be considered for compassionate appointment after attaining the age of a major. Similarly, in **OA No.1005/2005 in Akeel Ahmed Khan vs. General Manager, State Bank of India & Ors., 2003(4) MPHT 167**, the Hon'ble High Court of Madhya Pradesh had held that if an appointment on compassionate ground is rejected on the grounds of gratuity and provident fund amount received by the family, it will frustrate the entire purpose of compassionate ground appointment. In **Aparna Narendra Zambre & Anr. Vs. Assistant Superintendent Engineer, Sangli & Ors. 2011(5) Mh.L.J., WP No.1284/2011 decided on 01.08.2011**, it was held by the Hon'ble Bombay High Court that the fact of receipt of family pension cannot be the basis to deny benefit of compassionate appointment. In the case of **Director General of Posts & ors. vs. K.Chandrasekhar Rao, Civil Appeal No.9049/2012 arising out of LSP (C) No.19871/2009 decided on 13.12.2012** and similar Civil Appeals the Hon'ble Apex Court had laid down the principle

that the 1998 Scheme floated by the Government should receive a liberal construction and application as it is stated to be a social welfare scheme and largely titled in favour of the members of the family of the deceased employee. The purpose appears to be to provide them with recruitment on a regular basis rather than circumvent the same by adopting any other measure. In **Nirmala Saha & Anr. Vs. Union of India & Ors.**, **2010(124) FLR 88**, the Hon'ble Calcutta High Court had observed that by merely placing the application for compassionate appointment in three consecutive years from the date of filing the application irrespective of the fact that there were no vacancies will result in the applicant being deprived of the benefit under the scheme. In the case of **National Institute of Technology vs. Niraj Kumar Singh** (**2007**) **2 SCC 481**, the Hon'ble Apex Court had laid down the following principle with regard to compassionate appointment.

"All public appointment must be in consonance with Article 16 of the Constitution of India. Exception carved out therefore are the cases where appointments are to be given to the widow or the dependent children of the employee who died in harness. Such an exception is carved out with a view to see that the family of the deceased employee who has died in harness does not become a destitute. No appointment, therefore, on compassionate ground can be granted to a person other than those for whose benefit the exception has been carved out. Other family members of the deceased employee would not derive any benefit thereunder".

In **Haryana SEB vs. Naresh Tanswar** (**1996**) **8 SCC 23**, **Santosh Kumar Dubey v. State of UP**, (**2009**) **6 SCC 481**,

Haryana SEB vs. Krishna Devi (2002)10SCC 246, State of U.P. vs. Paras Nath 1998, (1998) 2 SCC 412 and National Hydroelectric Power Corporation vs. Nanak Chand (2004)

12 SCC 487, the Hon'ble Apex Court had recognized the need for providing compassionate appointment when the family of the deceased is in dire needs. In **State Bank of India vs. Anju Jain (2008) 8SCC 475**, the Hon'ble Supreme Court had pertinently observed the following.

"Appointment on compassionate ground is never considered a right of a person. In fact, such appointment is violative of rule of equality enshrined and guaranteed under Article 14 of the Constitution. As per settled law, when any appointment is to be made in Government or semi-Government or in public office, cases of all eligible candidates must be considered alike. That is the mandate of Article 14. Normally, therefore, State or its instrumentality making any appointment to public office, cannot ignore such mandate. At the same time, however, in certain circumstances, appointment on compassionate ground of dependents of the deceased employee is considered inevitable so that the family of the deceased employee may not starve. The primary object of such scheme is to save the bereaved family from sudden financial crisis occurring due to death of the sole bread earner. It is thus an exception to the general rule of equality and not another independent and parallel source of employment".

In the case of **V.Sivamurthy Vs. State of A.P., (2008) 13 SCC 730**, the Hon'ble Supreme Court have observed the following in respect of principles relating to compassionate appointment.

".....9. The principles relating to compassionate appointments may be summarized thus;

(a) Compassionate appointment based only on descent is impermissible. Appointments in public service should be made strictly on the basis of open invitation of applications and comparative merit, having regard to Articles 14 and 16 of the Constitution of India. Though no other mode of appointment is permissible, appointments on compassionate grounds are well recognized exception to the said general rule, carved out in the interest of justice to meet certain contingencies.

(b) Two well recognized contingencies which are carved out as exceptions to the general rule are;

(i) Appointment on compassionate grounds to meet the sudden crisis occurring in a family on account of the death of the bread-winner while in service.

(ii) Appointment on compassionate ground to meet the crisis in a family on account of medical invalidation of the bread winner.

Another contingency, though less recognized, is where land holders lose their entire land for a public project, the scheme provides for compassionate appointment to members of the families of project affected persons. (Particularly where the law under which the acquisition is made does provide for market value and solatium, as compensation).

(c) Compassionate appointment can neither be claimed, nor be granted, unless the rules governing the service permit such appointments. Such appointments shall be strictly in accordance with the scheme governing such appointments and against existing vacancies.

(d) Compassionate appointments are permissible only in the case of a dependant member of family of the employee concerned, that is spouse, son or daughter and not other relatives. Such appointments should be only to posts in the lower category, that is, class III and IV posts and the crises cannot be permitted to be converted into a boon by seeking employment in Class I or II posts."

9. A perusal of the catena of judgments pronounced by the Hon'ble Apex Court, Hon'ble High Court and various

Benches of this Tribunal discussed at para 14 and 15 above makes it abundantly clear that the Courts of law have firmly supported the principle that compassionate appointment cannot be denied merely because the family of the deceased have got some financial benefits consequent to the death of the sole bread winner of the family. The overwhelming trend of the judgments is that the applicants for compassionate appointment have to be considered for providing a fresh job so that the immediate financial need can be met and dire consequences of distress can be avoided. At the same time in various judgments the Courts have also laid down the principles that compassionate appointment is not a matter of right and cannot take away the principles enunciated in the constitution of equal opportunity for employment. In **V.Sivamurthy Vs. State of A.P., (2008) 13 SCC 730, Santosh Kumar Dubey Vs. State of U.P., (2009) 6 SCC 481**, it has been held that there is no vested right on the relatives of the deceased employee to seek and obtain compassionate appointment. In **Umesh Kumar Nagpal Vs. State of Haryana, (1994) 4 SCC 138**, the Hon'ble Apex Court clearly stated that in public service appointments should be made strictly on the basis of open invitation of applications on merit. The appointment on compassionate ground 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 means of livelihood.

10. Keeping this in mind, the government in their wisdom have put a ceiling of 5% of direct recruit posts for compassionate appointment. This obviously implies that the opportunity for compassionate appointment will be limited and there will be a stiff competition for the jobs since at any point of time the number of applicants for compassionate appointment will far exceed the number of jobs available (5% of the direct recruitment posts). The government have also made provision for consideration of the applications for compassionate appointment giving equal opportunity to all such applicants by providing for their consideration in the appropriate Committee for Compassionate Appointment which will examine each application against certain laid down criteria. Such criteria include the level of indigence of the family, family pension, terminal benefits, monthly income, number of earning members and income from property, extent of movable/immovable property, number of dependents, number of unmarried daughters, number of minor children and left over service of the deceased employee. There is a reasonable expectation on the part of the applicants that their cases will be considered against a properly laid down criteria on an equal footing with other applicants and those who are the most

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deserving will be offered appointment on compassionate ground.

11. In 2012, the Government issued the DOPT OM No. F. No. 14014/3/2011-Estt.(D) dated 26.07.2012 in which the time limit for consideration of the request for compassionate appointment has been removed. In the present O.A., the applicant's case has already been considered three times in the light of the relevant rules and instructions issued from time to time. The applicant has mainly relied on the ground that his score in the merit points is 52 and not 39. He has added extra points on the ground of his widowed sister and her son being dependent family members and his total income is less than what is calculated by the respondents.

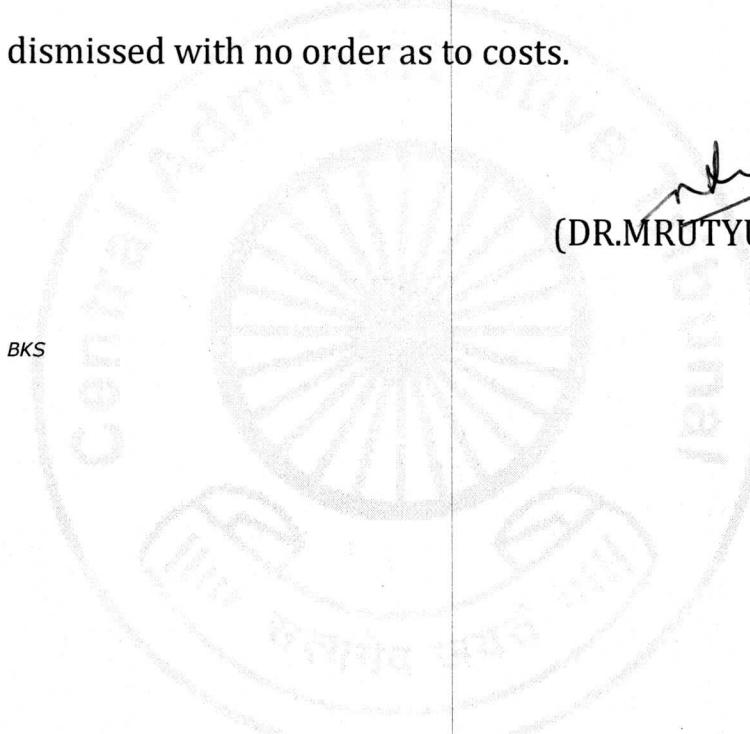
As per the instructions issued by the DOP&T in O.M. F.No.14014/02/2012-Estt.(D) dated 16.01.2013, dependent family member means:

- (a) spouse; or
- (b) son (including adopted son); or
- (c) daughter (including adopted daughter); or
- (d) brother or sister in the case of unmarried Government servant or
- (e) mother of the Armed Forces referred to in (A) or (B) of this para ...who was wholly dependent on the Government servant/member of the Armed Forces at the time of his death in harness or retirement on medical grounds, as the case may be.

Going by this criteria laid down by the DOP&T Office Memorandum as adopted by the Department of Posts, the respondents are right in taking the number of dependents as

two and awarding 7 points on that criterion. There does not seem any scope for upward revision of the other marks awarded to the applicant. The case law cited by the applicant in Canara Bank (supra) is not applicable since the CRC has applied the relevant and prevailing rules while considering the case of the applicant.

12. Taking the relevant facts and points of law into consideration, I find no merit in the O.A. Accordingly, it is dismissed with no order as to costs.



(DR.MRUTYUNJAY SARANGI)
MEMBER(A)