

21

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.1073 of 2014

Cuttack this the 13th day of Jan., 201

Sri Subhendu Kumar Bhole, @ Subhendu Bhole...Applicant

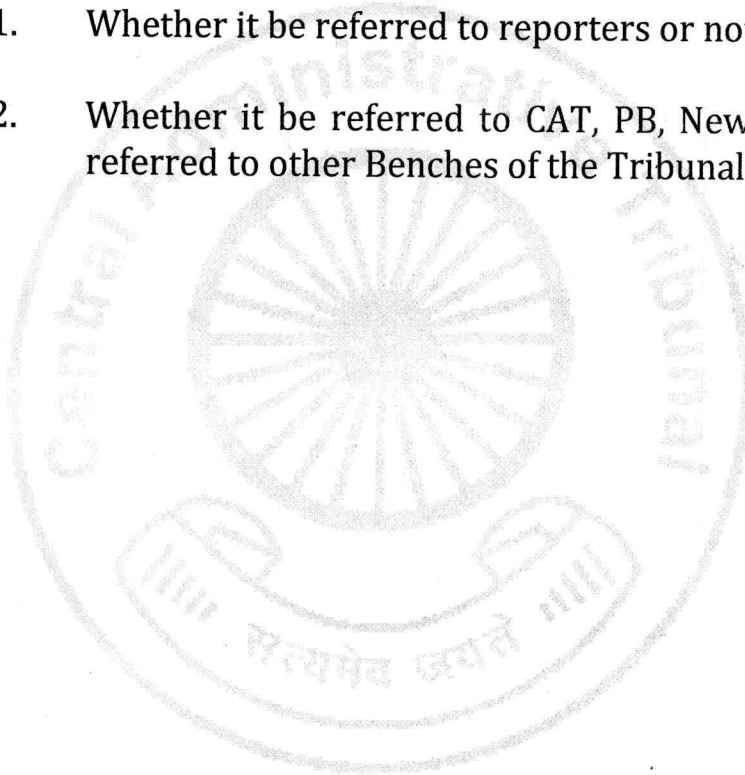
-VERSUS-

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 referred to other Benches of the Tribunal or not ? ✓


(A.K.PATNAIK)
MEMBER(J)





CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.1073 of 2014

Cuttack this the 13th day of *January*, 2017.

CORAM:

HON'BLE SHRI A.K.PATNAIK, MEMBER(J)

Sri Subhendu Kumar Bhole, @ Subhendu Bhole, aged about 30 years, S/o. late Kailash Chandra Bhole of Village – Saripur, PO-Balipatna, District-Khurda

...Applicant

By the Advocate(s)- Mr.B.Satapathy

-VERSUS-

Union of India represented through:

1. The Director General of Posts, Dak Bhawan, Sansad Marg, New Delhi-110 001
2. Chief Post Master General, Orissa Circle, Bhubaneswar, District-Khurda
3. Senior Superintendent of Post Offices, Bhubaneswar Division, At/PO-Bhubaneswar, Dist-Khurda

...Respondents

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

ORDER

A.K.PATNAIK, MEMBER(J):

Applicant is the son of the deceased postal employee, who, while working as GDSMD, Balipatna SO in account with Bhubaneswar GPO passed away on 20.8.2008. After the death of his father, applicant's request for compassionate appointment was considered by the CRC meeting, but his name was not recommended on the ground that the family of the deceased was not in indigent condition and accordingly, applicant was communicated with the order of rejection dated



73

4.4.2011. Aggrieved with this, applicant approached this Tribunal in O.A.No.465/2011. This Tribunal disposed of the said O.A. vide order dated 4.10.2012 with a direction to respondents to consider the case of the applicant for another two times. In pursuance of this direction, applicant's case was put up for the second time before the CRC meeting held on 30.7.2013, but his name could not be recommended as he secured 42 merit point in the 100 point scale. This decision was communicated to the applicant with a stipulation that his case would be considered for the third time by the next CRC meeting. Being aggrieved, the applicant approached the Hon'ble High Court of Orissa in WPC No.14046/2013. The Hon'ble High Court vide judgment and order dated 5.8.2013 disposed of the matter with a direction that as directed by the Tribunal, the respondents herein shall consider the case of the applicant as per the circular for two more times. In compliance with the aforesaid direction of the Hon'ble High Court, the CRC meeting held on 6.12.2013 considered the names of 50 candidates including that of the applicant for compassionate appointment, but his name could not be recommended as he secured 42 merit points in the same 100 points scale, based on various indigent related attributes, as fixed by the Department. In view of the above, a speaking order dated 26.12.2013(A/1) was communicated to the applicant which is impugned and called in

all

24

question herein. Hence, by filing the instant O.A. applicant has sought for the following relief.

"...to issue notice to the Respondents, call for relevant records and after hearing the counsel of parties quash the impugned order dtd. 26.12.2013 under Annexure-1 and issue direction to the Respondents particularly to the Chief Post Master General, Orissa, the OPP.Party No.2 to give compassionate appointment to the applicant forthwith, and/or pass such other order or direction as deemed fit and proper for the interest of justice".

2. In support of his case, applicant has urged that the respondents have wrongly taken into account the income certificate produced by him. By stating this applicant intends to convey that the income certificates furnished by him, his mother and two dependent unemployed brothers which had been issued from the same source of income from the same landed property were taken together into account which is violative of the guidelines issued vide OM dated 5.5.2003 (R/6) to the counter in O.A.No.465/2011.

3. It is the next plank of argument advanced by the applicant that while disposing of O.A.No.465/2011, this Tribunal had observed that *"although the respondents had rejected the case of the applicant for compassionate on the ground that the case of the applicant was not found to be indigent, but to substantiate their contention in this respect that there were candidates with more indigent condition than the applicant before the CRC for being recommended, they had not*

All

25

produced any comparative statement justifying their stand in that behalf". Therefore, according to applicant, in the absence of any comparative statement showing more indigent candidates than him, it cannot be held that there has been transparency and fair play adopted by the CRC in the matter of selection while recommending the names of more indigent and deserving candidates for appointment on compassionate grounds other than him.

4. Finally, it has been pointed out that the scheme adopting the criterion of merit point for consideration of appointment on compassionate grounds as per Orders dated 13.04.2014 and 9.3.2013 having come into effect after the death of the applicant's father, the same cannot be the determining factor in so far as consideration of case of the applicant for compassionate appointment is concerned.

5. I have heard the learned counsel for both the sides and perused the records including the rejoinder and written notes of submission filed by the parties.

6. Admittedly, applicant's case has been considered by the CRC for appointment on compassionate ground consecutively for three times. At this juncture, it is to be noted that the points urged by the applicant regarding inapplicability of orders issued by the DOP&T dated 13.04.2014 and 9.3.2013 on the ground that his father had passed away prior to issuance of those orders, do not appear to be wholesome, inasmuch as,

Alu

26

this Tribunal while disposing of O.A.No.465/2011 no such point had ever been urged by the applicant and, therefore, having taken note of the same, this Tribunal had disposed of O.A.No.465/2011. Applicant having accepted the above position, is at this stage, estopped to raise again all such points.

7. I have gone through the order dated 26.12.2013(A/1) passed by the respondents in compliance with the direction of this Tribunal in O.A.No.465/2011, the relevant part of which reads as under.

“As per the direction of the Hon’ble CAT, the case of the applicant was put up for the third time in the CRC held on 06.12.2013 along with 50 other cases for reconsideration.

This time also, the said CRC did not recommend the case of the applicant for engagement on compassionate ground as he secured 42 merit points in the same 100-point scale which is less than 51 merit points. Therefore, the decision of the CRC is accepted”.

8. On the above point, nothing is forthcoming from the counter that while considering the candidatures of the applicant vis-à-vis others, there has been an objective assessment with the preparation of comparative statement in which applicant has scored only 42 merit points in 100-point scale. Therefore, transparency appears to be inconspicuous while recommendations were made by the CRC for appointment on compassionate grounds.

all

57

9. Secondly, it is the case of the applicant that his family members including him had produced income certificates showing income of Rs.12,000/- per month from the same source of landed property which has been taken together while his case was considered by the CRC. This fact, as it appears, has not been urged by the applicant in the O.A. Therefore, in the absence of any statement made either accepting or denying this point by the respondents, the same not worthy of being considered.

10. As noted above, the vital point which needs to be considered is that the respondents have not produced any comparative statement in their counter, as had been held by this Tribunal in the earlier O.A.No.465/2011. At the cost of repetition, the relevant observation of this Tribunal is quoted hereunder.

"It reveals from the record that although the Respondents have rejected the case of the applicant for compassionate appointment vide Annexure-A/4 dated 4.4.2011 on the ground that the case of the applicant was not found to be indigent, but to substantiate their contention in this respect that there were candidates with more indigent conditions that the applicant before the CRC for being recommended, they have not produced any comparative statement justifying their stand in this regard. In this view of the matter, the stand taken by the Respondents that the applicant's family is not indigent has no legs to stand".

11. From the above, it is quite clear that the CRC or for that matter, the respondent-authorities have failed to consider this aspect of the matter while rejecting the case of the applicant for

AM

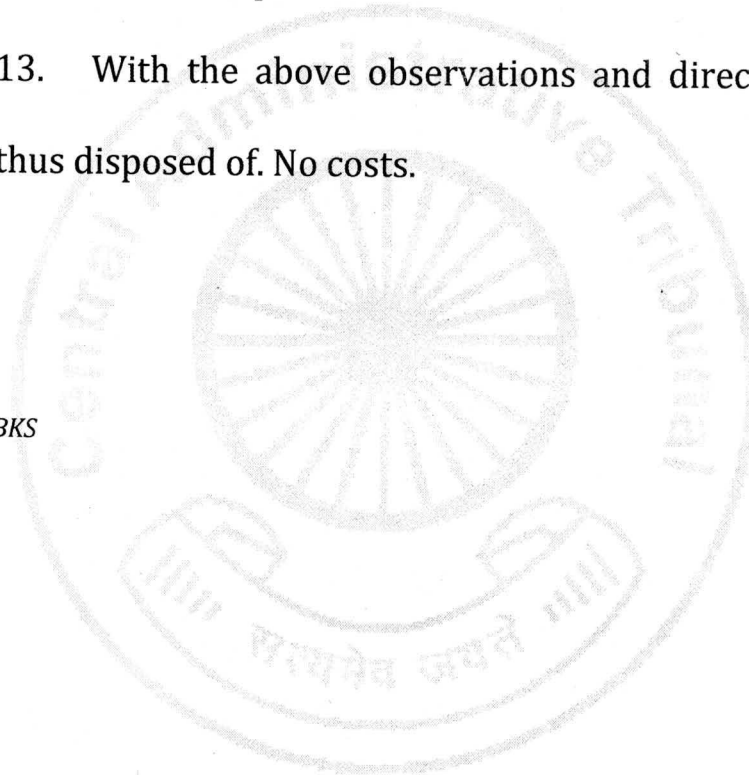
28

compassionate appointment. In the circumstances, order dated 26.12.2013(A/1) is not tenable in the eye of law.

12. Having regard to the preceding paragraphs, the impugned order dated 26.12.2013(A/1) is hereby quashed and set aside. Respondents, particularly, Res.No.2 is directed to reconsider the matter in the light of discussions held above and pass appropriate orders within a period of three months from the date of receipt of this order.

13. With the above observations and direction, this O.A. is thus disposed of. No costs.

BKS



(A.K.PATNAIK)
MEMBER(J)