
(2007) 03 OHC CK 0058
In the Orissa High Court

Union of India (UOI) and Others

APPELLANT

Vs

Dharmendra Sahu and Another

RESPONDENT

Date of Decision : 14-03-2007

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2007) 103 CLT 602 : (2007) 114 FLR 177 : (2007) 1 OLR 711 Supp

Hon'ble Judges : A.K. Ganguly, C.J.; S. Panda, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

S. Panda, J.—In this writ application, the petitioners have challenged the order dated 17.1.2003 passed by the Central Administrative Tribunal (hereinafter, referred to as the "Tribunal"), Cuttack Bench, Cuttack, in O.A. No. 137 of 2002.

2. The facts of the case are that : Bhaskar Sahu, who was the father of Opposite Party No. 1 died on 4.4.1998 while working as Head Postman at Chhatrapur Head Post Office. Opposite Party No. 1 applied for compassionate appointment. His name was approved by the Circle Relaxation Committee and allotted to Berhampur Division in Postal Assistant cadre. At that time, there was no vacancy and the authority asked all the approved candidates to express their willingness for consideration for appointment in pursuance of Ministry of Personnel, PG and Pension, Department of Personnel and Training, New Delhi in OM No. 42012/4-2000-Estt (D), dated 24.11.2000 communicated in DG Posts Letter No. 24-1-/99-SPB.I, dated 8.2.2001. Subsequently, the authority found that the chances for absorption in other Ministries are remote since there are also not enough vacancies within the ceiling limit of 5% of vacancies falling under the direct recruitment quota and the practice of circulating names of the deserving applicants to other Ministries/Departments has been discontinued. Keeping this in view, it was felt that an opportunity can be given to such wait listed candidates who are waiting for some time to be considered for vacant posts of Gramin Dak Sevaks, if they are willing and eligible for the post. Accordingly, Opposite Party

No. 1 who is the applicant in the O.A. has given his willingness. But the authority has given appointment to one Debasis Mohanty on 22.11.2001. Hence, being aggrieved, the Opposite Party No. 1 approached the Tribunal for redressal of his grievance and prayed for absorbing him in P.A. cadre on compassionate ground in Berhampur Division/Army/Postal Service/or in other Ministry/Department within a stipulated period.

3. The main objection of the present petitioners who were the respondents in the Tribunal was that the Opposite Party No. 1 could not be given a regular appointment for want of vacancies in the Department due to the guidelines/instructions within the stipulated quota of minimum 5% of vacancies falling under direct recruitment quota.

4. The Tribunal, after hearing both the parties allowed the O.A. as per Annexure-A/1 and held that the only limitation put in Annexure-1 was that the actual letter of appointment would be issued as soon as a vacancy would arise. If there was no vacancy, Debasis Mohanty could not have been accommodated therein in 2001 in preference to the petitioner who is a candidate of the approved list of 1998. From the facts and circumstance of the case, there is no doubt that the applicant has received an unfair deal from the respondents because no one from compassionate quota could have ever been appointed in Berhampur Division in preference to him and there is no doubt that appointing a person out of turn from Bhadrak Division was not only a breach of departmental rules but also smacks of favouritism.

5. Challenging the aforesaid conclusion of the Tribunal in the present writ application, the learned Counsel for the petitioner raised the following contentions:

(a) Rehabilitation Scheme cannot be claimed as a matter of right.

(b) Second contention is, the Tribunal has no jurisdiction to direct the petitioners to transfer a person from a particular post and appoint the Opposite Party No. 1 to that post.

6. None of these contentions has any merit.

The Opposite Party No. 1 has applied for appointment under Rehabilitation Assistance Scheme in the year 1998. His name was approved by the Circle Relaxation Committee and his willingness to join any post was obtained by the authority year to year and last on 8.2.2001. But the authorities have not given him any appointment and delayed the matter. Due to the laches of the petitioners, the Opposite Party No. 1 who was otherwise eligible, should not suffer. So far as the other contention is concerned, the Tribunal has only observed that the petitioners are to take action to absorb the Opposite Party No. 1 in Army Postal Service if he is fit medically for that purpose and in the process has given consequent directions. Hence, both the contentions lack merit.

7. The general principle for providing appointment under the Rehabilitation

Assistance Scheme is that at the time of death of the deceased it is to be seen as to who are the dependents and what are their income from all sources. The jerk in the family due to death of the bread winner can only be absorbed if a lump sum amount is made available to his family. At this juncture, if a lump sum amount is made available with a compassionate appointment, the grief stricken family may get some financial assistance to compensate the sudden loss of income. That benefit would be a replacement of the bread winner and compassionate appointment is meant to tackle such situation.

8. In view of the above, the decision of the Tribunal needs no interference by this Court in exercise of its power under Articles 226 and 227 of the Constitution of India.

9. The writ petition is accordingly dismissed. There will be no order as to costs.

A.K. Ganguly, C.J.

I agree.