

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.4597 of 2020**

1. The Union of India Through the Secretary cum D.G., Govt. of India, Ministry of Communications and I.T. Department of Posts, New Delhi.
2. The Assistant Director General (GDS), Government of India, Ministry of Communications and I.T. Dept. of Posts, (GDS Selection), New Delhi.
3. The Chief Post Master General Bihar Circle, Patna.
4. The Assistant Director (Recruitment) O/o the Chief Postmaster General, Bihar Circle, Patna.
5. The Superintendent of Post Offices Nalanda Division, Bihar Sharif.

... .. Petitioner/s

Versus

Jitendra Kumar Son of Late Dwarika Prasad Resident of Village- Meghi,  
District- Nalanda (Bihar).

... .. Respondent/s

**Appearance :**

For the Petitioner/s : Mr. Sujeet Kumar Sinha C.G.C  
For the Respondent/s : Mr.

**CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI**  
**and**  
**HONOURABLE MR. JUSTICE PURNENDU SINGH**  
**ORAL JUDGMENT**  
**(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)**

**Date : 28-11-2022**

On 11.11.2022 the following order was passed.

*“The matter is taken up through virtual Court proceedings.  
None appears for the respondent.  
From perusal of the record it is evident that Union of India has made out a prima facie case against the order of the Tribunal dated 29.08.2017 passed in O.A./050/00203/2016, Central Administrative Tribunal, Patna Bench, Patna. The Tribunal direction to consider respondent Jitendra Kumar's name for appointment on compassionate ground in view of the*



*letter circular dated 30 May, 2017 is contrary to Apex Court decision in the case of (i) Union Of India & Another vs. Shashank Goswami & Another reported in 2012 11 SCC 307. (ii) Shreejith L. vs. Deputy Director (Education) Kerala and Others reported in 2012 7 SCC 248. (iii) Dhalla Ram vs. Union Of India And Others reported in 1997 11 SCC 201. (iv) State of Uttar Pradesh and Others vs. Premlata reported in (2022) 1 SCC 30, (v) Delhi Jal Board vs. Nirmala Devi 2022 (Live Law) (SC) 863/ C.A. 7047 of 2022 Decided on 19.10.2022, para 6 and 7.*

*In order to give one more opportunity to the respondent Jitendra Kumar, relist this matter on 28.11.2022.*

*If there is no representation on behalf of the respondent Jitendra Kumar, matter would be decided.”*

Today none appears for the respondent.

Matter relates to compassionate appointment.

Respondent's father is stated to have died while he was in service on 18.12.2012. He had submitted application for compassionate appointment. Initially his application was not considered on the score that he was a married son. Thereafter, with reference to Govt. of India's clarification that married person is also entitled to compassionate appointment. The matter was reconsidered by the appellant and proceeded to decide on merit. Respondent has secured 26 points. On the other hand, other similarly situated persons have secured more than



50 points and who are eligible persons appoint on compassionate ground with reference to 5% quota. The tribunal has committed error in ordering that calculation of points is required to be examined in the light of later scheme stated to have been issued in the year 2016-2017.

Time and again Hon'ble Supreme Court and Courts have held that as on the date of application for compassionate appointment whatever the existing scheme is available. The same is required to be taken note of for the purpose of providing compassionate appointment. Therefore, the tribunal has committed error in allowing the O.A No. 050/00203/2016 dated 29.08.2017.

That apart, the Hon'ble Supreme Court's decision in the case of *Malaya Nanda Sethy V. State of Orissa and Ors.* reported in *AIR 2022 SC 2836* would assist the petitioner-department. To the extent that relevant scheme as on the date of submission of application read with death of the employee was required to be taken note of for the purpose of examining the criteria for appointing on compassionate ground. Therefore, the later scheme which is advantage in favour of respondent cannot be taken into consideration in view of principle laid down by the Apex Court.



Accordingly, petitioner-department have made out a *prima facie* case so as to interfere with the order of the tribunal dated 29.08.2017 passed in O.A. No. 050/00203/2016 is set aside while affirming the order of the department in declining compassionate appointment to the respondent herein.

**(P. B. Bajanthri, J)**

**( Purnendu Singh, J)**

shoaib/-

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