



AFR

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.A NO. 1220 OF 2025

In the matter of an appeal under Section-10 of the Letters Patent of Patna High Court read with Article 4 the Orissa High Court Rules, 1948 from a judgment dated 21.10.2024 passed by the learned Single Judge in W.P.(C) No. 26534 of 2020.

Union of India & Ors. *Appellants*

-versus-

Sri Ajit Kumar Khuntia & Anr. *Respondents*

Advocates Appeared in this case

For Appellants - Mr. Biswajit Maharana,
Senior Panel Counsel

For Respondents - M/s.Sameer Kumar Das, P.K.
Behera & Niranjana Lenka,
Advocates

CORAM :

MR. JUSTICE DIXIT KRISHNA SHRIPAD

MR. JUSTICE CHITTARANJAN DASH

Date of Hearing & Judgment : 15.01.2026

PER KRISHNA S. DIXIT, J.

We prelude this judgment with what George Orwell (1903-1950) said "*People sleep peaceably in their beds at night*



only because rough men stand ready to suffer violence on their behalf.”¹

The 1st respondent was a CRPF Police. Whilst in combat duty in Srinagar, he suffered acute physical disability because of bomb blast engineered by terrorists. This was on 23.01.2007. He was discharged from service on 07.03.2014. The 2nd respondent happens to be his dependent wife. The request for her compassionate appointment having been turned down, vide order dated 18.06.2020, the couple filed W.P.(C) No. 26534 of 2020. The same came to be favoured by single judge, vide order dated 21.10.2024. Aggrieved thereby this Intra-Court appeal is filed by the Union Government & its officials.

2. Learned Senior Panel Counsel appearing for the appellants made the following submissions seeking invalidation of the impugned order:

2.1. The learned Single Judge erred in granting relief of the kind when the 2nd respondent was rightly offered the post of Constable (Ground Duty), which she refused to accept; the said post is also one of the posts comprised in the cadre along with that of Head Constable (Ministerial Cadre). A person cannot lay a claim for a particular post on compassionate ground, the right to compassionate appointment being only a privilege.

¹. George Orwell's Essays, Notes on the Way, 1945.



2.2. When the cadre comprises of multiple posts of different grades, the appointing authority has a discretion to appoint the claimant on compassionate ground to any of those posts, and that such a discretion is not susceptible to judicial review under Articles 226 & 227 of the Constitution of India.

2.3. Learned Single Judge grossly erred in not duly considering the submission of Appellants that the 2013 Scheme for compassionate appointment has to be construed consistent with Standing Orders No.5 of 2001 and therefore, the Written Test was imperative even for appointment under Rehabilitatory Scheme; the claimant lady having secured only 50/200 marks, had not passed this test.

Learned Senior Panel Counsel presses into service a decision of Apex Court in *The State of Uttar Pradesh v. Premlata*².

3. Learned counsel appearing for the Respondents opposes the appeal refuting the submissions hereinabove made by the Appellants. He contends that the learned Single Judge has handed the impugned order after duly considering all aspects of the matter, it has brought about a just result in the circumstances and therefore, interference at the hands of this Court is uncalled for. He also tells that in Intra-Court appeal, examination

². AIR 2021 SC 846.



of impugned order should not be like a roving enquiry, in the absence of demonstrable errors of great magnitude in the impugned order.

4. Having heard learned counsel for the parties and having perused the appeal papers, we decline indulgence in the matter broadly agreeing with the reasoning of learned Single Judge. However, we also put on record our following discussion.

4.1. Nature & scope of compassionate appointment:

4.1.1. The idea of compassionate appointments has been holding the field for quite some time, in public employment. The idea becomes pronounced when the appointing authority is the State under Article 12 of the Constitution of India, as expansively construed by the Apex Court in a catena of decisions like *R.D. Shetty v. International Airport Authority of India*³. The obligation to confer compassionate appointment is one of the attributes of a Welfare State, which has to conduct itself as a Model Employer. The precise connotation of the idea, however, was not laid in any authoritative decisions, for a long period earlier. The Courts proceeded on ad hoc basis depending upon the facts & circumstances of each case. They were guided by sympathy & sentiment than any recognized policy principles. In *Haryana State Electricity Board v. Hakim Singh*⁴, the Supreme Court explained the rationale of the Rule relating to compassionate appointment in the following words:

³. AIR 1979 SC 1628.

⁴. (1997) 8 SCC 85.



"The rule of appointments to public service is that they should be on merits and through open invitation. It is the normal route through which one can get into a public employment. However, as every rule can have exceptions, there are a few exceptions to the said rule also which have been evolved to meet certain contingencies. As per one such exception relief is provided to the bereaved family of a deceased employee by accommodating one of his dependents in a vacancy. The object is to give succour to the family which has been suddenly plunged into penury due to the untimely death of its sole breadwinner. This Court has observed time and again that the object of providing such ameliorating relief should not be taken as opening an alternative mode of recruitment to public employment".

4.1.2. Compassionate appointment in Armed/Police Forces vis-à-vis Rehabilitatory Appointments in ordinary Civil Service.

Compassionate appointments are ordinarily provided to a family member of an employee dying in harness so that the consequent hardship of bereaved family is mitigated. However, the principle is not confined to consequences arising out of death only. It extends to dependents of a medically invalidated government employee also, if rules do provide for. It is on the premise that the problems of a family, whose member is medically incapacitated owing to occupational hazards in the employment, at times can be as harsh as in the case of death in harness. In *Nizam's Institute of Medical Sciences v. Prasanath S. Dahnank*⁵, it is observed as under:

"At the same time we often find that a person injured in an accident leaves his family in greater distress vis-à-vis a family in a case of death. In the latter case, the initial shock gives way to a feeling of resignation and acceptance, and in time, compels the family to move on. The case of an injured and disabled person is, however, more pitiable and the feeling of hurt, helplessness, despair and often destitution enures every day. The support that is needed by a severely handicapped person comes at an enormous price, physical, financial and emotional, not only on the victim but even more so on his family and attendants and the stress saps their energy and destroys their equanimity."

⁵. (2009) 6 SCC 1.



4.1.3. It does not require any research to know that the personnel of Combatant Forces like the Defence, BSF, ITBP, CRPF, etc. be they employed in the frontiers of the country or interior may have to sacrifice their lives or limbs for securing the countrymen. Thus, theirs is truly a yeomen service. They deserve more respect and much deference. In *Pinder v United Kingdom*⁶, what the European Commission of Human Rights observed is pertinent:

It is "... legitimate for State authorities to consider that servicemen are, as a group, exposed to risks of death and injury by the very nature of their work and training and to be more at risk than other professional groups in society. Moreover the close relationship that exists between members of the armed forces, often taking the form of a special dependence and solidarity between the ranks, may operate in particular situations to reduce the choice of action or behaviour open to them. This element distinguishes them from civilians and represents a factor which can legitimately be taken into account by the State in regulating civil liability with respect to the armed forces."

A society, which does not hold the Defence Personnel in high esteem, will do disservice to itself, inasmuch as its own security will be at stake, if those who guard it are not regarded. These personnel protect borders of the country with a belief that if something wrong happens to their life or limb, the State & Civil Society would come forward for rescue by providing some succour to their families. This belief that prompts them to do great sacrifice should not be shaken. Therefore, the claim for compassionate appointment in such special cases have to be processed with humane approach and not in a bureaucratic manner. Article 41 of the Constitution makes it imperative on the part of State to provide public

⁶ 7 Eur. H.R.R 464.



assistance in cases of unemployment. Such a case may arise because of medical invalidity of a serving employee, as well.

4.2. As to contentions of the parties:

4.2.1. As already mentioned, there is a Scheme for compassionate appointment in the CRPF, is not in dispute. Admittedly, the 2nd Respondent having been found eligible, was offered a post of Constable after the medical invalidation of 1st Respondent. Added, that offer was made sans any written examination. However, the lady staked her claim for the post of Head Constable. Under the Scheme the cadre comprises of, the post of Constable & Head Constable is also not disputed. When that is the position, it falls foul of Article 14 of the Constitution, inasmuch as that would create a class within the class, sans *intelligible differentia* and the connect of rational *nexus*, vide *E.P. Royappa v. State of Tamil Nadu*⁷. Learned Single Judge at Para 13 of the impugned order has rightly observed as under:

“13. It is true that unlike the Standing Order of the year 2021 prescribing the scheme of compassionate appointment, the scheme prescribed in 2013 under Annexure-A to the rejoinder does not expressly supersede Standing Order No.5/2001. As per the forwarding letter as well as the object of the scheme of the year 2013, the guidelines have been consolidated and applied to the case of compassionate appointment. When it is not specifically saying regarding applicability of normal recruitment procedure as per Standing Order No.5/2001 and only prescribes the eligibility and exemption clause (already stated earlier and the same is exempting the recruitment procedure, the applicability of conditions for written test as mentioned in the Standing Order No.5/2001 cannot be applied strictly for the cases falling under 2013 scheme. From the contents of the scheme of 2013, it is understood that these are such consolidated guidelines prescribed on 16th January 2013 to be followed for future compassionate appointment till Standing Order No.2/2021 came into

⁷. AIR 1974 SC 555.



force on 3rd March 2021. Therefore, subjecting Petitioner No.2 to a compelling written test is not found justified for the purpose of compassionate appointment.”

4.2.2. The contention that the compassionate appointment is a matter of privilege as distinguished from right, is a case of much ‘*addo* signifying nothing’. It is only a half truth, because the same is regulated by the Statutory Policy. In other words, the discretion to make such appointment, be it in the case of death or disablement, is justiciable. That is to say, in appropriate cases Courts do examine the decisions when there is *prima facie* breach of policy content or intent. The Apex Court in a catena of decisions has recognized that the compassionate appointment in Armed/Police Forces stands on a different footing as against other cases of rehabilitatory appointment, vide *Arun Kumar v. Union of India*⁸. In CRPF there is a Scheme for compassionate appointment both on the grounds of death & disability of employee in harness, is admitted by the Appellants. Such a Scheme stands on a different footing. It is primarily because, the occupational hazards to life & limb of employees are more, by very nature of such employment. The Delhi High Court in *Union of india v. Ex. Sub. Gawas Anil Madso*⁹ has observed as under:

“2....we sip our hot cappuccinos by the fireplace, while soldiers are braving icy winds at the border, willing to lay their lives at a moment’s notice...”

The provisions of such a Scheme have to be liberally construed in favour of the claimant, unlike in civil sectors of employment. The decision to deny the post of head Constable although the post of Constable was offered, did not reflect such a liberal approach. Thus, that itself

⁸. (2007) 5 SCC 580.

⁹. 2025:DHC:2021-DB.



constituted an error apparent on the face of the record. We are not interpreting the immutable loss of physics but construing man made law for humans and therefore, humane elements cannot be kept at a bay while enforcing socio-welfare policy. Otherwise, it will not be a “*living law of the people*”, to borrow the words of Eugen Ehrlich an Austrian jurist (1862-1922).

4.2.3. The vehement submission of learned Senior Panel Counsel that the 2nd Respondent having failed in the Written Test, cannot stake her claim for the post of Head Constable, is liable to be rejected on another ground too. There was no legal requirement of Written Test of the kind. A spouse in a distressed family had no option but to undergo the test, or else her claim would run the risk of rejection on that ground alone. As a sinking person catches the straw hoping to stay afloat, the 2nd Respondent too has taken the Written Test. The alleged failure in the said Test cannot be a stumbling block to the consideration of her claim, for compassionate appointment, when compelling her to write the Written Test itself was incompetent. If the post of Head Constable is also in the same cadre, as the post of Constable, and the Scheme envisages all these posts for the purpose of compassionate appointment, it is un-understandable as to how only for the post of Head Constable the written test was insisted upon by the Appellants. For the same reason, the question of *estoppel qua* 2nd Respondent would be miles away from the case.

4.2.4. As discussed above, the approach of the Appellants is akin to bureaucratic approach of Colonial Era, long gone by after the advent of Constitution. The authorities associated with the claim for appointment



on compassionate ground, especially in cases of death or disability of an employee in Combat Forces, have to have their heart at right place. Their approach should be positive keeping in view intent & policy content of the Statutory Scheme that is promulgated for protecting the surviving families of the deceased or the dependent members of the disabled, in harness. The authorities that be, should give an impression to the members of the Combating Forces that in the event of death or disability, there would be something for the dependents to fall back upon. Otherwise, the morale of Combatants would be badly affected leading to their thinking about the future of their families in the case of death or disablement, than concentrating on the due discharge of their combat duties, for securing our frontiers or protecting the countrymen. Such an approach is militantly lacking in the action of the Appellants in denying compassionate appointment to the post in question. Thus, there was an error apparent on the face of the record, which the impugned order of the learned single judge has rightly set at naught.

4.2.5. The last submission of learned Senior Panel Counsel that the decision in **Premalata** *supra* would come to the aid of Appellants for seeking invalidation of the impugned order, does not impress us even in the least. Firstly, the said decision related to a case of compassionate appointment in Civil Police Department, wherein the deceased employee was serving as Messenger in the Police Radio Department (as Class-IV employee). There is a sea difference between the Civil Police and Combatant Police, i.e., CRPF, regard being had to the nature of employment and place of deployment. As already discussed, a Scheme for compassionate appointment in the CRPF has to be treated on a



different footing. Secondly, the claimant for compassionate appointment in Civil Police lacked the requisite qualification of ITI, unlike in the appeal at hand. The only matchable factor in both the cases is that the offer was made for appointment to lower post. It hardly needs to be stated that a decision is an authority for the proposition laid down in a given fact matrix, and not for all that which logically follows from what has been laid down vide Lord Halsbury in *Quinn v. Letham*¹⁰.

5. As to levy of costs and its deferment:

5.1. The Respondents were before this Court in twice earlier, i.e., in WP(C) No. 16734 of 2014 & WP(C) No. 1180 of 2015. The 3rd case, i.e., WP(C) No. 26534 of 2020, from which the impugned order emanated, was the 3rd round of litigation, followed by this prolonged appeal. 1st Respondent suffered disability because of bomb blast in a terrorist activity on 23.01.2007. He was sent home, vide order dated 07.03.2014. Since then, this unfortunate couple has been fighting the legal battle one after another, although with successive victories on instalment basis. In these tough times, when blood is cheaper than bread, they are put to untold hardship, all these years. Therefore, this is a fit case for levying exemplary costs of Rs.50,000/- (rupees fifty thousand) only. However, we refrain from levying any with the hope that at least now the

¹⁰. [1901] AC 495 (HL).



compassionate appointment to the post of Head Constable, in terms of impugned order, shall be given within the time to be stipulated hereunder. If delay is brooked, the levy takes place, without any further order, and that the cost component may be recovered from the erring officials of the department, consistent with the decision of Apex Court in *Union of India v. Saroj Devi*¹¹.

In the above circumstances, this appeal being devoid of merits is liable to be rejected and accordingly it is, costs having been made easy subject to what is stated in the immediately preceding paragraph. The Appellants are directed to implement the impugned order of learned Single Judge within eight (8) weeks, and report compliance to the Registrar General of this Court within one week next following.

Web copy of judgment to be acted upon by all concerned.

(Dixit Krishna Shripad)
Judge

(Chittaranjan Dash)
Judge

Orissa High Court, Cuttack
The 15th Day of January, 2026/Prasant

¹¹. 2024 INSC 921.