

Dy - 22411/4AD
06-08-2019



**ODISHA ADMINISTRATIVE TRIBUNAL
BHUBANESWAR.**

CORAM:

**HON'BLE SHRI G.R.PUROHIT.,
ACTING CHAIRMAN.**

O.A. No. 1160 of 2014.

Sri Niranjana Chhura, aged about 29 years,
Son of Late Ram Prasad Chhura, permanent
Resident of Vill /P.O: Batemura, Dist:Sambalpur.

SS, SE

.... Applicant.

-Versus-

1. State of Orissa, represented through the Secretary to Government, Rural Development Department, Odisha Secretariat, Bhubaneswar.
2. Secretary to Government, General Administration Department, Odisha Secretariat, Bhubaneswar.
3. Chief Engineer, RWSS, Odisha, At: Jal O Parimal Bhawan, Unit-V, Bhubaneswar.
4. Executive Engineer, RWSS, Mechanical Division, Ainthapalli, Sambalpur.

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UOI-8477/SS
06.08.2019

BHUBANESWAR

... Respondents.

APPEARANCES.

For the applicants: M/s. M.Pratap & Associates.
Advs.

For respondents: Mr.N.C.Badjena,
Standing counsel.

Date of order: 08.07.19.

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ORDER.

G.R.PUROHIT, ACTING CHAIRMAN: The applicant has moved the Tribunal to direct the respondents to

appoint him under R.A. Scheme by quashing the order dtd. 09.09.04 as communicated on 14.01.-08.

2. The brief averments are as follows:

Sri Bhagaban Chhura, the elder brother of the applicant while working as Night Watchman under Resp.No.4 died on 08.04.1988 while in service. He was the sole earning member of the family on whom his mother, unmarried sister and minor brother i.e. the applicant were dependants. Annexure-2 is the legal heir certificate showing his mother, sister and the applicant(brother) who was then aged 17 years. As per Notification No.26303 dtd. 06.09.1999, the G.A.Department amended Rule-2(b) of OCS (R.A) Rules, 1990 and inserted Class-VI and also substituted Sub-Rule-7 and 11 of Rule-09 and accordingly as per the amended provision, in case of death of an unmarried government servant, his brother who was wholly dependent on such government servant at the time of death is entitled to the benefit under R.A.Scheme and if he is minor, then after attaining the age of majority. The copy of such amendment vide notification dtd. 06.09.99 has been marked as Annexure-3. His stand is that at the time of death of his elder brother, he was 17 years old and on attaining 18 years of age, he applied for his appointment under the Rehabilitation Assistance Scheme on 07.10.98 under OCS(R.A) Rules, 1990. But his application was not disposed of as a result of which, he



had filed O.A.No.133(C)/2002 before the O.A.T., Cuttack Bench and the said O.A. was disposed of on 18.11.02(Annexure-5) by remitting the paper book to the authority to take a decision taking into consideration the amended rule of 1999. As the order of the O.A.T. was not complied, he had approached before the grievance cell of the R.D.Department, but the R.D.Department vide letter dtd. 14.01.08(Annexure-6) reported to the grievance cell of the Chief Minister, Odisha rejecting the prayer of the applicant on the ground that the G.A.Department opined that the case of the applicant is not covered by the amended R. A. Rules, 1999 wherein R.D.Department Office Order No.1385 dtd. 09.09.04 had been enclosed. The stand of the applicant is that he was not communicated earlier with the Office order No.1385 dtd. 09.09.04 and therefore he went to the Office of Resp.No.3 and could collect the Memo No.11386 dtd. 09.09.04 and could know that his prayer has been rejected. Thereafter he made an appeal before the Governor, Odisha on 15.02.2008, but no action was taken and therefore, he has approached the Tribunal. His stand is that after the amendment of OCS(RA) Rules, 1990 in the year, 1999, a right has been created in his favour for appointment under the Rehabilitation Assistance Scheme and therefore, the respondents should be directed to appoint him under the Rehabilitation Assistance Scheme.

3. Counter has been filed by the respondents with the following averments:

On receipt of the order of the Tribunal of O.A.No.1223(C) of 2002, the matter was referred to the G.A.Department and the G.A.Department opined that the case of the applicant has not covered by the amended R.A.Rules, 1999 as the amendment is prospective in nature and the elder brother of the applicant had died before the amendment rule came into force and accordingly, the rejection was communicated to all concerned including the applicant in his house address vide Memo No.11389 dtd. 09.09.04(copy annexed as Annexure-B). The applicant remained silent on all these years and after lapse of nine years has approached the Tribunal to quash the order dtd.29.09.2004 which is barred by limitation. The Amendment Rule-9(7) is not retrospective in nature and so also the amended Rule(2)(b)(vi) is prospective in nature and therefore, the applicant has no claim for his appointment under the R.A.Scheme. The brother of the applicant died on 08.04.98 whereas the amendment of R.A.Rules was notified vide G.A.Department Notification No.26303 dtd. 06.09.99.

4. I have heard Mr. M. Pratap, learned counsel for the applicant and Mr. N.C.Badjena, learned Standing counsel.



Both the sides have advanced their argument in the light of their respective pleadings.

5. The undisputed fact is that the unmarried elder brother of the applicant who was a night watchman under Resp.no.4 died on 08.04.1998 and in the legal heir certificate at Annexure-2, his mother aged about 45 years, his sister aged about 19 years and the applicant (brother) aged about 17 years have been shown as legal heirs. The OCS(R.A) Rules,1990 was amended on 6th September, 1999, i.e. after more than one year from the date of death of the government servant and in the amended rule in Clause-2(b),Sub-clause(vi) was added where the definition of family members, brother of unmarried government servant who was wholly dependent on such government servant at the time of death has been introduced. In Rule-9 Sub-Rule-7, it has been mentioned that if at the time of death of the government servant, there is a ward who is minor and who alone is available in the family of the deceased government servant for employment, he/she shall apply for a job under these rules on attaining the age of 18 years and in no case, beyond 3 years from the date of attaining the age of 18 years. In the instant case under consideration, as I have already stated that the government servant died on 07.10.98, but the amended rule came on 6th September, 1999 and there is nothing to show that these amendment has got any retrospective effect. Besides this, as per the amended Rule-9(7) if a word minor and

who alone is available in family of the deceased government servant, then he can apply for appointment under the R.A. Scheme after attaining the age of majority. But in the instant case under consideration, at the time of death of the government servant Bhagaban Chhura, the applicant was not the only legal heir available, but the mother and sister who were at that time major were available and therefore, the amended Rule-9(7) has no application in the case of the applicant. Hence, rightly, the authority has rejected the prayer of the applicant vide order dtd.09.09.04. Besides this, the stand taken that the O.A. is barred by limitation is also applicable, because, this order dtd.09.09.04 has been challenged in 2014.

6. Hence, the O.A. has got no merit and accordingly stands dismissed. With these orders, the O.A. is disposed of.

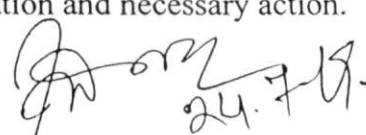
Sd/- G. R. Purohit
Acting Chairman

Memo No. 6307 Dt. 01-08-19

Copy forwarded to the

1. Secretary to Govt., Rural Development Deptt., Odisha Sectt., Bhubaneswar.
2. Secretary to Govt., General Administration Deptt., Odisha Sectt., BBSR.
3. Chief Engineer, RWSS, Odisha, At- Jal o Parimal Bhawan, Unit-V, BBSR.
4. Executive Engineer, RWSS, Mechanical Division, Ainthapalli, Sambalpur.
5. Sri Niranjan Chhura, C/o- Sri M. Pratap, Adv., Plot No.941/2812, Sibanagar, Near Chilli Pokhari, Tankapani Road, BBSR-2.
6. Publisher, A.T.T., BBSR.
7. Standing Counsel, O.A.T., BBSR for information and necessary action.

SKM
Compared by-
OA.1160/14.


24.7.19.
DEPUTY REGISTRAR,
Deputy Registrar
ODISHA ADMINISTRATIVE TRIBUNAL
BHUBANESWAR