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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

OA No.2664/2001

New Delhi this the 5th day of February, 2002

Hon'ble Smt. Lakshmi Swaminathan, Vice Chirman(J)  
Hon'ble Shri S.A.T. Rizvi, Member (A)

Shri Hukam Pal Singh  
S/O late Shri Vikram Singh  
Ex-Mail Overseer of Buland  
Shahr Postal Division, R/O  
Village and P.O. Mohammedpur Nar  
Distt. Buland Shahr, address for  
service of notice C/O Shri Sant  
Lal, Advocate, C-21(B), New Multan  
Nagar, Delhi-110056

..Applicant

(By Advocate Shri Sant Lal )

VERSUS

1. The Union of India, through the  
Secretary, Ministry of Communications,  
Deptt. of Posts, Dak Bhawan, N/Delhi.
2. The Chief Postmaster General  
U.P. Circle Lucknow-226001
3. The Postmaster General  
Agra Region, AGRA
4. The Superintendent of Post Offices,  
Buland Shahr Division, Bulandshahr.

..Respondents

(By Advocate Shri D.S. Mahendru along  
with Departmental representative  
Shri Veer Singh, PRI(P)

O R D E R (ORAL)

(Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)

In this application, the applicant is aggrieved that the respondents have not appointed him on compassionate grounds as Postal Assistant (PA) to which he had been earlier appointed by order dated 28.1.1999.

2. The brief relevant facts of the case are that by Annexure A-3 letter dated 28.4.1997, the applicant

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had been approved for appointment as PA and allotted to Bulandshahar Division. He had accepted this offer of appointment and admittedly, thereafter, he was sent for necessary training as PA. The respondents then issued him a letter dated 18.1.1999 in which it has been stated, inter alia, that on completion of one month practical training, the applicant an outsider candidate of PA cadre, appointed on relaxation basis was ordered to be posted as PA, Bulandshahar in the pay scale of Rs.4000-6000. The applicant joined the post of PA on 21.1.1999 but soon thereafter, the respondents have issued the impugned letter dated 28.1.1999 by which the earlier Office Memo. dated 18.1.1999 was cancelled "with immediate effect till approval of Circle Office (CO) come."

3. Taking into account the facts and circumstances of the case, the Tribunal by an ad interim order dated 26.11.2001 had directed as follows:-

"...we call upon respondents that if vacancy of Postal Assistant is available, to consider applicant's name for appointment on ad hoc basis, subject to applicants eligibility and suitability for the same, and further subject to there being nothing which would deny his appointment on ad hoc basis."

It was further clarified that this is not a decision on the merit of the applicant's claim. The respondents have filed MA 294/2002 in which they have submitted that even though on 26.11.2001 when the aforesaid interim order was issued, no reply had been filed but it was based on

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oral submissions of the learned counsel for the parties. Immediately thereafter on 27.11.2001 reply has been filed. We note that rejoinder has also been filed by the applicant on 18.12.2001. According to the respondents, there was only one vacancy in PA cadre on compassionate ground in 1998 as approved by the C.O by letter dated 30.7.1998. Since there was 5 % limit on vacancies available to be filled up on compassionate grounds, the applicant's appointment on this ground was beyond the 5 % limit. Learned counsel for the respondents has also submitted that as per the letter from the Chief Post Postmaster General, U.P.Circle, Lucknow dated 30.7.1998 sent to Postmaster General, Agra, it has been clarified that no candidate should be given appointment under compassionate grounds till further orders from that office. It is relevant to note from the averments in MA 294/2002 that even though the respondents had cancelled the applicant's earlier appointment under compassionate grounds by their letter dated 28.1.1999 till approval of C.O., they have sent the letter for such approval to CO, Lucknow on 29.1.2001 <sup>after</sup> more than 2 years after the aforesaid order dated 28.1.1999. They have also stated that the same was not permitted by CO, Lucknow but no reasons whatsoever have been given by that authority for disapproval of the applicant's earlier appointment in January, 1999.

4. Learned counsel for the respondents' main contention is that compassionate appointment cannot exceed

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5% limit. During the hearing, he has also submitted a letter dated 16.3.2001 from the Chief Postmaster General, U.P.Circle, Lucknow annexing the Govt.of India, Ministry of Personnel, PG & Pensions, Department of Personnel and Training O.M. dated 24.11.2000 to this effect, copy placed on record. In the circumstances, learned counsel for the respondents has submitted that not only the interim order should be vacated but OA should also be dismissed.

5. We have carefully considered the submissions,pleadings and documents on record. We find force in the submissions made by Shri Sant Lal,learned counsel for the applicant that in the annexure to the letter dated 30.7.1998, one post has been shown for compassionate appointment ( 5 %) in Bulandshahar Division which post apparently fell in the cadre of PA in that Division. We say so on the basis of the respondents own letter dated 26.4.2001 (Ann.R.4) wherein the applicant's name is shown as having been approved in PA cadre on 28.4.1997 which is approved by the Chief Postmaster General, UP Circle, Lucknow,addressed to Superintendent of Post Offices (SPOs), Bulandshahar. If, as stated in the letter annexure to the letter dated 30.7.1998 that one vacancy arising for compassionate appointment ( 5% ) is the basis, nothing further has been shown on record, which is the main thrust of the arguments of the learned counsel for the respondents, that in case quota exceeds 5 % then the subsequent approval of the C.O Lucknow has to be obtained. In the present case, even after two years of the

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cancellation of the initial appointment of the applicant by OM dated 18.1.1999 in the post of PA cadre, the respondents have not cared to place on record any documents to show why they have taken more than two years to get further approval after the cancellation or the reasons which weighed them to refuse the permission/approval. In the particular facts and circumstances of the case, therefore, we find merit in the submissions made by the learned counsel for the applicant that the cancellation is illegal and without justification or in accordance with the rules and instructions.

6. It is also relevant to note that in the meantime, the respondents have issued the letter dated 4.9.2001 for compassionate appointment of approved candidates but who were kept in the waiting list for want of vacancies within the 5 % limit for appointment in other organisations/Departments for which they had sought applicant's willingness. It is relevant to note that in the heading, what has been stated by the respondents is "for want of vacancies with 5% limit" whereas later it has been stated that non-availability of vacancies within the ceiling of 5% vacancies. However, as mentioned above, the annexure to the letter dated 30.7.1998 seems to indicate that the vacancies on compassionate ground is shown within 5 % quota and not exceeding that percentage. The fact that applicant had also completed the requisite training for the post in PA cadre is also relevant before he was appointed in that post by letter dated 18.1.1999. We are informed that at present the post of PA is still lying vacant at Bulandshahar which has been submitted by the learned

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