

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

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O.A./TXRX No.1972/1995

Decided on: 1. 11.96

Shri Mool ChandApplicant(s)

(By Shri N.S. Verma Advocate)

Versus

Union of India & AnotherRespondent(s)

(By Shri V.S.R. Krishna Advocate)

CORAM:

THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

THE HON'BLE SHRI

1. Whether to be referred to the Reporter or not? *yes*

2. Whether to be circulated to the other Benches of the Tribunal? *x*

W
(K. MUTHUKUMAR)
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 1972 of 1995

New Delhi this the ^{1st} day of November, 1996

HON'BLE MR. K. MUTHUKHUMAR, MEMBER (A)

Shri Mool Chand
S/o Late Shri Sukhpal Singh,
R/o H.No. 22-F, Subhash Mohalla,
Gali No.2, North Ghaunda,
Delhi-53.

...Applicant

By Advocate Shri N.S. Verma

Versus

1. Union of India through
The Secretary,
Ministry of Health and Family Welfare,
Nirman Bhawan,
New Delhi.
 2. The Director of Health Services
'A' - Wing,
Nirman Bhawan (4th Floor,
New Delhi.
- ..Respondents

By Advocate Shri V.S.R. Krishna

ORDER

Hon'ble Mr. K. Muthukumar, Member (A)

The applicant secured an appointment as Peon on compassionate grounds on the death of his father employed as a Farash under the respondent No.2. His case is that although he fulfilled the minimum educational qualification along with the knowledge of English typing which will be

adequate for consideration for the post of Lower Division Clerk, he was erroneously appointed only as a Peon. He secured the above compassionate appointment by the order dated 17.8.1987, Annexure A-1. He represented to the respondents that he was entitled to be appointed as LDC instead of Peon, by his representation dated 29.11.1994. The representation was considered by the respondents who had not agreed to reconsider this matter. The applicant, aggrieved by this decision, has approached this Tribunal with a prayer to have the O.M. dated 20.03.1995 rejecting his representation quashed and seeks a direction to the respondents to amend their original appointment order by treating the applicant as LDC on the initial date of his appointment without arrears of back wages.

2. In the counter-reply, the respondents have contested the claim of the applicant. The respondents maintain that every individual application or appointment on compassionate grounds is considered in the light of the circumstances prevailing and the eligibility prescribed for this appointment. The respondents contention is that applicant having a compassionate appointment on a particular post is estopped from staking his claim for higher post, that too, after a lapse

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of several years. They rely on the instructions of the Department of Personnel and Training dated 30.6.1987 to contend that once a compassionate appointment had been accepted by a person seeking such compassionate appointment, the circumstances which led to his initial appointment, should be deemed to have ceased to exist and, therefore, any change in the nature of grade of appointment on the same compassionate consideration could not be accepted. In the normal course, he has^{to} strive for his advancement in the career along with his colleagues and will have no claim for preferential treatment. The respondents also aver that although the applicant had a matriculation qualification, they have stated that it was not known whether he knew typing or not. The applicant's case was considered sympathetically in detail in consultation with the Department of Personnel & Training, but the case could not be reopened and on the principle of promissory estoppel, the applicant having accepted the post of Peon on compassionate grounds when the offer was made, he is estopped from making claim for a higher post at a later date, that too after a lapse of several years.

3. The learned counsel for the applicant argued strenuously that the applicant does not seek to change his appointment but only submits

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that there had been an error in the initial consideration of the applicant on compassionate grounds. Under the instructions issued by the Department of Personnel & Training, it has been clarified that it was not the intention to restrict the employment to a son or a daughter or a near relative of a deceased employee to a Group 'D' post and he or she can be appointed to a Group 'C' post for which he/she is educationally qualified provided a vacancy in Group 'C' exists. The learned counsel submits that according to the applicant there was a vacancy of LDC even at the time of his initial appointment. The learned counsel also pointed out that in similar situation another compassionate appointment was offered to one Smt. M. Pappal as a Clerk on the demise of her husband who was a Group 'D' employee and, therefore, the applicant has been discriminated although he has the requisite qualification for the post of Clerk. The learned counsel for the respondents, however, argued that the applicant had no vested right to any particular appointment and in considering the compassionate appointment, respondents have been generally guided by the instructions issued by the Department of Personnel & Training from time to time.

4. Having taken the facts and circumstances in toto, the applicant was offered the post of

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Peon, a Group 'D' post and it was open to him either to accept or to reject the offer. Having accepted the offer and having joined the post, it was not open to him to say at this point of time after a lapse of several years that initial consideration giving him appointment as Group 'D' was wrong and he should have been given the appointment of LDC. The question of his consideration for LDC would arise in the normal course and the respondents cannot obviously reopen this issue. The learned counsel for the respondents also submitted that the respondents have denied any knowledge in their averments about the case cited by the applicant and argued that even if it was so, the facts and circumstances relating to that particular case might have been considered at that relevant point of time by the respondents. In any case, the learned counsel argued, that in the matter of compassionate appointment while the respondents no doubt will take into account the qualification and fitness of a person for compassionate appointment to a particular post, the applicant cannot claim to have a vested right to any particular post or particular appointment.

5. I have heard the learned counsel for the parties and have carefully perused the records.

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6. It is an admitted position that the applicant was offered appointment of a Group 'D' post in 1987 on compassionate grounds. The contention of the applicant that he was not expected to know the rules and other guidelines governing the compassionate appointment at the time when he was in dire need of employment following his father's sudden death in harness, it is no doubt understandable but that does not by itself give rise to a claim that his original appointment on compassionate grounds was given erroneously. It was open to him to reject the offer and instead seek appointment of LDC in accordance with his qualification. Besides, it is seen that in the application he has stated that he knew English typing with a speed of 40 w.p.m. It is not clear from his application that he had ^{the} requisite certificate at that point of time and whether he ^{had} produced the relevant certificate ^{at that time}. The respondents also aver that while he was matriculate at the time of compassionate appointment, it was not known whether he knew typing or not. In the circumstances, it would not be appropriate to conclusively assert that the respondents had erred in not considering the applicant for the post for which he was fully qualified and was offered a lower post. The

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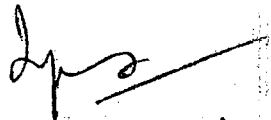
learned counsel for the applicant had relied on State of U.P. and Others Vs. Shri J.P. Chaurasia & Others, JT 1988 (4) SC 53 to stress the point that person who has been simialry placed has been given a higher scale. I find that this case has no application here. The fact remains that the applicant has been appointed to a lower post on a compassionate ground and, therefore, cannot claim that the respondents have erred in not giving him appointment as a Clerk whereas they have offerred the post of a clerk to another person eventhough according to the applicant, both were similary placed qualification-wise. The learned counsel applicant for the applicant submitted that the/ had not made any false representation at any stage and, therefore, he is not estopped from seeking remedy for correcting the error made by the respondents in his initial appointment. It is difficult to accept this contention. At the time when the offer of compassionate appointment to a Group 'D' post was made, this/accepted and as a result of the acceptance of the offer by the applicant consciously and in the absence of any allegation of / bias or prejudice on the part of the respondents, the applicant is estopped by his own conduct of having accpeted the original offer, from seeking to revise the original offer. It is also seen that the applicant

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had not alleged any mala fide action on the part of the respondents in offering him only a Group 'D' post instead of a Clerk post.

7. In the circumstances, I do not find any merit in the application and the same is, therefore, dismissed but without any order as to costs.



(K. MUTHUKUMAR)
MEMBER (A)

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