

Central Administrative Tribunal
Principal Bench, New Delhi.

OA-3020/2004

New Delhi this the 13th day of February, 2009.

Hon'ble Mr. N.D. Dayal, Member(A)

Sh. Vinod Kumar Mishra,
S/o late Sh. Ramesh Chander Mishra,
R/o Radha Kund Mathura, Address
for service of notices
C/o Sh. Sant Lal, Advocate Bar Room,
New Delhi-110001.

.... Applicant

(through Sh. Sant Lal, Advocate)

Versus

1. The Union of India through
the Secretary,
M.O. Communications & I.T. Dept. of Posts,
Dak Bhawan, New Delhi-110001.
2. The Chief Postmaster General,
U.P. Circle, Lucknow-226001.
3. The Postmaster General,
Agra Region, Agra-282001.
4. The Sr. Supdt. of Post Offices,
Mathura Division, Mathura-281001.

.... Respondents

(through Sh. R.N. Singh, Advocate)

ORDER

This O.A. had earlier been decided by order dated 03.10.2005, inter-alia, noticing that the decision of the Tribunal in the case of **Abdul Basit Vs. Union of India & Ors.** (OA No.2359/2004) decided on 05.08.2005 covered the present O.A. on all fours, with a direction to the respondents not to insist on 5% ceiling in direct recruitment quota for compassionate appointment in the case of

the applicant and process his appointment as per CPMG's approval dated 08.06.1998 within a period of three months. This decision was challenged by the respondents in WP(C) No. 1235/2006, which was taken up by the Hon'ble High Court of Delhi along with WPs (C) No.1236-1238 of 2006. At the outset, on 30.01.2006, the learned counsel appearing for the petitioner stated that the issues raised were similar to those of WP (C) No. 22578-80/2005 and notice had already been issued in the latter on 28.11.2005. As such, the High Court issued notice and original record was asked to be produced at the time of hearing. It was made clear that these Writ Petitions would be heard along with WP (C) No. 22578-80/2005 and till the next date of hearing, the Tribunal's order dated 03.10.2005 would remain stayed. The WP(C) No. 1235/2006 was decided on 22.09.2008 with the following order:-

"For orders, see WP(C) No. 22578-80/2005."

2. In the WP(C) No.22578-80/2005, ***Union of India & Ors. Vs. Abdul Basit***, the Hon'ble High Court passed orders on the same date viz. 22.09.2008. The Court observed that the petitioners were aggrieved by order dated 05.08.2005 passed by the Tribunal in OA2359/2004. The Court noted that an application for compassionate appointment filed by the respondent after death of his father had been rejected by order dated 24.07.2002 mentioning that the case was considered in the light of several OMs including O.M. dated 26.09.1995 and since the respondent did not come within the quota of 5% for direct recruitment his application was

liable to be rejected. It was observed that the Tribunal had allowed the application of the respondent and had considered several decisions. It had made a reference to O.M. issued in 1993 where no ceiling of the 5% had been mentioned. It also referred to O.M. of 1999 where ceiling of 5% had been mentioned and held that O.M. of 1999 cannot be applied retrospectively. But it completely overlooked O.M. dated 26.09.1995 which appeared at page 241 of the paper-book and which was the basis on which the claim of the respondent was rejected. The O.M. mentions that compassionate appointments can be made upto a maximum of 5% vacancies falling under direct recruitment quota in any Group-C & D post. A review application moved by the petitioners had also been rejected by the Tribunal on 30.09.2005. Therefore, the Court found that the Tribunal had not considered the case in the correct factual perspective and as such the order dated 05.08.2005 as well as order dated 30.09.2005 were set aside and the matter was remanded back to the Tribunal for consideration in its entirety on merits.

3. The learned counsel for the applicant has drawn my attention to order dated 11.11.2008 subsequently passed in OA-2359/2004 by a Single Bench on which I was the Member. A perusal of the same shows that it was submitted by respondents that the cases for compassionate grounds are required to be considered within 5% of the vacancies of direct recruitment and as such it would not be possible to consider the applicant's case without such limit. The learned counsel for the applicant thereupon submitted that there is

a Government order dated 30.06.2006, which lays down the manner in which 5% vacancies in direct recruitment are to be calculated and submitted that the same should be kept in view by the respondents. Accordingly, the respondents were directed to consider the case of the applicant for appointment on compassionate grounds keeping in view the limit of 5% of vacancies along with the instructions of 2006 and inform the applicant of the decision taken by a speaking order.

4. The learned counsel for the applicant states that the orders of the High Court are the same for the present O.A. as for OA-2359/2004. He has produced a copy of the same Government order and pointed out that the date had been recorded wrongly as 30.06.2006 whereas it is actually 14.06.2006. He prays that the applicant would be satisfied at this stage if the present O.A. is disposed of on the same lines by asking the respondents to recalculate the 5% vacancies keeping in view these orders.

5. The learned counsel for the respondents has taken me through the earlier order passed by the Tribunal on 03.10.2005 as well as the orders passed by the Hon'ble High Court of Delhi. He has further relied upon the counter-reply filed to the application and also submitted a synopsis along with certain judgments in support of the stand taken by the respondents. It is noticed that this synopsis is dated 23.04.2007 and as per the cause title appears to have already been placed before the Hon'ble High Court in WP(C) NO.1235/2006, which had been filed challenging the order of the

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Tribunal dated 03.10.2005 earlier passed in this O.A. It is also noticeable that a counter-reply to the rejoinder by the applicant is on record. This appears to be dated 29.06.2005 and added to the paper-book without leave of the Court, as the order sheet does not reveal any permission granted for the same.

6. It is seen that in terms of the order passed by the Hon'ble High Court, the same order as has been passed in WP(C) No. 22578-80/2005 would apply in respect of the present O.A. as well. As such, the matter is to be considered in its entirety on merits and keeping in view the observation of the High Court that the O.M. dated 26.09.1995, which puts a ceiling of 5% for compassionate appointment under direct recruitment quota was over-looked by the Tribunal earlier on.

7. A perusal of the counter-reply as well as the synopsis submitted by respondents reveals that the case of the applicant was approved for appointment on compassionate grounds as Postal Assistant vide Chief Postmaster General letter dated 08.06.1998 and he was allotted Mathura Postal Division. But for want of vacancy within 5% quota he could not be put on the job so far. It is stated that waiting lists have to be discontinued as per Government instructions of the year 2000 and 2001 and as such the applicant cannot claim appointment as a matter of right. He was, however, asked to submit willingness, if so desired, for the post of Gramin Dak Sewak to which he did not respond in time but after two years. Although his name was to be circulated to other

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Ministries and Departments in terms of DoP&T instructions dated 09.10.1998, due to non-availability of sufficient vacancies, the instruction had been withdrawn. It has been further stated that no junior candidate has been appointed on compassionate ground in Mathura Division. The ground of limitation has also been raised and reliance placed upon various judgments of the Hon'ble Supreme Court to contend that such appointment cannot be granted after the lapse of reasonable period of time and it is not a vested right.

8. It is true that the applicant only has a right for consideration for appointment and cannot claim the same as a matter of right. However, his appointment on compassionate grounds already stands approved as far back as in 1998 for the post of Postal Assistant in Mathura Division. However, due to no-availability of vacancy, he remained without actual orders of appointment. Even though the respondents have stated that wait listed persons cannot claim appointment as a matter of right, there is no categorical averment that the waiting lists are in fact not being operated in actual practice since what they have said is that the waiting lists have to be discontinued. A few years in the intervening period have passed with the case being under consideration firstly in the Tribunal and thereafter before the Hon'ble High Court of Delhi. I am, therefore, of the opinion that delay in this matter should not come in the way of further consideration of the applicant's case.

9. The order dated 11.11.2008 passed by the Tribunal in OA-2359/2004 appears to have become final as neither party to the

present O.A. has submitted otherwise. However, in the present case the appointment of the applicant to the post of Postal Assistant already stands approved. As such, the respondents are directed to process the case of the applicant for appointment on compassionate grounds as per approval dated 08.06.1998, within the limit of 5% of the vacancies keeping in view their own instructions dated 14.06.2006 and status of appointment of the applicant be informed to him by passing a speaking order within a period of three months from the date of receipt of a certified copy of this order.

10. The O.A. is disposed of as above. No costs.



(N.D. Dayal)
Member(A)

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