

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD

Dated: This the 09<sup>th</sup> day of March 2006.

Misc. Application No. 4747 of 2004

IN

Original Application No. 1358 of 2001

Hon'ble Mr. K.B.S. Rajan, Member (J)

H.S. Prasad ..... Applicant

By Adv: Sri R.S. Gupta

V E R S U S

Union of India & Ors ..... Respondents

By Adv: Sri S. Singh

O R D E R

When a high level committee (C.R.C) headed by the highest authority recommends a compassionate appointment, compliance of the same should be made religiously and no attempt to stultify the said recommendation can be permitted. Here is a case, where the applicant, who was successful in his attempt in seeking compassionate appointment and in whose favour the Circle Relaxation Committee had recommended for appointment to the post of P.A. is running from pillar to post to have his appointment fructified. The respondent, allegedly for the reason of non availability of vacancy under the 5% quota offered the applicant the post of EDBPM which the applicant is reluctant to accept and moved the Tribunal and the Tribunal by its order dated 10-01-2002 disposed of the OA No.1358/2001 with a direction to the respondents to decide the

representation filed by the applicant. That is still to fructify and hence this application.

2. If certain aspects are seen, the case appears to be analogous to one filed by Ram Babu Tripathi in OA No. 555/2001 in which, an elaborate and comprehensive order dated 11-10-2001 in OA No. 555/2001 was passed which pronounced the entitlement of the applicant to be appointed as P.A. and the operative portion of the said order is as under:-

"I have considered the facts of the case and the case law cited on behalf of the parties. Thus O.A. is disposed of with the direction that the applicant should be placed on the top of the waiting list of the candidates who are to be given appointment as P.A. on compassionate ground. As and when a vacancy of P.A. is to be filled up from the quota of compassionate appointment, the applicant shall be given appointment on priority basis as he had already been approved for such appointment and has also successfully completed the requisite theoretical and practical training. In the meantime the applicant shall have the option of joining as Gramin Dak Sewak, the post now offered to him within a period of one month from the date of receipt of this order."

3. The aforesaid order had been affirmed by the High Court by dismissing the departmental writ petition No. 35/03 vide order dated 27-01-2003, wherein it has been clearly expressed that the order of the Tribunal neither contravenes Rules of appointment on compassionate ground nor it infringes upon any quota of such appointment.

4. Admittedly no special leave petition has been filed by the Respondents.

*[Handwritten signature/initials over the bottom left corner]*

5. The applicant in the aforesaid OA has been appointed and the applicant in the present OA seeks a similar treatment. Understandable.

6. However, the constraint of the respondents in offering the applicant the post of PA is explained in their counter and the relevant portion is extracted below:-

*"That the contents stated in paragraph 4 of the Misc. Application No. 4747/2004 are not aamittee in the form they stand. In reply thereto it is submitted that the compliance of the order dated 10.01.2002 passed by this Hon'ble Tribunal, the representation of the applicant dated 01.10.2001 was duly considered. It is submitted that the respondent No. 3 vide letter dated 23.08.2001 asked the applicant to accept the post of GDS BPM for the time being but he flatly denied the same.....So far as the case of Sri Rambabu Tripathi is concerned is entirely different to the case of the applicant. Sri Rambabu Tripathi never denied the opportunity of his appointment to the post of GDS whereas the applicant denied the opportunity. This action on the part of the applicant itself demonstrates that his pecuniary status was not so poor. It is further submitted that the case of the applicant is also different from that of Sri Nadeem Faridi. Of course, the appointment on compassionate grounds were approved in favour of both the applicant and Sri Nadeem Faridi by the CRC, UP, Lucknow in the same year but Sri Nadeem Faridi was erroneously appointed by the SPOS, Kheri Division and worked as regular P.A. from 05.04.2000 to 17.08.2001 without vacancy. Therefore his appointment was cancelled by the SPOS, Kheri Division memo No. B/Nadeem Faridi dated 17.08.2001, which he challenged before the Hon'ble CAT, Lucknow Bench. The Hon'ble CAT, Lucknow Bench quashed the impugned order of SPOS, Kheri and directed to allow Sri Faridi to continue on the post of PA."*

7. Apart from the above explanation, the respondents herein, contend, imparting of induction training cannot bind the respondents to appoint the applicant immediately as P.A. irrespective of non availability of vacancy.

8. The spirit of compassionate appointment as spelt out in the Apex Court in *Umesh Kumar Nagpal*

v. State of Haryana (1994) 4 SCC 138 is that as a rule in public service appointment should be made strictly on the basis of open invitation of applications and merit. The appointment on compassionate ground is not another source of recruitment but merely an exception to the aforesaid requirement taking into consideration the fact of the death of employee while in service leaving his family without any means of livelihood. In such cases the object is to enable the family **to get over sudden financial crisis.** But such appointments on compassionate ground have to be made in accordance with the rules, regulations or administrative instructions taking into consideration the financial condition of the family of the deceased. Also see, *Commr. of Public Instructions v. K.R. Vishwanath, (2005) 7 SCC 206.*

9. The action taken by the respondents has to be tested on the touchstone of the abovementioned law laid down by the Apex Court. The offer of EDBPM as a temporary measure is certainly in favour of the applicant and the applicant cannot stick to his claim for the post of PA which is not completely denied but which could not be given to him at the moment as there is no vacancy. When there is no vacancy in group C post, nothing can be done. The employer cannot be compelled to accommodate the applicant against the vacancy in any other quota, as the same would be unlawful. Nor can the respondents

*b*

be compelled to create a supernumerary post, as the same is equally illegal as held by the Apex Court in the case of *Hindustan Aeronautics Ltd. v. A. Radhika Thirumalai*, (1996) 6 SCC 394 wherein the Apex Court has held as under:-

"9. A situation similar to the present case arose in *Himachal Road Transport Corpn. v. Dinesh Kumar*<sup>5</sup>. In that case this Court was dealing with two cases where applications had been submitted by the dependants of the deceased employees for appointment on compassionate grounds and both of them were placed on the waiting list and had not been given appointment. They approached the Himachal Pradesh Administrative Tribunal and the Tribunal directed the Himachal Road Transport Corporation to appoint both of them as Clerk on regular basis. Setting aside the said decision of the Tribunal this Court has observed: (SCC p. 563, para 10)

"... In the absence of a vacancy it is not open to the Corporation to appoint a person to any post. It will be a gross abuse of the powers of a public authority to appoint persons when vacancies are not available. If persons are so appointed and paid salaries, it will be a mere misuse of public funds, which is totally unauthorised. Normally, even if the Tribunal finds that a person is qualified to be appointed to a post under the kith and kin policy, the Tribunal should only give a direction to the appropriate authority to consider the case of the particular applicant, in the light of the relevant rules and subject to the availability of the post. It is not open to the Tribunal either to direct the appointment of any person to a post or direct the authorities concerned to create a supernumerary post and then appoint a person to such a post."

10. The only alternative is to direct the respondents to offer any post available at present under the 5% quota or as EDBPM with an assurance that as and when vacancy under the 5% quota is

*Purbo*

available, the applicant would be accommodated against the same. However, his pay, seniority etc., would be only as for a new entrant. To obviate the immediate financial hardship the applicant may accept such a post when offered. This exercise be completed within a period of four months from the date of communication of this order. Let a compliance report be filed accordingly. List the case on 17-08-2006 for taking judicial notice of compliance.



Member (J)

/pc/