

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD**

ALLAHABAD this the 12th day of **April, 2007.**

HON'BLE MR. S.K. DHAL, MEMBER-J.

ORIGINAL APPLICATION NO. 1343 OF 2004

Smt. Rai Kumari, w/o Har Prasad, aged about 26 years, R/o Ambedkar Park Bamba Road, Village Sailai, District Firojabad.

.....Applicant.

VERSUS

1. Union of India through Secretary, Ministry of Communication, Government of India, New Delhi.
2. The Circle Relaxation Committee through the CPMG, U.P. Circle, Lucknow.
3. The Sr. Superintendent of Post Offices, Agra Division, Agra.

.....Respondents

Present for the Applicant: Sri O.P. Gupta
Present for the Respondents: Sri S. Singh

ORDER

The applicant has challenged the order-dated 20.1.2004 under which her request for compassionate appointment has been refused.

2. The applicant claiming herself to be married wife of Shri Har Prasad has filed the present O.A. Her case is that Har Prasad while working as Postal Assistant lost his eye-sight and was retired on medical invalidation w.e.f. 8.2.1997. By the time Har Prasad retired, he had his wife three sons and

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two daughters. The first wife died on 15.5.98. Due to his loss of vigil; it was difficult in his part to lead his life. So, he married the applicant under Hindu Marriage Act, which was registered as per law. The applicant then submitted application for compassionate appointment. Her request was turned down by the respondents, who questioned the status of the applicant. The applicant was compelled to file O.A. no. 1017 of 2002 before the Principal Bench, CAT, New Delhi. While disposing the said O.A., the Tribunal recorded a finding that the applicant status cannot be questioned in view of registration of the marriage and that service benefits received by the legal representative of the Government servant cannot be a ground to deny the compassionate appointment and directed the respondents to reconsider the claim of the applicant for compassionate appointment as per the scheme and as per her eligibility with further direction that the exercise is to be done by passing a detailed and speaking order within a period of three months from the date of receipt of order of the Tribunal. In pursuance of the said direction, the case of the applicant was considered, but her request for compassionate appointment did not find favour of the respondents and the applicant was communicated about rejection of her claim under letter dated 20.4.2004 (Annexure A-3) and 14.5.2004 (Annexure A-4). So, the present O.A. has been filed with a prayer to direct

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the respondents to provide her appointment on compassionate grounds.

3. The respondents more or less have admitted the averments made by the applicant. Their further stand is that the case of the applicant was considered by the Circle Relaxation Committee in pursuance of the directions of the Tribunal passed in O.A. no. 1017 of 2002, but her case could not be recommended because she failed to make out a case in her favour. The same ground that the service benefits have been received by the husband of the applicant and that the status of the applicant is not known have been taken in this O.A. also.

4. I have heard the learned counsel for both the parties and have perused the documents available on record.

5. The stand of the respondents that the status of the applicant is not known to them cannot be accepted. In earlier O.A. no. 1017 of 2002 the following observations have been made by the Tribunal:-

"On merits also, the ground of rejection the status of the applicant no.2 as wife is not clear as per the Service Rules cannot be countenanced as after the death of the applicant no.1, first wife on 15.5.98 the applicant no.1 had married the applicant no.2 (present applicant) according to Hindu rights and the marriage was duly registered before the Registrar of Marriages is a legal and valid marriage. It was the rejection that the service book did not contain the status of the applicant no.2 as wife of the applicant no.1 is

illogical as service book was maintained upto 1997, whereas marriage had taken place subsequently."

6. In view of the above observations, now the respondents cannot challenge the status of applicant who has been accepted as the legal married wife of Har Prasad.

7. Coming to the service benefits I am also not inclined to accept the submissions made on behalf of the respondents in this regard. Reference can be made to the case of Govind Prasad Verma Vs. L.I.C. & Ors., reported in 2006 (1) ATJ 234. In this case, the Hon'ble Supreme Court have been pleased to observe that compassionate appointment cannot be refused on the ground that any member of the family received the amount admissible under the rules. So, the ground taken by the respondents that the husband of the applicant had received service benefits at the time of retirement cannot be accepted to refuse the compassionate appointment.

8. It is urged on behalf of the respondents that the compassionate appointment can be made upto 5% of the vacancies falling under direct recruitment quota in any Group 'C' or 'D' posts. In para 11 of the Counter, the respondents have made reference to the case of Himanchal Pradesh Road Transpotation Vs. Dinesh Kumar reported in JT 1996 (5) SC 319 and has been argued that the appointment on compassionate

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ground can be made only if a vacancy is available for that purpose. The above position of law is not disputed. Compassionate appointment can be made if there is a vacancy and the applicant is eligible for the post. Keeping this position of law in view the respondents were directed in O.A. 1017 of 2002 to reconsider the case of the applicant by passing a speaking order. The impugned orders as I have already stated at Annexure A-3 and A-4. Both the orders do not reflect as to whether there ~~is~~ ^{was} no vacancy or the applicant was not eligible for the post. Though, I was not inclined to refer the orders in detail, but ~~having~~ ^{have been} compelled to do so because both the orders, in my opinion, have been passed mechanically without application of mind. The "speaking order means" the applicant should know as to why the order went against her. The Annexure A-3 has indicated the letter no. of the DOP&T and it has been stated that the case was not recommended considering the liability of the family like education of minor children, marriage of daughters, responsibility of aged parents, prolonged and major ailment of a member availability of dependable and secured shelter and financial condition and other relevant factors. Same thing has been mentioned in the other letter i.e. Annexure A-4. After perusal of both the above letters, I am of the opinion that the directions issued by the Tribunal in O.A. no. 1017 of 2002 has not been complied with in a positive

manner, but the case of the applicant has been disposed of mechanically on flimsy grounds.

9. When the Tribunal has already accepted the applicant as the wife of the Government servant and have recorded that the service benefits received by the legal representative of the employee cannot be a ground to deny the compassionate appointment, the respondents should have considered the case of the applicant as to whether there is a vacancy of the post applied for and whether the applicant was eligible for the post. Without taking that course, in Annexure A-3 reference has been made ^{to} ~~letters~~ of DoP&T and the authority had suddenly jumped into the conclusion that the case of the applicant was not considered by the Circle Relaxation Committee. In Annexure A-4 the case of the applicant in O.A. no. 1017 of 2002 has been narrated and in the last paragraph the case of the applicant has been rejected making the following observation :

"The case of the applicant (Smt. Raj Kumar) was reconsidered by the CRC in the meeting held on 20/22 and 23 January, 2004 keeping in view the instructions issued by the Department of Posts on the subject time to time and taking into account of family and social liabilities, financial condition and other relevant factors and after inter-se consideration of all the case and keeping in view the prescribed ceiling of vacancies for appointment on compassionate ground, the case was not recommended for

appointment on compassionate grounds and rejected."

10. Both the above impugned orders do not reflect what was the number of vacancy available by the time the case of the applicant came for reconsideration in pursuance of the directions of the Tribunal and whether the applicant was eligible for the post applied for.

11. In the O.A. it has been mentioned that the retired government employee had three children one is aged about 16 years, second one is about 14 and third one is aged about 10 years and they are studying. This fact has not been disputed by the respondents. The respondents have failed to place ~~any~~ ^{very poor} the materials before this Tribunal that the applicant ~~or~~ has got sufficient means and her financial condition is ~~not measurable~~ to refuse the appointment on compassionate grounds. In deserving cases even where there is already an earning member in the family, a dependent family member maybe considered for compassionate appointment if the authority is satisfied whether the income is sufficient to support the family. It is also well settled that an application for compassionate appointment should not be rejected merely on the ground that the family of the Government servant has received the benefits under the various Welfare schemes. The request for compassionate appointment consequent on death or retirement on medical grounds may be considered with

greater sympathy by applying relaxed standard depending on the facts and circumstances of the case.

12. The respondents have admitted that the retired Government servant made a representation to them to give compassionate appointment to his son and subsequently requested them to allow him to withdraw the representation on the ground that his son is not keeping the relationship with him after his retirement. So in view of such admission, now the respondents cannot take a stand that the retired Government servant has got source of income.

13. Considering the above factual aspects and keeping the legal position in this regard in view, I am of the opinion that it is a fit case for giving compassionate appointment to the applicant. This Tribunal is aware of the fact that it cannot direct for giving compassionate appointment, but can issue suitable directions for consideration. The direction of the Tribunal giving in the earlier O.A. has not been complied with in a proper perspective. So, I am of the view, the applicant has to be offered the compassionate appointment in the next vacancy which would be available after pronouncement of this judgment if she is found eligible for the post. Hence, the O.A. is allowed in the above terms. No costs.

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24/12/2007*
MEMBER-J

GIRISH/-