

(RESERVED)

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

**HON'BLE MR. A.K. GAUR , MEMBER (J).
HON'BLE MRS. MANJULIKA GAUTAM, MEMBER (A).**

Original Application Number. 294 OF 2004

ALLAHABAD this the 9 day of 2, ^{10/} 2004.

Brijendra Singh Son of late Shri Deshraj Singh, Resident of Village and Post Ghat Kotra, Tehsil Mauranipur, Disctrict Jhansi (Lastly employed as EDDA, Bhadarwara Branch Office, Tehsil Mauranipur, District- Jhansi.

.....Applicant.

VE R S U S

1. Union of India through the Secretary, Ministry of Communication, Department of Post, New Delhi.
2. Post Master General Agra Region, Agra.
3. Senior Superintendent of Post Offices, Jhansi Division, Jhansi.
4. Deputy Sub Inspector (Post), Mauranpur Sub Division, Mauranipur, District- Jhansi.

.....Respondents

Advocate for the applicant: Sri O.P. Gupta

Advocate for the Respondents: Sri S. Singh
Sri R.D. Tiwari

O R D E R

(Delivered by Hon'ble Mr. A.K. Gaur, J.M)

The applicant Through this O.A filed under section 19 of Administrative Tribunals Act, 1985 has prayed for following main relief/s: -

“i). Issue a suitable order or direction in the nature of CERTIORARI QUASHING the order dated 20.1.2004 passed by respondent no. 2 and the oral termination order and the charge report dated 30.6.2003 passed by the respondent no. 4 (Annexure no. 1 and 4)

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ii). Issue a suitable order or direction in the nature of MANDAMUS DIRECTING the respondents not to interfere in the peaceful working of the applicant as E.D.D.A, Bhadarwar Branch Office, Tehsil Mauranipur, District Jhansi and to pay his salary as and when it falls due.”.

2. Factual matrix of the case are that the father of the applicant, who was working in the respondent's establishment, died in harness and his brother namely Rajendra Singh was appointed as Extra Departmental Delivery Agent (EDDA in short) on compassionate ground in the year 1992. The brother of the applicant also died in the year 1999. According to the applicant, after death of his brother, he was appointed as EDDA, Bhadarawara Branch Office and given the charge of the post on 14.12.1999/Annexure-2 of O.A. Thereafter the respondent No. 4 vide order dated 07.02.2000 (Annexure-3 of O.A) ordered to work as EDDA Bhadarawara Branch Office on the risk and responsibility of EDBPM, Bhadarawara. The applicant after taking charge of the post on 14.12.1999 worked upto 30.06.2003 continuously but, according to the applicant, on 30.06.2003 his engagement was terminated orally and no orders were passed as to whether the CPMG, U.P. Circle or Circle Relaxation Committee disapprove his for compassionate appointment. Rather vide letter dated 30.09.2003 (Annexure-8 of O.A) the applicant was asked to supply certain documents and to fill up prescribed application form. Aggrieved the applicant filed Original Application No. 1311/2003, which was disposed off vide judgment and order dated 05.11.2003 (Annexure-5 of O.A) and in compliance of the directions contained therein, the applicant filed representation dated 24.11.2003 (Annexure-6 of O.A), which was rejected by the respondent No. 2 vide order dated 20.01.2004 (Annexure-1 of O.A) validity of which has been

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challenged by the applicant on the ground that the finding recorded in the order dated 20.01.2004 are totally wrong as the applicant was engaged on compassionate grounds. Learned counsel for the applicant submitted that as per GDS (Recruitment) Rules, 2001, appointing authority of the post of EDDA is the Inspector Post Office and the order dated 07.02.2000 was issued by the Inspector of Post Offices.

3. Learned counsel for the applicant further submitted that after the death of applicant's brother, there was no earning member to look after the family and as per the provisions for appointment under dying in harness rules, brother of the deceased employee is entitled for compassionate appointment. In support of his contention, learned counsel for the applicant invited our attention to the DG Posts Letter No. 17-85/95-ED & Trg. Dated 15.02.1996, which reads as under : -

"It is clarified that the provisions contained in O.M, Department of Per. & Trg as circulated with this office, compassionate appointment of brother/sister of the deceased, who died in harness are applicable to the ED Agents.

....."

4. Learned counsel for the applicant further submitted that the appointment of the applicant as EDDA was not irregular because as per the provisions contained in ED Rules, the applicant was rightly engaged temporarily till the decision for compassionate appointment by the Circle Relaxation Committee. Learned counsel invited our attention to Note 4 page 148 of Swamy's Postal ED Staff, which reads as under: -

"NOTE 4- The dependents of the deceased ED Agents who have been already appointed, albeit on temporary basis,

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pending completion of the requisite formalities and formal approval of the Circle Relaxation Committee in accordance with the orders applicable at the relevant point of time prior to 1-4-1993 may be allowed to continue to hold the posts of ED Agents, if the competent authority formally approves their appointments on compassionate grounds.”.

3. On notice, the respondents have filed Counter Affidavit . Learned counsel for the respondents submitted that vide order dated 07.02.2000, the applicant was allowed to work as EDDA/MC, Bhadarawara Bhadarawara Branch Office temporarily with certain condition , which was also in violation of instructions issued under Chief Post Master General, U.P. Circle, Lucknow Letter No. Rectt/M-8 Genl/98/2/II dated 08.12.1999, in which it was mentioned that the dependents of the deceased should be engaged only after approval of Circle Office. Therefore, the applicant was disengaged w.e.f. 30.06.2003It has further been contended that the applicant being brother of Late Rajendra Singh/deceased employee, is also not dependent of the deceased, therefore, he has no claim for compassionate appointment. Learned counsel for the respondents would further contend that the applicant was not never appointed under dying in harness rules and his earlier engagement since was purely on temporary basis with certain condition and was not in accordance with the EDAs (Conduct and Service) Rules, 1964, therefore, no formal termination order was required to be issued. Learned counsel further submitted that the engagement of the applicant by SDI did not confer any right for approval of his case by Circle Relaxation Committee. However, in compliance of the direction of the Tribunal passed in O.A No. 1311/2003, the case of the applicant was considered but was not found suitable for compassionate appointment.

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4. Learned counsel for the respondents placed reliance on judgment of Apex Court in **Umesh Kumar Nagpal Vs. State of Haryana and others - JT 1994(3) SC 525** and submitted that appointment on compassionate grounds can be considered only if the family is in indigent circumstances and not as a matter of right, which can be executed at any time in future. In the said judgment, Hon'ble Apex Court has further held that the compassionate appointment cannot be granted after lapse of a reasonable period.

5. Applicant has filed Rejoinder Affidavit to which the respondents filed Suppl. Counter Affidavit and we have carefully seen the averments made therein.

6. We have heard rival contentions, perused the pleadings as well as the Written Arguments filed by learned counsel for the applicant.

7. For better appraisal of the controversy involved in the instant case, we would like to reproduce the contents of Letter dated 07.02.2000 (Annexure A-3 of O.A): -

"Keeping on view the spirit of the SSPOs, Jhansi letter No. B4/Relaxation Appli/Akseo dated 29.10.99 compassionate appointment candidate for the post of E.D.D.A, Bhadarawara Sri Brijendra Singh is hereby ordered to work as E.D.D.A, Bhadarawara B.O on risk and responsibility of E.D.B.P.M, Bhadarawara.

He should clearly understand that if his name for relaxation appointment is not approved by the office of Chief post Master General Lucknow, He shall have to leave the charge of the post immediately.”.

8. A bare perusal of the order clearly shows that applicant was engaged purely temporarily and without following due process of

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recruitment and that too on risk and responsibility of EDBPM, Bhadarwara. Thus we are not convinced with the argument of learned counsel for the applicant that applicant was appointed on compassionate grounds. The very engagement of the applicant on 14.12.1999 was purely temporary; therefore, there was no occasion for the respondents to pass any formal order while disengaging him on 30.06.2003. However, aggrieved by the oral termination order, the applicant filed O.A No. 1311/2003, which was disposed off in following terms: -

“8. In the facts and circumstances, we allow four weeks time to the applicant to file a representation before Post Master General, Agra Region, Agra alongwith the copy of the order of this Tribunal and the Post Master General, Agra Region, is directed to decide the same within two months from the date of receipt of such representation. E also provide that the re-engagement of the applicant shall also be considered by the Post Master General, Agra as the work of EDDA is still required in the Branch Post Office.”

9. In compliance of the above direction, the applicant filed representation dated 24.11.2003 (Annexure-6 of O.A) to the Post Master General, Agra Region, who passed the order dated 20.01.2004 (Annexure- 1 of O.A). In para (i) of the said order it has clearly been observed that the applicant was irregularly engaged on the post by the EDBPM and SDI, Mauranipur in violation of the instruction issued under Chief Post Master General, U.P. Circle, Lucknow letter No. Rectt/M-8 Genl/98/2/II dated 08.12.1999. Said letter stipulates that the dependents of the deceased should be engaged only after approval of circle office, which in the instant case has not been done. The applicant being the brother of deceased employee also does not come within the

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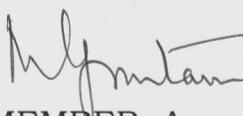
purview of dependent of deceased. Hence he is not entitled for compassionate appointment.

10. We would also like to observe that the brother of the applicant, died in the year 1999 and the family has survived during this period. In view of the decisions rendered by Hon'ble Supreme Court in **M.T. Latheesh's case reported in 2006 (7) SCC 350 as well as in the case of State of J&K and Ors. Vs. Sajad Ahmed Mir (2006)5 SCC 766 and 2007(1) SCC (L&S) 668, National Institute of Technology Vs. Manoj Kumar Singh**, the appointment on compassionate ground cannot be granted to the applicant after lapse of sufficient time of the death of an employee. As per the decision of Hon'ble Apex Court rendered in State of J&K (supra), in which it has been held that 'once it is proved that in spite of the death of the breadwinner, the family survived and substantial period is over, there is no need to make appointment on compassionate ground at the cost of the interests of several others ignoring the mandate of Art. 14 of the Constitution'.

(Underlined to lay emphasis)

11. In view of the observations made above and law laid down by Apex Court, the applicant has failed to make out any case for interference. Accordingly the O.A is dismissed being devoid of merit.

12. There will be no order as to costs.



MEMBER- A.



MEMBER- J.

/Anand/