

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

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DATED : THIS THE *6<sup>th</sup>* DAY OF AUGUST 1996

*September*

SINGLE MEMBER BENCH

Hon'ble Mr. S. Das Gupta A.M.

ORIGINAL APPLICATION NO. 1453 of 1993

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Jitendra Kumar Dixit

R/o 9/54 G. P. O. Compound,

Pratappura, Distt: Agra. . . . . Applicant

C/A Sri R. K. Tewari.

VERSUS

1. Director General, Posts,

New Delhi - 1

2. Chief Post Master General,

U.P.Circle, Lucknow-1

3. Union of India through

Secretary, Ministry of Communication,

New Delhi-1. . . . . . . . . . . Respondents

C/R Sri C. S. Singh

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ORDER

By Hon'ble Mr. S. Das Gupta A.M.

Through this application filed under section 19 of the Administrative Tribunals Act, 1985, K. Applicant seeks a direction to the respondents to give appointment to the applicant on compassionate ground, setting aside the order dated 22.9.1993 by which the applicant's request for such appointment was rejected.

2. The applicant is a younger brother of Dharmendra Kumar Dixit, who was employed as Mail Man at R. M. S. office, Agra Fort. The said Dharmendra Kumar Dixit was selected for appointment as Sorting Assistant and while undergoing training for the said post, he died in harness in October, 1991, leaving behind his parents, 3 un-employed brothers including the applicant and 2 un-married sisters. The applicant thereupon requested for compassionate appointment and the said application was rejected by the impugned order dated 22.9.1992 on the ground that there is one earning member in the family and that there is no heavy liability.

3. The respondents have filed counter affidavit in which it has been stated that the father of the deceased late Dharmendra Kumar Dixit, who died in harness after rendering 4 years service is himself in service as a Sorting Assistant in R.M.S. Office, Agra and is drawing monthly salary of Rs.1,720/- plus D.A. Since father is already working and is receiving substantial salary, the brothers and sisters of the deceased Dharmendra Kumar Dixit cannot be considered

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as dependents of the deceased employee. As such the request of the applicant for compassionate appointment was rejected after due consideration.

4. The applicant has stated in his O.A. that the financial condition of the family is very straitened as the applicant's mother is hospitalised for a major operation of Cancer. The treatment is highly expensive and it is extremely difficult for his father to bear such expense. Moreover his father was also due to retire only after 18 months. In such a situation, the applicant contends, his request for compassionate appointment should have been sympathetically considered. The applicant has also filed rejoinder reply in which he has stated that his deceased brother was a member of Joint Hindu un-divided family and his earning formed a part of the earning of the whole family. He has reiterated that the financial condition of the family in view of heavy expenses on the treatment of his mother is bad.

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

6. The facts of the case are not disputed. The applicant has annexed to the O.A. a copy of Office Memorandum No. 22 dated 6.1995 issued by the department of Personnel and Training by which the rules relating to compassionate appointment have been liberalised to the extent that dependent brother/sister of an unmarried government servant, who dies in harness may be considered for compassionate appointment. As such

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case of the applicant would ~~thus~~ be governed under the instructions contained in the aforesaid Office Memorandum in case he and his other brothers and sisters were dependent on the deceased brother.

7. It is not disputed by the respondents that the deceased government servant was a member of un-divided Hindu family. It is also no disputed that the said employee was un-married. I do not, therefore, disbelieve the contention of the applicant that his brother's income supplement~~the~~ the income of the family as a whole and after his death, the income of the family has been reduced to the extent of his brother's contribution to the family expenses. I am aware ~~of~~ of the fact that the applicant's father was still in service at the time this O.A. was filed. Keeping inview the norms and practice of an un-divided Hindu family, I am of the view that brother and sister of a deceased government servant were partly, if not ~~wholly~~, dependent on their brother's income. The aforesaid Office Memorandum ~~is~~, therefore, would govern the case of the applicant. In any case the respondents have not stated that these instructions would not apply to the applicant.

8. The question, therefore, remains as to whether the rejection of the applicant's request for compassionate employment on the ground that there was an earning member in the family and the liabilities of the family were not heavy is tenable.

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9. It is now settled law that the death of a government servant does not ipsofacto confer any right on his dependants to claim compassionate employment. They have only a right to be considered for such employment in terms of the extant G.Os. Such consideration would be based on various factors, the most predominant factor ~~to be~~ being the economic condition of the family left behind by the deceased government servant. The essence of ~~implementation~~ <sup>employment</sup> of compassionate ground is to render immediate succour to the bereaved family which has been left in penury by the death of the bread earner.

10. If in the ~~extant~~ <sup>instant</sup> case, the respondents had considered economic condition of the family and had come to the conclusion that the family did not require any immediate assistance in the form of compassionate employment to any of its member, there would be nothing further for the Tribunal to interfere. However the impugned order dated 22.9.1992 does not indicate that the respondents enquired into the financial condition of the family and then came to the conclusion that no assistance was required to be given to the family members. It has been rejected merely on the ground that there is an earning member in the family and that there was no heavy liability. The fact that the father who is <sup>the</sup> Head of the family is in service is not in dispute. However, it is not clear, how the respondents came to the conclusion that the family did not have heavy liability. By their own statement the family had six members including parent, two un-employed sons and two un-married sisters. The respondents have also not disputed that

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that applicant's mother is suffering from incurable and terminal disease like Cancer and there is heavy burden on the family's financial resources in the shape of medical expenses. The respondents have also not disputed the assertion of the applicant that his father was due to retire shortly. Keeping in view the totality of the financial circumstances, it would appear that the respondents have mechanically rejected the request of the applicant without applying their mind to the actual financial condition of the family which is the most dominant factor to decide whether compassionate appointment should be given in a particular case or not.

11. Inview of the foregoing, I set aside the impugned order dated 22.9.1992. Respondents are directed to reconsider the request of the applicant for compassionate employment after conducting an enquiry into the financial condition of the family and thereafter decide whether the family would require assistance in the form of compassionate employment to the applicant, who is the brother of the deceased government servant. In case the decision is ~~not~~ in favour of the applicant, he shall be provided with suitable employmenent on compassionate ground.

12. Let the enquiry and consideration thereafter be completed within a period of 3 months from the date of communication of the order and in

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case the respondents decide to offer compassionate employment, let the applicant be offered employment within 2 months thereof.

13. The application is disposed of with the aforesaid direction, leaving the parties to bear their own cost.



MEMBER (ADMINISTRATIVE)

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