

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO.1287 OF 2002
ALLAHABAD THIS THE 23RD DAY OF SEPTEMBER, 2004

HON'BLE MRS. MEERA CHHIBBER, MEMBER-J

Vipin Kumar,
S/o Late Mangal Singh,
R/o House No.H-26-A Railway
Harthla Colony,
Moradabad.

. Applicant

(By Advocate Sri Avnish Tripathi)

Versus

1. Union of India,
through its Secretary,
Ministry of Communication,
Dak Bhawan, Sadaad Marg,
New Delhi.
2. Chief Post Master General,
U.P. Circle, Hazratganj,
Lucknow.
3. Senior Superintendent of Post Office,
Moradabad Division,
Moradabad.

. Respondents

Shri
(By Advocate/Saumitra Singh)

. 2/-



_O_R_D_E_R_

By this O.A. applicant has sought quashing of the order dated 01.07.2002 communicated by letter dated 05.09.02 whereby request for compassionate appointment has been rejected on the ground that the deceased employee has already put ⁱⁿ more than 35 years of service. Two sons ~~of~~ ^{of} the deceased employee are already in service. Family is getting family pension of Rs.3175/- + DA apart from other terminal ~~benefits~~ amounting to Rs.574216/-. Moreover, number of vacancies are very limited to the extent of 5% of the recruitment ^{in a year} ~~rules~~ and since the conditions of family are not found to be indigent, their case could not be recommended by the Circle Relaxation Committee (Page 27).

2. It is submitted by the applicant, that his father died on 30.09.1999 leaving behind his widow, two sons aged 27 years and 16½ years and one unmarried daughter. It is submitted by the counsel for the applicant that applicants neither have any landed property nor they have any house ⁱⁿ their own ^{name} and they are living in a rented accommodation and applicant's father had also died due to cancer for which heavy loans ^{from other} have been taken/persons and whatever amount, family has received after the death of deceased employee, that was utilised in repaying the said loan. He has thus, submitted that it is a fit case for grant of compassionate amount in favour of applicant.

3. Counsel for the applicant submitted that if it is a deserving case, the ground that one son is already in

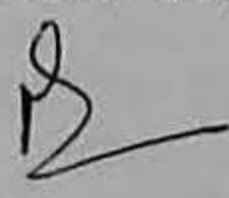


Government service will not make any difference.

4. Respondents on the other hand, opposed this O.A. and have relied on JT-1996(5) SC 519 judgment given in the case of Himanchal Road Transport Corporation Vs. Dinesh Kumar and in the case of Hindustan Aeronautics Ltd. Vs. A. Radhika Thirumallai reported in JT-1996 (6) SC-197 wherein it has been held that appointment on compassionate grounds can be made only if a vacancy is available for that purpose. They have further submitted that it is not open to the Tribunal to give compassionate appointment to any person, therefore, applicant is not entitled to get the relief no.3 as claimed by him. They have further submitted that appointment on compassionate grounds could be given only if the post is available under 5% quota and compassionate appointment cannot be claimed as a matter of right. They have thus, prayed that the O.A. be dismissed.

5. I have heard both the counsel and perused the pleadings as well.

6. The law on the subject of compassionate appointment is well settled by now, that neither compassionate appointment can be claimed as a matter of right nor as a line of succession. On the contrary, compassionate appointment can be given only in exceptional circumstances where the family members are left in totally indigent condition due to the sudden death of the sole earning



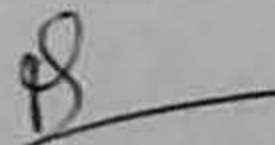
member in the family leaving the surviving members in a total lurch and they are not even able to survive unless immediate assistance is given to them. In the instant case, it is seen, that the son who applied for compassionate appointment is already 27 years old and is married. In normal course, he should have been appointed in service by now. Simply because he is out of job, he cannot make, the death of his father, as an easy step to gain entry in the Government service. It is settled by now, that compassionate appointment can be given only within the limited 5% vacancies meant for compassionate appointment, therefore, a comparative chart has to be maintained and only such of the persons are to be recommended for compassionate appointment who are more deserving. In the process, if less deserving cases get eliminated, they cannot complain because the limit of 5% has been upheld by Hon'ble Supreme Court, therefore, no direction can be given to the department to appoint the applicant in excess of the 5% limited vacancies or in preference to more deserving cases.

7. It is also settled law that Tribunal cannot give direction to appoint any person on compassionate grounds. At best, a direction can be given to reconsider the case, if the case is made out, that either the case of person has not been considered at all by the respondents or the reasoning while rejecting the claim of the applicant is found to be illegal and unsustainable in law. In this case, we only have to see, whether the grounds on which applicant's claim for compassionate

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appointment has been rejected is valid in the eyes of law or not, because admittedly, his case has been considered by the Circle Relaxation Committee.

8. Respondents have given four grounds for rejecting the claim of applicant. First is that the employee had already putⁱⁿ~~ting~~ more than 35 years of service. The date of Birth of the deceased employee was 30.11.1944. He died in 1999 and was due to retire on 30.11.2004. The purpose of saying, that the deceased employee had already putⁱⁿ~~ting~~ more than 35 years^{of} service was that a person gets maximum pension after 33 years of qualifying service and since he had already putⁱⁿ~~ting~~ more than 35 years of service it would not have made much difference in pension of deceased employee because subsequent service would not have added to the maximum pension. The second ground taken by the respondents is that two of the sons of the deceased employee were already in service. On this point, it would be relevant to ^{Quote}~~get~~ the judgment of Hon'ble Supreme Court given in the case of Sail and Another Vs. Awadesh Singh reported in JT 2001(4) SC 73 wherein it was held that if one heir^{is} already in employment, compassionate appointment cannot be provided to others. Since this view had already been held by Hon'ble Supreme Court and the fact, that two sons of the deceased employee are already in Government Service are not disputed, this ground is also absolutely in consequence with the judgment given by Hon'ble Supreme Court. Respondents have next taken the ground that the family is getting family pension and were also given terminal benefits, on this point, though Hon'ble Supreme Court has held in the case of Balbir Kaur



that compassionate appointment cannot be denied only on the ground that family is getting terminal benefits but that would be in those cases, where the case has been rejected solely on that ground, whereas in the instant case this is only an additional ground taken by the respondents to show that the family has been given sufficient amount to survive, therefore, it cannot be said that the family is in indigent condition. Since, I do not find any illegality in the reasoning given by the respondents while rejecting the claim of applicant, I do not think, this case calls for any interference by the Tribunal.

9. In view of the above discussion, this O.A. is dismissed with no order as to costs.



Member-J

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