

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

ORIGINAL APPLICATION NUMBER 833 OF 2002
ALLAHABAD, THIS THE 27th DAY OF JANUARY, 2004

HON'BLE MRS. MEERA CHHIBBER, J.M.

Ziya Haider,
son of Late Tahrul Hasan,
resident of Village and P.O. Mohammadpur,
District Kanpur Dehat Local Address H.No.17/87,
Hata Nawab Sahibe, Ram Narain Bazar,
District-Kanpur Nagar.

.....Applicant

(By Advocate : Shri K.K. Tripathi-Absent)

V E R S U S

1. Union of India,
Ministry of Communication,
Department of Post, New Delhi.
2. The Chief Post Master General,
U.P. Circle, Lucknow.
3. The Director, Postal Services, Kanpur Region,
Kanpur.
4. The Chief Post Master, Kanpur Head Office,
District-Kanpur.

.....Respondents

(By Advocate : Shri S. Chaturvedi)

O R D E R

By this O.A. applicant has sought the following
reliefs:-

- (A) to quash the orders dated 16.10.2001 and 10.01.02
(Annexure No.A-1 and A-2 of compilation-I of
this application) passed by the respondent No.4.
- (B) A direction may be given to the respondents to
pass the order for posting of applicant on the
post of Postal Assistant cadre for which he has
been initially recruited vide order of respondent
No2 dated 18.08.1997.



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- (c) to pass any order or direction as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case in the interest of justice.
- (D) Award the cost of the application to the applicant."

2. Grievance of the applicant in this case is that after the death of his father applicant was appointed on compassionate ground as postal assistant on 29.07.1999 instead of permitting him to join as Postal Assistant at Kanpur Head Office, repeated letters have been sent to the applicant for giving his willingness to join the post of Gramin Dak Sewak. It is submitted by the applicant that this amounts ^{to B} reduction in rank as the same could not have been done without affording him opportunity as stipulated under Article 311 of the Constitution. He has further submitted that respondents ^{were 18} ~~had~~ resorting to pick and choose policy as few other candidates have been given the appointment as Postal Assistant even by exceeding the ceiling of 5% limit for compassionate appointment on malafide grounds. He has given their names as Gyan Prakash Shukla, Vinay Kumar Mishra and Shri Arvind Kumar Dixit. He has thus prayed that in similar way applicant should also be appointed as Postal Assistant without insisting that he should give his willingness for Gramin Dak Sewak. Applicant has also submitted that the order dated 16.10.2001 and 10.01.2002 has been challenged by other persons in O.A. No,100 of 2002 titled as Mahesh Chandra Vs. Union of India & Ors and since this is the identical matter, this O.A. may be connected with the O.A. No.100 of 2002.

3. Respondents on the other have submitted that applicant was found suitable for appointment as postal assistant but he could not be appointed because there was no vacancy in P.A. Cadre which could be filled up by by relaxation under the



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compassionate quota. It was, therefore, decided to absorb the applicant in G.D.S. Cadre for which number of letters were written to the applicant to give his willingness but he has not submitted his willingness for absorption in G.D.S. Cadre. They have, thus, submitted that there is no merit in the O.A. and the same may therefore, be dismissed as the other O.A. bearing No.100/02 has already been dismissed by this Tribunal by a Division Bench vide judgment dated 01.09.2002. Copy of the judgment taken on record. They have also relied on a judgment given by Principal Bench in O.A. No.719 of 2002. Counsel for the respondents submitted that compassionate appointment can not be claimed as a matter of right and even if a person is approved for grant of compassionate appointment, respondents could not have exceeded 12 5% limit within 12 which alone compassionate appointment could have been granted and since there was no vacancy available in the P.A. cadre applicant cannot insist that he should be appointed beyond the limit of 5% nor can courts give such^a direction.

4. Applicant in rejoinder has reiterated his contention and has relied on the Judgment given by Lucknow Bench in the case of Mohd. Khalid in O.A. 6901 of 2001 dated 18.01.2002.

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

6. Perusal of the letter dated 23.07.1999 shows that approval was given by the Chief Post Master General for giving compassionate appointment to the applicant and he was further allotted to Kanpur Division. The said letter cannot be said to be an appointment as appointment letter was yet to be issued after verifying and completing the formalities, which is evident from para-3 of the said letter, ^{itself. 12} Simply because the applicant was approved for compassionate appointment, it does not mean that



he had to be given the appointment also irrespective of the fact whether there was vacancy available within the 5% quota of compassionate appointment or not. At this point it would be relevant to quote J.T.2002(7) SC 425 in the case of UNION OF INDIA VS. JOGINDER SHARMA wherein the Tribunal had directed the respondents to consider the applicant by relaxing the limits of 5% ceiling. High Court dismissed the petition but Hon'ble Supreme Court held it was not open to the Tribunal or Court to compell the authorities to grant any such relaxation. Such a direction cannot be sustained. It is thus, clear that the Tribunal cannot give direction to the respondents to give appointment to an individual beyond the limit of 5% vacancies meant for compassionate appointment. Respondents have categorically stated that even though applicant was approved but could not be appointed due to non-availability of vacancies. Therefore, in these circumstances, I do not think we can give any direction to the respondents to give appointment to the applicant by exceeding the 5% limit.

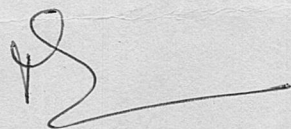
7. Similarly simply because, respondents had given compassionate appointment to some other persons by exceeding the 5% limit, it would not give right to applicant to claim the same benefit, as court cannot give direction to the respondents to commit a mistake. The persons who have given the compassionate appointment beyond the limit as alleged by applicant are neither made a party in the O.A. nor their appointment has been challenged. Therefore, we are not called upon to examine the correctness or otherwise appointment of the said candidates. Even otherwise two wrongs cannot make it a right. Therefore, this contention of applicant can also not be accepted. Apart from these contentions, it is also seen that applicant had himself stated that this O.A. is identical as that of O.A. No.100/02 and he had



himself prayed that this O.A. may be tagged with the said O.A. as the applicants of that O.A. were also approved for compassionate appointment alongwith the applicant by the same order and they were also asked to give their willingness for GDS Cadre. Respondent's counsel has placed the said Judgment for our perusal and it shows that the same has already been dismissed. Therefore, it is but natural that this O.A. also has to meet the same fate.

8. It would not be out of place to mention here that compassionate appointment is given to a person in order to tide over the distressed condition of the family due to the sudden death of the sole bread earner in the family and if such is the condition whichever post is offered would be accepted. The same could have been done under protest. If the financial condition is really bad one would not insist for a particular post only as the case could have been perused even after accepting the appointment in GDS Cadre. In any case without going into further details about his requirement since respondents had already given him an offer to join the GDS Cadre, it would be open to the applicant to exercise his option even now and give his willingness for being appointed in GDS Cadre. In case he gives such willingness within 2 weeks from the date of receipt of a copy of this order, I am sure respondents shall consider the same and pass appropriate orders thereon within a period of 2 months from the date of receipt of such willingness.

9. With the above observations, this O.A. is dismissed with no order as to costs.



Member (J)