

(RESERVED on 11.12.2012)

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD  
BENCH ALLAHABAD

Allahabad, this the 21<sup>st</sup> day of December, 2012

Hon'ble Mr. Sanjeev Kaushik, Member-J  
Hon'ble Ms. Jayati Chandra, Member-A

Original Application No.1361 of 2003  
(U/s 19 of Administrative Tribunal Act, 1985)

Sarman, S/o Late Hari Ram Sen, R/o Village and Post Bansi,  
District-Lalitpur.

..... Applicant.

By Advocate : Shri Avnish Tripathi

**V E R S U S**

1. Union of India through its Secretary, Department of Post, Ministry of Communication, Dak Bhawan, Sansad Marg, New Delhi.
2. Chief Post Master General, U.P. Circle, Hazratganj, Lucknow.
3. Senior Superintendent of Post offices, Jhansi Division, Jhansi.
4. Sib Division Inspector, South Sub Division, Jhansi.

..... Respondents

By Advocate : Shri R.K. Srivastava

**ORDER**

**DELIVERED BY**  
**HON'BLE MR. SANJEEV KAUSHIK, MEMBER-J**

The applicant has impugned the order dated 4.9.2003  
passed by respondent no.2, order dated 17.9.2003 passed by

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respondent no.3 and order dated 16.10.2003 passed by respondent no.4 by which the services of the applicant has been terminated with immediate effect.

2. The facts is to be noticed first. The father of the applicant late Hari Ram Sen was working as Extra Departmental Runner Bansi Barh Line Lalitpur. He died on 24.12.1999 while he was in service. Immediately thereafter the mother of the applicant moved an application for giving compassionate appointment under compassionate scheme to his second son namely Surman i.e. the applicant. The applicant was allowed to continue to work as Extra Departmental Runner Bansi till the claim of the applicant is finally decided by Circle Relaxation Committee headed by the Chief Post Master General, U.P. Circle, Lucknow respondent no.2. It is averred that during the life time of his father when he was ill the applicant was allowed to work on his post by order dated 01.11.1999 and thereafter he was provisionally appointed by order dated 3.6.2000. By order dated 4.9.2003 issued by the office of Chief Post Master General, U.P. Circle Lucknow to Senior Superintendent of Post offices Jhansi the claim of the applicant on compassionate grounds was rejected. The said order was communicated to the

applicant vide order dated 17.9.2003 by respondent no.3 and also direction has been given to respondent no.4 to terminated the services of the applicant in continuance of the instructions issued by the higher authorities. The service of the applicant was terminated by order dated 16.10.2003, hence the original application.

3. Pursuance to notice respondents contested the case of the applicant by filing detailed counter affidavit and submitted that compassionate appointment cannot be claimed as a matter of right and it is to be given to those families who are living in pecuniary circumstances and are not able to earn their livelihood due to death of their bread earner. Reliance has also been placed in the case of *Life Insurance Corporation of India Vs. Mrs. Asha Ramchandra Ambekar and Another*, AIR 1994 SC 2148: JT 1994 (2) SC 183 and judgment in the case of *Umesh Kumar Nagpal Vs. State of Haryana and Others*, (1994) 4 SCC 138: JT 1994(3) SC 525. In para no.8, 9 and 10 of the counter affidavit the respondents averred as under:-

"8. That in the present case the family of the deceased was not found in penury condition because the petitioner and his brother Sri Ramesh are having Rs.10,000/- each per year totaling to Rs.20,000/- per year hence the petitioner is not entitled to the reliefs claimed and the

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petition is liable to be dismissed. The copies of reports of the Tehsildar are attached as Annexure CA2 to this affidavit.

9. That apart from the above the elder brother of he petitioner is employed as drawing Rs.3,950/- as his salary. A true copy of the certificate of the employer is attached as Annexure CA-3 to this affidavit.

10. That the father of the petitioner late Sri Hari ram while working as G.D.S. Runner in Bansi Barh Line expired on 24.12.1999 while he was on leave from 1.11.1999 to 31.12.1999 leaving three years two months eighteen days service. The deceased after his death left behind him the following family members:

- |    |                       |          |                                      |
|----|-----------------------|----------|--------------------------------------|
| 1. | Smt. Rajji Bai        | Wife     | 57 years                             |
| 2. | Sri Gulab Chand       | Son      | 36 years                             |
|    |                       | Employed |                                      |
| 3. | Sri Ramesh            | Son      | 35 years Unemployed                  |
|    |                       |          | Out his Annual income is Rs.10,000/- |
| 4. | Sri Sarman Petitioner | Son      | 29 years Un-employed                 |
|    |                       |          | But his annual income is Rs.10,000/- |

The applicant has also filed rejoinder affidavit. The respondents have filed supplementary counter affidavit.

4. We have heard Shri A. Tripathi learned counsel for the applicant and Shri D. Tiwari brief holder of Shri R.K. Srivastava, counsel for the respondents. Shri Tripathi, learned counsel for the applicant argued that the action of the respondents in terminating the service of the applicant on the ground that brother of the applicant is working is totally illegal as it has already been informed by the applicant that his brother

is living separately and he has no concern. The whole family is dependent upon him. Even when the father of the applicant was ill the applicant was appointed on provisional basis against the post of his father. Secondly, he argued that the respondents have relied upon the terminal benefits which were granted to the deceased family on the death of his sole bread earner. He argued that the terminal benefits cannot be counted while considering the case under the compassionate grounds. He placed reliance upon judgment in the case of *Govind Prakash Verma Vs Life Insurance Corporation of India and Ors.*, 2005(2) S.C. SLJ 102. Lastly he argued that the respondents took three years to consider the case of the applicant and by a stroke of pen the service of the applicant has been terminated without considering the fact that he is continuing from last three years. On the other hand, Shri Tiwari argued that the Chief Post Master General considered the case of the applicant and found that one son of the deceased employee was drawing monthly salary of Rs.3950 P.M. After considering above, coupled with the fact that the family has received Rs.49,738 as terminal benefits, it was found that the case of the applicant is not deserving then others for appointment under the

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compassionate grounds and accordingly the same was rejected by the impugned order.

5. We have considered the rival submission and have gone through the record.

6. When the case came up for preliminary hearing on 7.11.2003, this Tribunal passed the following order:-

*"7.11.2003*

*Hon' Maj Gen K.K. Srivastava, A.M.*

*Hon'ble Mr. A.K. Bhatnagar, J.M.*

*Heard Sri A. Tripathi learned counsel for the applicant and Sri Chandrika Prasad holding brief of Shri R.C. Joshi learned counsel for the respondents.*

*Learned counsel for the respondents prays for and granted 4 weeks time to file counter affidavit. Two weeks thereafter for filing rejoinder affidavit.*

*Heard counsel for the parties on the question of interim relief. The father of the applicant was working as E.D.M.C. Bansi-Barh line Lalitpur, District Lalitpur. He died in harness on 24.12.1999. The applicant was working as substitute on the post w.e.f. 01.11.1999. However, he was provisionally appointed by order dated 03.06.2000 (Annexure A-7). The case of the applicant for appointment on compassionate ground was pending with Chief Post Master General U.P. Circle Lucknow till 16.10.03. The applicant received the order dated 17.09.2003 from respondent No.3 that his case for appointment on compassionate grounds as G.D.S. Runner, Bansi-Barh line Lalitpur has been rejected by Circle Recruitment Committee.*

*Learned counsel for the applicant has challenged the order on two grounds that the applicant has worked for more than three years on the post and he cannot be removed from the said post without any show cause*

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notice and he has also challenged the impugned order dated 17.09.2003 by which his case for appointment on compassionate grounds has been rejected.

In our considered opinion, the applicant has an arguable case and it entitled for legal protection. We, therefore, stay the operation of the order dated 16.10.2003 and direct that the status quo as on 16.10.2003 shall be restored. The applicant who is stated to be relieved, shall be allowed to work on the post. The applicant shall be re-engaged immediately on receipt of this order on the post of E.D.M.C. Bansi-Barh line Lalitpur. However, he shall not be entitled for any wages from 17.10.2003 to the date of re-engagement.

List on 06.01.2004.

Copy of the order shall be given to the counsel for the parties within a week."

The applicant is still continuing in service. It is the law of land that compassionate appointment is not a mode of appointment. It is an exception to the general Rule to provide employment to the dependant of the deceased employee who died in harness and are not having any source of income or have any livelihood to earn bread to survive, in other words, enabling the family of the deceased to get over the sudden financial crisis. In this case it is not disputed by the respondents that when the father of the applicant was ill the applicant was appointed provisionally against the post of his father. Subsequently, on his death he was given provisional appointment subject to the final decision on his application for compassionate appointment. His case has been rejected on two counts. Firstly, that the elder son of

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the deceased employee is in service and secondly that the deceased family has received a sum of Rs.49,738/-.

7. It is pleaded by the applicant that he is only looking out of the entire family except his brother who is residing separately and is in service. Without conducting any enquiry to ascertain the veracity of the statement of the applicant that his elder brother is residing separately and no contribution toward the family, the respondents while considering his case for compassionate appointment have taken into account the above fact and have rejected his claim on this account, which to our mind is totally arbitrary and against the settled principle of law as held by the Hon'ble Karnataka High Court in the case of *Srikanth Vs. Chief Engineer, K.E.B., Bangalore and Others, ILR 1996 Kar.2271 as under:-*

*"8.....It is evident that compassionate appointment is given to one of the members of the deceased family to tide over the sudden economic crisis facing the family on the sudden demise of the bread-winner in the belief that he would look after the family which was being done by the deceased and not as a hereditary right. If one or more members of the family are already employed, it cannot be said that the family is penurious. In that view of the matter, the fact that two brothers of the petitioner got employment during the lifetime of the deceased father and that they are residing separate makes no difference and disentitles the petitioner from claiming appointment on compassionate grounds."*

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Relying upon the above in the case of *R.V. Krishnappa Vs. Karnataka Electricity Board, Bangalore, 1998(2) ATJ 104* where the Hon'ble High Court has considered and held that merely one son of deceased as in employment does not bar the other son to seeks appointment under the compassionate grounds for the reason that the elder son or the son who is under employment is not supporting the family and residing separately. The other ground which was considered by the respondents that he has received the terminal benefits, therefore, he rendered himself ineligible is also negatived by the Hon'ble Supreme Court and held that service benefits received by the legal representative of the deceased employee cannot be a ground to deny the compassionate appointment in the case of *Govind Prakash Verma(Supra)*. Moreover, the applicant is continuing since 2000 with the respondents and, therefore, he has already put more than 12 years of service, as such at this stage the settled life cannot be unsettled on these two grounds, therefore, both the grounds taken by the respondents in the impugned order does not stand on their legs.

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8. In view of the above judicial pronouncements, the impugned orders dated 4.9.2003, 17.9.2003 and 16.10.2003 cannot sustain and accordingly the same are set aside. Original application is allowed. No Costs.

*S Chandra*  
Member-A

*[Signature]*  
~~Member-J~~

/ns/