

Open Court

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD**

Original Application No.1420 of 2003.

Allahabad, this the 4th day of April, 2007.

Hon'ble Mr. Justice Khem Karan, Vice-Chairman

Yashwant Kumar Yadav, Son of Shri Brigunath Ram,
Resident of Village Dharamagatpur, Post Office Ratanpura,
District Mau.

...Applicant.

(By Advocate Shri Shri A.N. Srivastava
Shri R.K. Pandey

Versus

1. Union of India through Secretary, M/o Communication Department of Post, New Delhi.
2. Superintendent of Post Offices, Ballia Division, Ballia-277001.
3. Senior Superintendent of Post Offices, Azamgarh Division, Azamgarh.
4. Chief Post Master General Uttar Pradesh, Parimandal, Lucknow (UP).

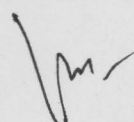
...Respondents.

(By Advocate Shri S.Singh)

ORDER

By Hon'ble Mr. Justice Khem Karan, V.C. :

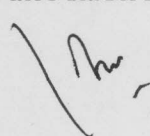
The applicant is son of Shri Bhrigunath Ram who was retired on 21.12.1998 on medical ground and thereupon the applicant moved for his appointment on compassionate ground. It is said that the condition of the family was poor one and it was not able to sustain without assistance in the form of compassionate appointment. It transpires that vide communication dated 12.12.2001; the applicant was informed that compassionate appointment was not possible in view of guidelines dated 28.12.1998. Aggrieved of it, the applicant filed OA No.1028/02, which this Tribunal disposed of vide order dated 8.1.2003 (Annexure-4). The Tribunal remanded the matter back to the respondents, with a direction to pass a reasoned and speaking order, after taking into consideration all the aspects of the matter. The applicant submitted his application together with the



copy of the order dated 8.1.2003, and the Office of respondent No.2, received its on 4.2.2003. Now the respondent No.2 has passed the impugned order dated 26.3.2003, rejecting the claim of the applicant mainly on the basis of guideline dated 28.12.98. It has been stated in this rejection order that as per those guidelines dated 28.12.98, only the dependents of an employee, retiring before attaining the age of 55 years, can be considered for such appointment and since applicant's father retired at the age of about 57 years, so his claim was not acceptable one.

2. The applicant is challenging this order mainly on the ground that his case could not have been rejected on the basis of guidelines dated 28.12.98 as his father retired on 21.12.98 on medical grounds, much earlier to the issuance of the said guideline. The respondents have filed reply contesting the claim of the applicant for compassionate appointment. They have also referred to Rule 2 of CCS (Medical Examination) Rules, 1957 and to Rule 38 of CCS (Pension) Rules, 1972 so as to say that even in those rules there was a similar provision as contained in guidelines dated 28.12.98. It is also stated that such type of compassionate appointment is not a regular source of recruitment. In Para 12, it has also been averred that on his retirement on medical grounds Shri Bhrigunath Ram Ex P.A. Khandwa Ballia received an amount of Rs.142168/- as terminal benefit and was getting Rs.1350/- plus D.R. per month, as pension. It has also been stated that Shri Bhrigunath Ram is living with family in his own house and possesses agricultural land, having annual income of Rs.25200/- per annum.

3. By filing the rejoinder, the applicant denied the allegation that family has annual income of Rs.25200 per annum. It has been stated that his father is still bed ridden and family is facing a lot of hardship, due to its poor economic condition. Attempt has also been made to say that in view of the judicial pronouncement of the Apex




Court, compassionate appointment can not be refused merely on the ground that family has received terminal benefits.

4. I have heard Shri A.N. Srivastava, for the applicant and Shri S. Singh for the respondents.

5. The first contention of Shri Srivatava is that the guidelines dated 28.12.1998, could not have been applied to the case is hand, as applicant's father retired much before it, on 21.12.98. When the Tribunal put a query to the learned counsel then what are those provisions/Rules, which will apply to this case, Shri Srivastava could not satisfy me. I have carefully gone through the guidelines, dated 28.12.98 (Annexure-6). On page 2 the heading is "to whom applicable" and under this heading reference to Rule 2 of CCS (Medical Examination) Rules, 1957 as well as reference to Rule 38 of CCS (Pension) Rules, 1972 has been made. A close perusal of the said Rules, would make it clear, that guidelines dated 28.12.98, by themselves did not prescribe any eligibility other than eligibility referred to in the Rules of 1957 and 1972. Perhaps, these were the relevant rules under which the applicant's case was to be considered for compassionate appointment. There is no dispute on the point that applicant's father retired on medical ground after crossing the age of 55 years and before attaining the age of superannuation i.e. the age of 58 years. He was a Postal Assistant, apparently in the Ministerial Cadre falling under Group 'C' so apparently the view taken by the authority in rejecting his claim on that ground does not appear to be faulty.

6. Shri Srivastava has then argued that the limit of 55 years as mentioned in the Rule of 1957 or in the Rule of 1972 as reproduced in letter dated 28.12.98, should not have been strictly applied to the case of the applicant after superannuation age was extended to 60. Learned counsel wants to say that when superannuation age of the employee of the Central Govt. was extended to 60, the limit of 55 or 57 as provided in the said Rules or guidelines would automatically be extended by two years.



7. I am of the view that this argument of Shri Srivastava cannot be accepted for two reasons. One, by the time applicant's father retired on 21.12.98, superannuation age was 58 years and two, even if superannuation age stood extended to 60 before 21.12.98, the guidelines ^{on} the rules prescribing the limit as mentioned above, will not automatically ^{stand amended} ~~extended~~ ^{by two years} and for that amendment in the Rules, was required.

8. Shri Srivastava has also argued that in view of the law laid down by the Apex Court in Balbir Kaur and another Vs. Steel Authority of India Ltd. And others [(2000) 3 UPLBEC 2055] and by a Division Bench of Hon'ble High Court in the case of Subhash Chandra Yadav Vs. State Bank of India and another [(2000) 3 UPLBE 2926], the request for compassionate appointment could not have been refused on the ground that the family received certain terminal benefits. A perusal of the impugned order reveals that the request for compassionate appointment has been rejected solely on the ground and in view of guidelines dated 28.12.98, the applicant was not eligible as his father had retired after crossing the age of 55 years. It has not been refused on the ground that family had received certain terminal benefits. I do not know as to why terminal benefit has been mentioned in the reply. The Tribunal is examining the correctness of the rejection order and when the rejection order itself does not say that the family has got some terminal benefit, there is no need for considering the question as to whether receipt of terminal benefits was sufficient for rejecting the claim for compassionate appointment.

9. I am of the view that the order impugned in this OA does not suffer from any infirmity. The Tribunal cannot interfere with the same. The OA is devoid of merits and is accordingly dismissed but with no order as to costs.

Amran
04.4.07
Vice-Chairman