

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD.

Allahabad this the 22nd day of November, 2004.

ORIGINAL APPLICATION NO. 211 of 2003.

Hon'ble Mr. D.R. Tiwari, Member-A.

Prem Prakash Gupta, S/o Late Sri Ved Prakash Gupta
R/o Ekta Nagar, Kundanpur Line Par, Moradabad,
Distt. Moradabad.

.....Applicant

Counsel for the applicant :- Sri M.C. Joshi
Sri Vivek Srivastava

V E R S U S

1. Union of India through Secretary, M/o Communication,
D/o Post, Dak Bhawan, Sansad Marg, New Delhi.
2. Post Master General, U.P. Circle, Lucknow.
3. Post Master General, Bareilly Region, Bareilly.
4. Senior Superintendent of Post Offices, Moradabad.

.....Respondents

Counsel for the respondents: - Sri Saumitra Singh

O R D E R

By this OA filed under section 19 of Administrative Tribunals Act, 1985, the applicant has prayed for quashing the impugned order dated 06.09.2002 by which the request for compassionate appointment of the applicant has been rejected. He has further prayed for issuance of direction to the respondent No. 4 to give suitable employment to him on compassionate grounds as his father died in harness.

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on him and after his death the family is on the verge of starvation. It has been further contended that if an employee dies in harness then one of his dependent may be given employment. The applicant has further argued that the financial condition of the applicant is below poverty line having four members in the family and only ~~one~~^A bread earner died in harness. He has also disputed the fact that the dependents of the deceased family were in receipt of ~~would deprive the entitlement for compassionate appointment~~ retrial benefits. He has further submitted that small piece of land and the family pension are not adequate for the requirements of the entire family. It has further mentioned that minor sister and younger brother of the applicant are studying in school. The rejection of the request of the applicant is illegal, arbitrary and unjust. Reasons given in the impugned order are contrary to settled principle of law regarding appointment on compassionate grounds. As such it has been prayed that the OA deserves to be allowed.

4. The respondents, on the other hand, has contested the OA by filing the detailed counter wherein it has been submitted that the appointment on compassionate ground cannot be claimed as a matter of right and can only be given if the family of the deceased is in indigent condition. Other requirement is that such appointment has to be made under 5% quota of the direct recruitment post. It has been further argued that such appointment is primarily given, as relief against the destination and objective of the scheme is to help the family to get out

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the emergency, which is in indigent condition. They have argued that the 5% quota of the direct recruitment has been fixed in pursuance of the judgment of Hon'ble Supreme Court and any appointment beyond this would be clear violation of the court's order as well as the instructions issued by the nodal Ministry vide O.M dated 24.11.2000 (CA-1). They have submitted that after completion of usual formalities the case of the applicant was considered for appointment on compassionate ground by the Circle Relaxation Committee in accordance with the direction/ instruction of the Directorate in letter dated 29.09.1989 (Annexure CA-2). They have further submitted that para 7(b) of the Department of Personnel and Training O.M. dated 09.10.1989 has clearly provided that the compassionate appointment can be made up to 5% vacancy ^{falling} ~~following~~ under the direct recruitment quota in any group 'C' and 'D' post (CA-3). It has been further argued that Circle Relaxation Committee headed by the Chief Post Master General, U.P Circle, Lucknow could not find the case of the applicant fit for appointment on compassionate grounds within the limited quota of 5%. The main reason being that the family was paid the terminal benefit amounting to Rs. 3,65,511/- . Apart from this the family is drawing sum of Rs. 2562/- plus DA per month as family pension and also has its own house. In view of this his case for appointment on compassionate grounds was rejected.

5. I have heard both the counsel for parties and perused the pleadings. During the course of arguments the

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counsel for the applicant as well as counsel for the respondents reiterated the facts and the legal provisions from the pleadings. Counsel for the applicant relied on the case of Laxmi Devi Vs. U.O.I. in O.A No. 1045/2004 decided by this Tribunal on 22.09.2004. The counsel for the respondents relied on the decision of Hon'ble Supreme Court in the case of Life Insurance Corporation of India Vs. Asha Ram Chandra Ambedkar, Himanchal Road Transport Corporation Vs. Dinesh Kumar and Umesh Kumar Nagpal Vs. State of Haryana as such the counsel for the respondents concluded his argument by stating that the OA is devoid of merits and be dismissed whereas the counsel for the applicant took a contrary view and submitted that the OA deserves to be allowed on merit.

6. The only question, which survives for decision, is the validity of the order passed by the respondents, which is at Annexure-11. The main reason for rejecting the case of the applicant given in the impugned order is that the family is in receipt of family pension in addition to lump sum amount received by the family on account of retrial benefits. The second reason is that they have own house to live in and thirdly the deceased has served the organization for 29 years and was left with few years of service. It is true that the object of the compassionate appointment is to provide succor to the members of the family of the deceased on time of crisis. It is assistance for the family to tide over the immediate financial crisis. Keeping in view this object, the Government has decided to

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provide compassionate appointment to one member of the family and necessary provisions have made and circulated to the competent authorities. It is also settled proposition of law that such appointment has to be made taking into account the 5% quota of the total number of vacancies occurring in a year and in relaxation of normal rules.

7 Having regard to the legal position mentioned above I would like to examine the case of the applicant taking into account the reasons for rejection of his case. The first ground given by the respondents is that he is in receipt of family pension as well as the lump sum amount of retrial benefits. I think whenever the retrials benefits have been given are not to be taken into account while deciding the financial position of the family. Hon'ble High Court of Allahabad in Dhiraj Kumar Dixit Vs. General Manager, U.Co. Bank Kalcutta decided on 31.07.2002 has laid down that retrial benefits provident fund, gratuity , group insurance , leave encashment etc., are not the income either under statutory provisions or in general law. The Hon'ble High Court, for the above conclusion relied on JT 1994(3) SC 525 and JT 1994 (2) SC 183. Hon'ble High Court of Allahabad in case of State Bank of India Vs. Rampyare in Special Appeal No. 134/2001 decided on 17.04.2001 has held that receipt of family pension by widow cannot be taken to be the good ground for rejecting the case for compassionate appointment particularly when the husband dies in harness. Thus the plea of the respondents regarding the receipt of family pension as well as retrial benefits cannot be sustained in

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law and is negatived. The second ground taken by the respondents relates to the fact that he has a house and the deceased has served for a period of 29 years. This cannot be a reason for rejecting the case of the applicant as a house does not help the family to get over the financial crisis and a small house is to accommodate as many as 4 persons. The respondents have completely ignored that the applicant has a younger sister who is to marriage ~~and~~ and younger brother who is to study. Further ^{if} all these things are taken together, I can see by ~~any~~ ^{no} ~~stage~~ ^{at} of imagination that the financial condition of the applicant is sound. The plea of the respondents that deceased while left with only few years of service before retirement leads me nowhere and ~~its~~ ^{by} implication is incomprehensible. Lastly I would like to mention that the respondents in the impugned order have stated that Circle Relaxation Committee could not find him fit as compared to other deserving candidates without mentioning any ground except the grounds mentioned in the impugned order as stated above. These grounds are not convincing and they have not been able to appreciate the real problem of the family and the financial status in which they were living. Accordingly the OA is liable to succeed.

8 In view of the discussion made above the OA succeeds and is allowed. The impugned order dated 06.09.2002 is quashed. The respondents are directed to reconsider the case of the applicant for compassionate appointment and

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this may be done within a period of six months from the date of receipt of a copy of this order. No costs.

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MEMBER-A

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