

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH : ALLAHABAD

Original Application No. 291 of 2003.

Allahabad, this the 13<sup>th</sup> day of October 2004.

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

Amit Kumar,  
S/o Late Jagdish Prasad,  
R/o Bareilly Sarai near Janta  
Petrol Pump Sambhal, Moradabad.

.....Applicant.

(By Advocate : Shri A. Tripathi)

Versus

1. Union of India through its Secretary,  
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,  
Moradabad Division, Moradabad.

....Respondents.

(By Advocate : Shri V.V. Mishra)

O R D E R

By Hon'ble Mr. A.K. Bhatnagar, J.M. :

By this O.A., the applicant has prayed for quashing and setting aside the impugned order dated 8-7-2002 communicated vide order dated 5-9-2002 by which the respondent No.3 informed the applicant for rejection of his claim for compassionate appointment by respondent No.2 (Annexure-A-1) and has further prayed for quashing and setting aside the impugned policy letter dated 26.9.1995 issued by the Government of India and communicated by Director General of Post vide his letter dated 11.12.1995 by which the Government of India has imposed

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the restriction for compassionate appointment against only 5% of the resultant vacancy (Annexure-A-2) and has also prayed for a direction to respondents to give the compassionate appointment to the applicant in Postal Assistant Cadre in which cadre his father was working and his case was recommended by the respondent No.3.

2. The brief facts giving rise to this OA as per the applicant are that the father of the applicant while working as Postal Assistant in Moradabad Division in the respondent's establishment expired on 21.7.1999 leaving behind his widow, two sons including the applicant. The mother of the applicant namely Smt. Kanti Devi submitted ~~that~~ the application for compassionate appointment to her son namely Amit Kumar on 29.7.1999. The mother of the applicant furnished the synopsis form as required by department on 30.7.1999 which was forwarded to the Office of Chief Post Master General, U.P. Circle, Lucknow on 13.8.2000. It was informed to the mother of the applicant that his case was forwarded to the Office of Chief Post Master General by letter dated 14.9.2000. The mother of the applicant again submitted a representation to the department on 7.5.2001 which was replied by letters dated 16.5.2001 and 19.6.2001 that the case of the applicant is still under consideration before the Circle Relaxation Committee, Lucknow. The mother of the applicant again sent a representation on 20.12.2001 followed by reminder dated 12.8.2002. Ultimately, respondent No.3 communicated the rejection order dated 8.7.2002 on 5.9.2002 (Annexure-A-1), hence he filed this OA.

3. Learned counsel for the applicant <sup>stressed</sup> the grounds taken in Para 5 of the OA and submitted that

action of the respondents in not granting the compassionate appointment to the applicant is arbitrary and illegal, which has been taken without considering the indigent circumstances of the family and is also against the policy of the Government of India regarding the compassionate appointment. Learned counsel further challenging the policy of the Government of India imposing the 5% restriction for compassionate appointment, submitted that it is illegal, arbitrary and unconstitutional. Learned counsel also submitted that the respondents have acted arbitrarily in not considering the case of the applicant for compassionate appointment. Learned counsel finally submitted that the respondents have rejected the claim of the applicant without applying their mind to the fact that the family of the deceased employee did not have any source of income.

4. Resisting the claim of the applicant the respondents filed counter but inspite of so many opportunities given to the applicant for filing rejoinder, the applicant failed to file any rejoinder till date.

5. Learned counsel for the respondents invited my attention on para 11 to 14 of the Counter Affidavit and submitted that the instructions issued by Government of India dated 23.9.1992 are not applicable as new instructions have been issued vide letter dated 28.12.1998 (Annexure-CA-1) and the respondents have rightly considered the application of the applicant in the light of new instructions. It is further submitted that as per Government of India instructions dated 30.7.1999 there

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are some norms for allotment of marks for giving employment and person who get better marks in 5% quota do get earlier employment than others. A copy of the basis of marks are filed as Annexure-CA-II. Learned counsel finally submitted that the order passed by respondents are not illegal and have been passed after considering the full facts of the present case as well as family condition of the applicant and the order passed on 5.9.2002 (Annexure-A-1) is a detailed and reasoned order, by which the claim for compassionate appointment was rejected.

6. I have heard the counsel for the parties and perused the pleadings available on record.

7. The law of compassionate appointment is well settled by now by the Hon'ble Supreme Court that the compassionate appointment can neither be sought as a matter of right nor as a line of succession. In fact, the Government of India has issued instructions to all the departments to consider the cases of those persons who seek compassionate appointment and in case it is found that the family of the deceased employee is in indigent condition and are in financial distress and need immediate assistance tide over the <sup>causes</sup> cases left behind by the sudden death of employee ~~xxxxxxxxxx~~ only in such circumstances compassionate appointment with in 5% under direct recruitment quota can be given. In the present case, it is seen that the respondents have already considered the case of the applicant and they have specifically given 04 grounds for rejecting the claim of the applicant vide letter dated 5.9.2002 (Annexure-A-1), which are as under :-

- i) that the family is getting a family pension of Rs.2252/- p.m.

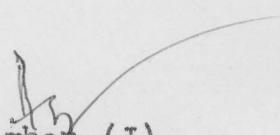
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- iii) the respondents have paid an amount of Rs. 2,83,804/- as retiral benefit,
- iii) that the family of the deceased employee have their own house for ~~leaving~~, living
- iv) the wife of the applicant is a teacher in Junior High School.

The fifth ground taken by the respondents for rejecting the claim of the applicant for compassionate appointment is that there is no unmarried daughter or minor children of the deceased employee, who are dependent. It is also seen that the deceased employee had left two sons who are 24 and 18 years of age at the time of his death. They are well qualified and in ~~normal~~ course, they ought to have been engaged by this time. Simply because they are still un-employed. It does not mean that they are ~~un-employed~~ compassionate appointment should be given to them. Since the respondents are bound by the 5% ceiling and they found that there are more deserving cases than the applicant for grant of compassionate appointment, I do not find any illegality in the orders passed by the respondents. I have gone through Annexure-A-1 and found that it is a very detailed and reasoned order and the same can not be termed as illegal and the same was passed by the respondents after considering the merit of the case.

8. Accordingly, the OA is dismissed with no order as to costs.

  
Member (J)

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