

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad, this the 19 day of April 2005.

QUORUM : HON. MR. D. R. TIWARI, A.M.

O.A. NO. 434 of 2003

Dushyant Kumar, Son of Late Prem Pal Singh, R/O Village
Bahrapur Post Office Bahrapur, District Agra.

..... Applicant.

Counsel for applicant : Sri A. Tripathi.

Versus

1. The Union of India through the Secretary,
Ministry of Communication, New Delhi.
2. The Chief Post Master General U.P., Lucknow.
3. The Post Master General, Agra Region, Agra.
4. Senior Superintendent of Post Office, Agra.
5. Sub-Divisional Inspector (Postal), East Sub-
Division, Agra.
6. Branch Post Master Bahrapur, District Agra.

..... Respondents.

Counsel for respondents : Sri S. Singh.

ORDER

BY HON. MR. D.R. TIWARI, A.M.

By this O.A., filed under Section 19 of the A.T. Act, 1985, the applicant has prayed for quashing the impugned order dated 22.1.2003, passed by the Respondent No.2 and communicated by Respondent No.4 vide order dated 27.3.2003, coupled with prayer for issuance of direction to the Respondents to continue the applicant on the post of Extra Departmental Runner (EDR) in Branch Post Office, Bahrapur, District Agra and to confirm his appointment on the post of EDR under the dying in harness rules on compassionate ground along with payment of salary continuously in future with all emoluments for which he is legally entitled.

2. Briefly stated, this is the second round of litigation between the applicant and the Respondents.

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After the death of Sri Prem Pal Singh, while working as EDA staff, died in harness on 17.4.1999 leaving behind his widow and six sons, the applicant (son of Prem Pal Singh, deceased) was orally directed by the Mail Overseer, Barhan Line, Agra to work as EDR in Bahrapur Branch Post Office. The applicant passed High School examination in 1987 and Intermediate examination in 1989 (Annexure Nos.2 and 3). It is averred that on the basis of oral orders of Mail Overseers, Barhan Line, Agra, Branch Post Master permitted the applicant to join his duty and work as EDR in place of his father and accordingly, the applicant joined the duties on 17.4.1999 (Annexure Nos.4 and 5). Since, 17.4.1999, the applicant is discharging his duties on the post of EDR at Branch Post Office, Bahrapur, District Agra and he is drawing his salary continuously. The Branch Post Master, vide his letter dated 19.4.1999, informed the Sub-Divisional Inspector (Postal), East Sub-Division, Agra about the employment of applicant in place of his deceased father under the dying-in-harness rule (Annexure No.6). On 15.4.2002, the Sub-Divisional Inspector (Postal), East Sub-Division, Agra forwarded all requisite documents of the applicant to the Senior Superintendent of Post Office, Agra Division for granting approval for the appointment of applicant on the post of EDR (Annexure No.7). The applicant has also averred that on 8.12.1999, Chief Post Master General, U.P., Lucknow issued a circular in respect of appointment under the dying-in-harness rules on compassionate ground (Annexure-8, Page 51).

3. The case for his appointment was pending with the Respondent No.4 for a long time and aggrieved by the inaction, the applicant filed O.A. No.802 of 2002 before the Tribunal which was disposed of by an order dated 25.11.2002 (Annexure-9) with the following direction :-

"As the matter is pending before the respondents for taking final decision about

D. D. Singh

continuance of the applicant as E.D.R., in our opinion, ends of justice will be served if the direction is given to the Chief Post Master General, U.P. Lucknow (Respondent No.2) to decide the matter finally within a period of three months from the date of copy of this order is filed before him. Till the decision is taken, the applicant shall be continued on the post."

4. The applicant, after obtaining the certified copy of the order of the Tribunal, made a representation dated 11.12.2002 to the Chief Post Master General, U.P. Lucknow for its compliance (Annexure-10). Contrary to his expectation, he was communicated vide letter dated 27.3.2003 rejecting his claim for compassionate appointment which has been impugned herein.

5. Aggrieved by the impugned order, the present O.A. has been filed and is being challenged on various grounds of arbitrariness, impropriety, illegality etc. and some factual aspects have also been made the basis to challenge the impugned order as right from the beginning, his appointment was done under the dying-in-harness rules on compassionate ground. The grounds given in the impugned order are as under :-

- "a) There is no minor child and a marriageable daughter.
- b) The family has six grown-up sons.
- c) The family has agricultural land of 2.89 hectares."

6. From the above facts it has been pleaded that the above grounds cannot be taken into account while giving compassionate appointment as the land is held as joint property and the yield per year from the agricultural land is Rs.15,000/- only as evaluated and reported by the Revenue authorities. To say that six grown up children are in the family overlooks the

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fact that except the applicant, others are school going children. As such, it has been pleaded that the grounds taken by the Respondents are arbitrary, unjust and improper for denying the compassionate appointment.

7. The respondents, on the other hand, have resisted the O.A. by filing a detailed counter affidavit and they have argued that the order has been passed after due consideration of the case of applicant by the competent Circle Relaxation Committee and there is no illegality. They have argued that his appointment in the beginning was not on compassionate ground and he was only a substitute. It was a stop gap arrangement on the risk and responsibility of one Mahendra Pal Singh, GDS, BPM. They have also disputed that Annexure A-6 is not the appointment letter but it says that he has been engaged to work on the post. It has been further argued that the compassionate appointment is granted only when the family is found in indigent condition and if the vacancy under the limited quota of 5% of the post of direct recruitment is available. They have placed reliance on the decision of the Hon'ble Supreme Court in the case of LIC Vs. Mrs. Asha Ram Chandra Ambedkar - JT 1994(2) SC 83 and also on the judgment of Umesh Kumar Nagpal Vs. State of Haryana & others - JT 1994(3) SC 525 which held that only the dependent of an employee dying in harness leaving his family in penury and without any means of livelihood can be appointed on compassionate ground if the post under the limited quota of 5% for such appointment is available. (Para 5 of SCA). They have also stated that in view of the above judgments and the facts mentioned, the O.A. is devoid of merit and may be dismissed.

8. During the course of argument, learned counsel for the applicant has contended that it is wrong to say that there was no minor child or a marriageable daughter in the family when the applicant's father died. From the summary of the

D. S. J.

case, which was prepared by the department itself for considering his case for compassionate appointment, it would be clear that out of the five sons, three were minor at the time of the death of the applicant's father. He also submitted that there was one marriageable daughter who was married after the death of the applicant's father which is evident from the same summary submitted by the department. He further emphasized that the reason of the denial of compassionate appointment on the ground that six grown up sons were in the family, cannot be accepted as they were all unemployed and except the applicant, they were school going children. He refuted the claim of the respondents that agricultural land of 2.89 Hectares was sufficient to generate income by which the entire family could survive. The revenue authority's report that a sum of Rs.15,000/- from agricultural land has not been disputed by the Respondents and if it is divided between the seven members of the family, it is beyond anybody's imagination as to how they can survive on this meager amount alone. Accordingly, he has argued that the rejection of the case of his appointment on compassionate ground has been done arbitrarily and the O.A. has merit and may be allowed. In the alternative, he also submitted that as per D.G. P&T letter No.43-4/77-Pen., dated the 18th May, 1979 and Cir. No.19-34/99-ED & Trg., dated the 30th December, 1999 which provides for alternative employment to E.D. Agents, who are appointed provisionally and subsequently discharge from service due to administrative reasons, may be taken into account for giving him alternative appointment. He also relied on the judgment of Hyderabad Bench of the Tribunal in the case of N. Sunkana Vs. Union of India reported as 2003(2) ATJ 113 wherein it has been held that the alternative employment may be provided to those E.D. agents who have worked continuously for 3 years or more as and when vacancies arise.

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9. Counsel for the respondents has contested each and every claim made by the applicant and has reiterated the facts and the legal pleas, mentioned in the counter affidavit and the Supplementary Counter Affidavit of the respondents. The counsel has very forcefully relied on the judgment of the Supreme Court in the case of Asha Ram Chandra Ambedkar and Umesh Kumar Nagpal, cited supra, to contend that the compassionate appointment could be considered against the 5% quota and if the family is in very indigent condition. He finally concluded his argument by pleading that the O.A. deserves to be dismissed as it lacks merit.

10. I have heard very carefully counsel for the parties and given a thoughtful consideration to the rival submissions. I have also perused the pleadings.

11. The core question, which falls for consideration, is the validity of the impugned order dated 27.3.2003 (Annexure No.1). If one has regard to the arguments advanced by the counsel for applicant, one is bound to reach the conclusion that the grounds taken by the respondents for rejecting the claim of compassionate appointment cannot be sustained in law. I may mention in this regard that the decisions of the Supreme Court also point to the fact that financial condition of the applicant's family is the prime concern while considering the case of compassionate appointment. The settled legal position is that the compassionate appointment is given to a member of the family to tide over the financial crisis because of the death of the bread earner and such sudden crisis is to be overcome. Keeping this in view, the rules were framed for giving compassionate appointment for dying in harness and from the records, it is evident that in this case also, the respondents had appointed the applicant on the post of EDR immediately on the death of his father. Annexure-5 (dated 17.4.1999) clearly states as under :-

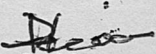
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‘‘ईडीआर. श्री प्रेम पाल सिंह की मृत्यु हो जाने के कारण श्री दुट्टयन्त कुमार को चार्ज दिया गया।’’

12. From the above, it is clear that the applicant was appointed under the rules of dying in harness and he continued to work till 13.7.2002. During the entire period, he was regularly paid salary and the contention of the respondents that his appointment was not on compassionate ground and the authority appointing him was not competent to do so cannot be sustained in law. The continuance of the appointment for as many as more than three years and regular payment of salary is the indication that he was provisionally appointed and his appointment cannot be termed as appointment as substitute or temporary. In view of this, the impugned order is bound to fail. I am inclined to accept the argument of the applicant's counsel regarding the alternative employment as provided under the circular, cited supra and the judgment of the Hyderabad Bench on this point. The decision of the Coordinate Bench is binding. In the fact situation of this case, the applicant has been working continuously for more than three years and his case is fully covered under the above circular.

13. In view of the reasons, recorded above, the O.A. succeeds and the impugned order is quashed and set aside. The respondents are directed to reconsider the case of the applicant for his appointment on compassionate ground or in the alternative give him alternative employment at the Branch Post Office Bahrapur as the vacancy still exists there.

No costs.


A.M.

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