

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH,
ALLAHABAD**

ORIGINAL APPLICATION NO. 678 OF 2003

ALLAHABAD THIS THE 14/3 DAY OF MARCH, 2006

HON'BLE MR. K.B.S. RAJAN, MEMBER-J

Rajeev Nirala, S/o Sri Chunni Lal, R/o House No. 107,
Rawan Tila, Aligarh.

.....Applicant

(By Advocate Shri Y.D. Sharma.)

V E R S U S

1. Union of India, through Secretary, Ministry of Communication, Department of Posts & Telegraph, New Delhi.
2. The Chief Post Master General, U.P. Circle, Lucknow.
3. The Post Master General, Agra.
4. The Superintendent Postal Stores Forms and Seals, Aligarh.

.....Respondents

(By Advocate: Sri V.K. Pandey.)

O R D E R

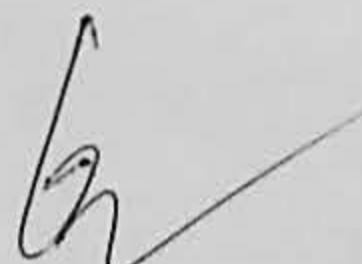
Compassionate Appointment is not a vested right. It has a limited purpose and is given to mitigate the immediate financial hardship of the bereaved family, which has lost its main bread winner. The anxiety of the dependent in securing that appointment which is most beneficial could

well be visualized. However, more often than not, it so happens that though certain appointment is approved in anticipation of vacancies, such vacancies not being available, the person is not in a position to be offered the very appointment for which such approval is given. However, keeping in mind the need of the family, if the authorities offer another alternative appointment, some, in dire need of financial support zealously avail of the opportunity and some on the fear that once a lower type of appointment is accepted, the same would telescopically affect their service career, decline to accept the same and insist for that appointment for which earlier approval is given. The instant case is one of this nature.

2. Brief facts of the case as given in the pleadings are as under:-

(a) The Chief Post Master General, Lucknow has ~~provided~~ ^{provided} the job to the applicant in Class 'C' in Dying in Harness vide his letter dated 24.1.1999, but despite the order, the applicant was not given any appointment in that grade.

(b) The applicant has made several representations and last representation has been given on 25.1.2001 and 19.2.2003 to the respondents that despite the order dated 24.4.96 till

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today no appointment letter has been issued to the applicant.

3. The respondents have contested the OA and their version is as under:-

- (a) The applicant could not so far be given a regular appointment for want of vacancies. The wait listed persons cannot claim appointment as a matter of right since the waiting lists have to be discontinued as per Ministry of Personnel O.M. dated 24.11.2000.
- (b) Considering the hardship experienced by these waited listed candidates, the Department of Posts proposed to offer appointment as GDS (RD) purely on humanitarian measures, to those wait listed candidates who are willing for this purpose options have been called for from those wait listed candidates for appointment as GDS (ED) as far as possible in a place of their choice.
- (c) It was decided that approved candidates for direct recruitment on compassionate grounds should be absorbed against GDS Posts. The applicant initially gave his willingness, but lateron submitted his denial for willingness to the post of GDS vide his letter dated 9.8.2002 and 19.2.2003.
- (d) The time limit for making gap appointment on compassionate ground of Sri Rajiv Nirala has expired as per

instructions contained in Directorate,
New Delhi letter dated 17.6.2003

4. While none appeared on behalf of respondents, counsel for the applicant has insisted for disposal of the case. Accordingly, invoking the provisions of Rule 16 of the C.A.T (P) Rules, 1987, the case has been considered and decided.

5. Now the discussion on the point: Compassionate appointment is not a vested right. Even if the approval is accorded for a compassionate appointment, no indefeasible right is vested with the individual in the wake of such approval. In fact, where by a formal and proper selection, some one is selected, he does not crystallize his appointment, as held by the Apex Court in the case of *Shankarsan Dash v. Union of India, (1991) 3 SCC 47* wherein the Apex Court has held as under:-

"7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post."

6. The applicant has claimed that in case no vacancy is available, supernumerary post should be created to accommodate him. This is

impermissible in view of the decision of the Apex Court in the case of **Himachal Road Transport Corp. v. Dinesh Kumar, (1996) 4 SCC 560** wherein the Apex Court has held as under: -

"In the absence of a vacancy it is not open to the Corporation to appoint a person to any post. It will be a gross abuse of the powers of a public authority to appoint persons when vacancies are not available. If persons are so appointed and paid salaries, it will be a mere misuse of public funds, which is totally unauthorised. Normally, even if the Tribunal finds that a person is qualified to be appointed to a post under the kith and kin policy, the Tribunal should only give a direction to the appropriate authority to consider the case of the particular applicant, in the light of the relevant rules and subject to the availability of the post. It is not open to the Tribunal either to direct the appointment of any person to a post or direct the authorities concerned to create a supernumerary post and then appoint a person to such a post."

7. The above was reiterated in the case of **Hindustan Aeronautics Ltd. Vs Radhika Thirumalai (1996) 6 SCC 394.**

8. The Ministry of Personnel in their OM dated 08-02-2001 clearly stated that waiting list for compassionate appointment approval, if no vacancies exist, be scrapped and the individual informed accordingly and the option of the individual be asked in case he would be able to take up any other appointment in any other Ministry. This order has neither been challenged nor could be challenged in view of non existence of any indefeasible right with the individual whose compassionate appointment has only been approved and no appointment granted. The

authorities were kind enough to offer another alternative appointment by way of EDBPM etc., which the applicant has flatly refused. His refusal reflects that he is not in such a financial distress. He insisted upon the post of Postal Assistant, for which no vacancy existed.

9. The respondents have stated that his case has now become time barred in terms of the order dated 05-05-2003 (Annexure CA 15). Of course, the applicant has approached the Tribunal in May 2003 and as such, he has certain protection in this regard.

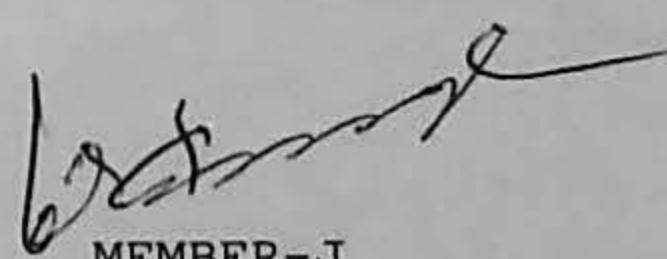
10. It is not known whether those whose case for compassionate appointment had been approved posterior to that of the applicant for the post of Postal Assistant, were given such appointment. If appointed, the same would not be appropriate since, if any right has been accrued to the applicant on his case being approved for compassionate appointment, the same is to the limited extent that prior to him none of those whose appointment had been approved after the approval of his appointment could be appointed. If none has been appointed so far because of non availability of vacancies, the respondents should now try to adjust the applicant against the post of Postal Assistant, if one such vacancy under the 5% quota is available. If not, he could

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again be considered for the post of EDBPM or the like with the assurance that in the event of vacancy arising under the 5% quota for compassionate appointment in the grade of P.A., the same would be made available to the applicant. Again, at that time, as the applicant might become over-aged, necessary age relaxation should be given.

11. The OA is, thus, disposed of with the direction to the respondents to consider offering the applicant the next available vacancy of Postal Assistant in the 5% quota or EDBPM whichever occurs earlier and in case the vacancy of EDBPM is available and if the applicant accepts the same, his case for appointing as P.A. be kept alive so that as and when such a vacancy arises, the same could be offered to the applicant. As the probable period of availability or otherwise of a vacancy as EDBPM or P.A. cannot be precisely ascertained, no time limit is calendared for this purpose. Nevertheless, it can be fairly expected that the respondents who have been acting bonafide would act with their responsibility in this regard on priority basis.

No cost.



MEMBER-J