

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH
ALLAHABAD

THIS THE 18th DAY OF AUGUST, 2005

ORIGINAL APPLICATION NO. 71 OF 2003

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

Kuldeep Rajauriya, S/o late Ram Bhorose Lal,
R/o Himayunpur,
District Firozabad (U.P.).

Applicant

By Adv: Sri O.P. Khare.

Versus.

1. Union of India through the Secretary,
Department of Posts, Government of India, New
Delhi.
2. Chief Post Master General, U.P. Circle,
Lucknow.
3. Senior Supdt. Of Post offices, Agra Region,
Agra.
4. Supdt. Of Post Offices, Mainpuri Division,
Mainpuri.

.....Respondents

By Adv: Sri S. Singh.

O R D E R

BY K.B.S. RAJAN, MEMBER-J

This relates to grant of compassionate appointment to the applicant Shri Kuldep Rajauriya, whose father died in harness in March, 1991. At that time, while applying for family pension, the mother of the applicant also requested for compassionate appointment to her till the time of her minor son's attaining majority in 1994 and

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her minor son's attaining majority in 1994 and thereafter, her son be appointed on compassionate grounds. The PMG Agra, rightly wrote to the Superintendent of Post Offices Agra to consider the case of the applicant "as per law". Correspondence took place ~~between~~ ^{with} the applicant/his mother and without offering any compassionate appointment to the mother, the department, and in December, 1998/99, advised the applicant to apply in the prescribed proforma (obviously as it would facilitate to assess the case on the basis of comparative merit of various applicants for such compassionate appointment) and in 2002, the applicant was informed that the case was considered for appointment against the 5% direct recruitment quota along with the case of other similarly situated candidates and the applicant's case did not find place in the list of candidates approved for appointment on compassionate grounds, (within the limited number of vacancies) and the circumstances of the family of the Ex official i.e. the father of the applicant.

2. The applicant contends that the Circle Relaxation Committee did not consider the case of the applicant as per the pre-revised Rules and further, no chart of comparative hardship had been furnished to the applicant.

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3. With a view to ascertaining the exact position, the respondents were directed to produce the minutes of the meeting and the same was made available. It reflected that the Circle relaxation committee met on 26th and 27th February, 2002 and considered a good number of cases, of which 7 cases were approved for appointment against the vacancies under the 5% quota, a few individuals were approved for appointment as GDS subject to their willingness and subject to availability of vacancies and the rest which were not found deserving, were declared as rejected. Such rejected cases numbered 33 and the case of the applicant was one of them. The details of the liabilities, properties, annual income from other sources etc., have all been reflected in the list.

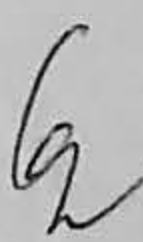
4. We have heard the arguments from both the sides and have given our anxious consideration. We find that the Circle Relaxation Committee had acted in the most scientific way and also in a very fair manner. The case of the applicant does not fall even under the second category of approval for appointment as GDS subject to availability of vacancy.

5. The Apex Court has in a number of cases held that Compassionate appointment is not a matter of right. The latest judgment in this regard is **National Hydroelectric Power Corpn. v. Nanak Chand**, (2004) 12 SCC 487, at page 491 :

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"In LIC of India v. Asha Ramchandra Ambekar² it was pointed out that High Courts and Administrative Tribunals cannot confer benediction impelled by sympathetic considerations to make appointments on compassionate grounds when the regulations framed in respect thereof do not cover and contemplates such appointments. It was noted in Umesh Kumar Nagpal v. State of Haryana³ that as a rule in public service appointment should be made strictly on the basis of open invitation of applications and merit. The appointment on compassionate ground is not another source of recruitment but merely an exception to the aforesaid requirement taking into consideration the fact of the death of employee while in service leaving his family without any means of livelihood. In such cases the object is to enable the family to get over sudden financial crisis. But such appointments on compassionate ground have to be made in accordance with the rules, regulations or administrative instructions taking into consideration the financial condition of the family of the deceased.

7. In Sushma Gosain v. Union of India⁴ it was observed that in all claims of appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread-earner in the family. Such appointments should, therefore, be provided immediately to redeem the family in distress. The fact that the ward was a minor at the time of death of his father is no ground, unless the scheme itself



envisage specifically otherwise, to state that as and when such minor becomes a major he can be appointed without any time consciousness or limit. The above view was reiterated in *Phoolwati v. Union of India*⁵ and *Union of India v. Bhagwan Singh*⁶. In *Director of Education (Secondary) v. Pushpendra Kumar*⁷ it was observed that in the matter of compassionate appointment there cannot be insistence for a particular post. Out of purely humanitarian consideration and having regard to the fact that unless some source of livelihood is provided the family would not be able to make both ends meet, provisions are made for giving appointment to one of the dependants of the deceased who may be eligible for appointment. Care has, however, to be taken that provision for ground of compassionate employment which is in the nature of an exception to the general provisions does not unduly interfere with the right of those other persons who are eligible for appointment to seek appointment against the post which would have been available, but for the provision enabling appointment being made on compassionate grounds of the dependant of the deceased employee. As it is in the nature of exception to the general provisions it cannot substitute the provision to which it is an exception and thereby nullify the main provision by taking away completely the right conferred by the main provision.

8. In *State of U.P. v. Paras Nath*⁸ it was held that the purpose of providing employment to the dependant of a government servant dying in harness in preference to anybody else is to mitigate

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hardship caused to the family of the deceased on account of his unexpected death while in service. To alleviate the distress of the family, such appointments are permissible on compassionate grounds provided there are rules providing for such appointments. None of these considerations can operate when the application is made after a long period of time. In that case also the delay was 17 years.

9. These aspects were highlighted in *State of Manipur v. Md. Rajaodin*,⁹ *State of Haryana v. Ankur Gupta*,¹⁰ *Haryana SEB v. Naresh Tanwar*,¹¹ *Haryana SEB v. Hakim Singh*¹² and *Punjab National Bank v. Ashwini Kumar Taneja*.¹³

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- 2 (1994) 2 SCC 718
 3 (1994) 4 SCC 138 537
 4 (1989) 4 SCC 468
 5 1991 Supp (2) SCC 689
 6 (1995) 6 SCC 476:
 7 (1998) 5 SCC 192:
 8 (1998) 2 SCC 412:
 9 (2003) 7 SCC 511:
 10 (2003) 7 SCC 704
 11 (1996) 8 SCC 23:
 12 (1997) 8 SCC 85:
 13 (2004) 7 SCC 265"

6. In the instant case, the applicant's father died in 1991 when the applicant was a minor and in 1994 he had applied. Due to administrative and other reasons, for which none can be held responsible, sufficient time had passed and it was as late as in 2000 and later that the case of the

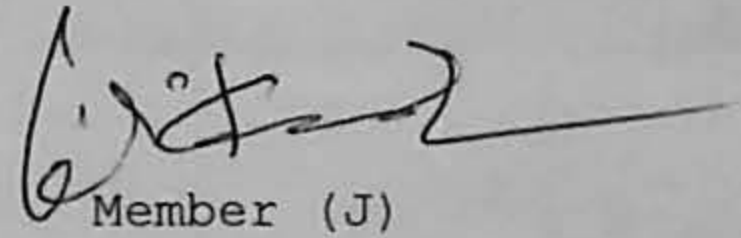
applicant could be considered. The applicant cannot now claim that the respondents ought to have considered the case at the relevant point of time in accordance with the instructions then in force. In that case, the applicant ought to have approached the Court at the appropriate time, which he failed to do. The respondents did not throw the case of the applicant without consideration of the same. They have consolidated all such cases and compared with other cases and have arrived at a just conclusion. Thus, the case of the applicant, when scanned through the ratio as spelt out by the Apex Court as stated above, reflects that the Department has acted fairly.

Under the normal circumstances, we would have perhaps dismissed the OA. However, it is to be observed here that in this case as, the applicants mother promptly applied for compassionate appointment immediately after the demise of her husband but she was not appointed at the time when she applied, though with a request that on her son's attaining majority he may be offered the appointment, the case stands in a different footing. Had she been considered and appointed at the relevant point of time, the same would have certainly mitigated the hardship the family ^{is to} ~~may be~~ facing. As such, keeping in view this peculiar situation, the case has to be considered. Though once the applicant's case has been rejected, it may be considered in the next two rounds and if compared

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appointment to any of the available post, subject to fulfillment of the requisite qualifications. With this observation, the OA is disposed of.

7. Under these circumstances, no order as to costs.

A handwritten signature in black ink, appearing to be 'G. J. ...', written over the typed name 'Member (J)'.

Member (J)

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