

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
BENCH, ALLAHABAD

(This the 28TH Day of July, 2011)

Hon'ble Mr. Justice S.C. Sharma-JM

Original Application No. 987 of 2006
(U/S 19, Administrative Tribunal Act, 1985)

Mahendra Pratap S/o Late Sri Bhagwan Das, Ex-G.D.S., M.D. Gaini
(Visharatganj) Bareilly. R/o Ward No.6 Station Road, Visharatganj,
Distt. Bareilly (Uttar Pradesh).

..... Applicant

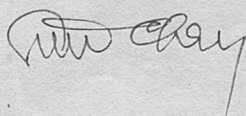
By Advocate: Shri Vinod Kumar
Shri R. Srivastava

Versus

1. Union of India through Secretary Ministry of Communication,
Department of Post, Dak Bhawan, New Delhi.
2. Senior Superintendent of Post Office Bareilly Division Bareilly.
3. The Post Master General, Bareilly Region Bareilly. (U.P.).
4. Superintendent of Post Office (West) Division Bareilly.

..... Respondents

By Advocate: Shri Saurabh Srivastava

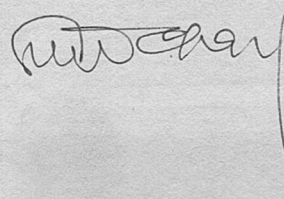


ORDER

Under challenge in this O.A. is the order dated 11.08.2006 (Annexure A-1). Further prayer has been made for giving a direction to the respondents to release the settlement dues of his deceased father at the earliest to the applicant. Further prayer has also been made for giving a direction to the respondents to offer an appointment to the applicant on compassionate ground on the post of G.D.S. or in other Group 'D' post.

2. The facts of the case are summarized as under:-

The father of the applicant was working as GDS MS at Gaini Sub Post Office Visharatganj. The father of the applicant died in harness on 31.01.1989 leaving behind his widow, two minor sons and one minor daughter. The applicant was aged about 05 years at the time of death of his father and hence no claim would be preferred before the respondents in regard to dues of the father as well as for compassionate appointment. The mother of the applicant was an illiterate lady and she could also not be made any claim for dues. The mother of the applicant also died on 27.02.1991 just after one year of the death of her husband. The applicant was the only guardian of the minor brother and sister and he had no other source



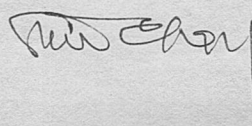
of livelihood. The applicant ^{was} living with his Nana and Nani and after attaining the age of majority, he filed the claim for the dues of the father and also for compassionate appointment but the respondents rejected the claim of the applicant illegally, hence the O.A.

3. Respondents have contested the case and filed Counter reply. It has further been alleged by the respondents that at the time of death of the father, the applicant was aged about 5 years and no claim was set up by the mother of the applicant for settlement of dues. The application was submitted by the applicant for compassionate appointment only on 10.12.2002. After completion of all the formalities the application was submitted to P.M.G., Bareilly on 14.05.2003. At the relevant period the post of GDS MD Gaini was not vacant. A proposal was submitted for giving compassionate appointment to the applicant on vacant post of GDS MD, Basantpur and the case was submitted to the Chief Post Master General, U.P. Circle, Lucknow on 17.07.2003 and the matter was considered by the Higher Power Committee constituted by the D.G. (Posts), New Delhi but the Committee found the case of the applicant for compassionate appointment unfit under the regularization of recruitment Rules on the ground that Ex GDS had died about 17 years back and the family of the deceased has

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sustained all these years. The decision was communicated to the applicant. The applicant is not entitled for compassionate appointment. The case for compassionate appointment is to be considered when there is a sudden crises to tide over that and to relieve the family from financial destitution and to help it get over the emergency but the family has survived such a long period. The Hon'ble Apex Court held that right for Compassionate Appointment is not vested right and can be exercised at any time in the future. No ground is available to the applicant for compassionate appointment and the claim was rightly rejected. O.A. lacks merit and liable to be dismissed.

4. One Supplementary Affidavit was also filed by the respondents. Regarding settlement dues it has been alleged that in this connection a fresh representation was made by the applicant and it was duly considered by the respondents and it was found that ex-gratia gratuity is payable after completion of 10 years of service at GDS but the father of the applicant has completed only 09 years 10 months & 07 days and hence she was not entitled for any ex-gratia gratuity. Severance allowance is payable only after 17.12.1988, but the father of the applicant was died on 31.01.1989, so it is not permissible to the applicant.



5. I have heard Shri Vinod Kumar, Advocate for the applicant and Shri Saurabh Srivastava, Advocate for the respondents and perused the entire facts of the case.

6. It has been alleged by the applicant that the father of the applicant worked as Gramin Dak Sewak, Maintenance Service known as GDS MS at Gaini Sub Post Office Visharatganj, Bareilly. The applicant's father died on 31.01.1989 while in service leaving behind his wife, two minor sons and one minor daughter. The applicant was aged about 5 years at the time of the death of his father, hence neither any claim could have been set up for settlement of dues nor any application have been moved for compassionate appointment. The mother of the applicant also died within one year of the death of her husband. A perusal of the order (Annexure A-1) shows that the father of the applicant, namely, Bhagwan Das died about 17 years earlier and the family of the deceased survives for a long period of 17 years, hence the case was not found fit for giving compassionate appointment.

7. The respondents have also alleged in the counter reply that the case was submitted to Post Master General, Bareilly for

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consideration on 14th May 2003 and the post of GDS MS was not lying vacant at that time, hence the applicant was proposed to be approved on the vacant post of GDS MD, Basantpur on compassionate ground and the case of the applicant was forwarded to the Chief Post Master General, U.P. Circle, Lucknow on 17.07.2003 and the matter was considered by High Power Committee constituted by the D.G. (Posts), New Delhi and the committee arrived to the conclusion that the family sustained/survives for a long period of 17 years, hence the case is not found fit for Compassionate Appointment.

8. Learned counsel for the applicant argued that the applicant was aged about 5 years at the time of death of his father and hence no application could be moved at the time of death of the father. There was no other source of livelihood to the applicant and hence the applicant along with his brother and sister had to live with his Nana and Nani and after attaining the age of majority, the application was submitted by the applicant for compassionate appointment as well as for settlement of dues. Undisputedly, the application was submitted by the applicant after 17 years of the death of the father. It has also been submitted that the mother of the applicant ¹² ~~was~~ also died within one year after the death of her

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husband and that is why the claim could not be set up for settlement of dues. It is a fact that family survives for a long period of 17 years and the purpose for giving compassionate appointment is not for giving employment to one member of the deceased employee. But the purpose for giving compassionate appointment is to provide help financially to the family of the deceased so that he can overcome the financial crises. The Hon'ble Apex Court held that the compassionate appointment is not a vested right of applicant and it cannot be exercised at any time in the future. In the case of *Umesh Kumar Nagpal v. State of Haryana & Ors (1994)4 SCC 138*, the Hon'ble Apex Court has held as under:-

"Compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crises which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over."

Hence, I am also of the opinion that in view of the judgment of the Hon'ble Apex Court the right of compassionate appointment is not a vested right of a dependant of the deceased but it is only for the purpose ~~of~~ that the family may overcome the financial crises which it faces at the time of the death of the sole breadwinner, but

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there can be no justification for giving appointment after the crises is over and I agree with the contention of the respondents that the family sustained for a long period of 17 years and after lapse of so much period there will be no justification for giving compassionate appointment and moreover it is not a vested right of the applicant to exercise at any time in the future.

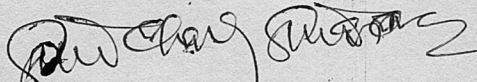
9. Learned counsel for the applicant has also cited the judgment of Hon'ble High Court of Allahabad in *Writ Petition No.13102 of 2010 Union of India v. Smt. Asha Mishra & Anr.* but this judgment is not applicable in the present case. It has also been alleged by the applicant that the settlement dues have also not been given to him. It is material that the father of the applicant was a Gramine Dak Sewak, posted at Gaini, Sub Post Office Visharatganj, Bareilly, it has not been shown by the learned counsel for the applicant that whether in the case of GDS pension or family pension is payable to the employee or to the family of the employee. The respondents alleged that there is a provision for the payment of ex-gratia gratuity after completing 10 years of service. The father of the applicant only ^{worked} at about 9 years and few months in the service and hence he was not entitled for ex-gratia gratuity and that no amount was payable to the applicant after the death of the father. On behalf

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of the applicant nothing has been shown that in such circumstances the dues are payable to the applicant or to the family after the death of his father.

10. For the reasons mentioned above, I am of the opinion, that the application of the applicant for compassionate appointment was rightly rejected because the father of the applicant ~~was~~ died in the year 1989 whereas, the application was made for compassionate appointment in the year 2002 and the application of the applicant was considered for compassionate appointment in the year 2006 and the family survived for such a long period of 17 years, hence the applicant was not found fit for giving compassionate appointment. Moreover, in view of the judgment of the Hon'ble Apex Court the right of compassionate appointment is not a vested right to be exercised at any point of time in future. O.A. lacks merit and liable to be dismissed.

11. Accordingly, O.A. is dismissed. No costs.


(Justice S.C. Sharma)
Member-J

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