

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD**

Original Application No. 1264 of 2006

Allahabad, this the 29 day of 10, 2010

Hon'ble Mr. Justice S.C. Sharma, Member (J)

Krishna Kant Sharma, son of Late Shri Satish Chandra Sharma,
Resident of Village Sarangpur, Post Fatehabad, District Agra.

Applicant

By Advocate: Mr. M.K. Upadhyaya

Vs.

1. Union of India through the Secretary, Ministry of Postal and Communication, New Delhi.
2. Chief Post Master General, U.P. Circle, Lucknow.
3. Assistant Director (Recruitment) on behalf of Chief Post Master General, U.P. Circle, Lucknow.
4. Post Master General, Head Post Office, Agra.
5. Senior Superintendent of Post Offices, Agra.

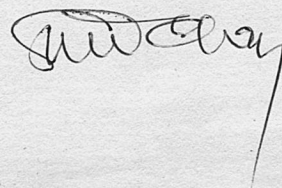
Respondents

By Advocate: Mr. Saurabh Srivastava

ORDER

By Hon'ble Mr. Justice S.C. Sharma, J.M.

Under challenge in the O.A. is the order dated 29.08.2006 passed by the respondents in respect of abolition of the name of applicant from the waiting list be quashed. Further prayer has also been made for giving a direction to the respondents to grant the applicant benefit of compassionate appointment as an employee of the Head Post Office, Agra on suitable post in place



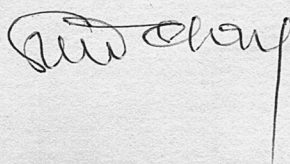
of his father Late Satish Chandra Sharma, who died in harness while in employment of the respondents.

2. The pleadings of the parties may be summarized as follows:

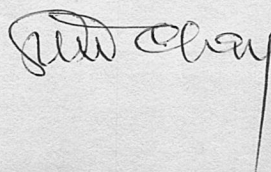
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That father of the applicant namely Satish Chandra Sharma had been working as Postman in the Head Post Office, Agra on 29.03.1984. At the time of death of father, the applicant was aged about 5 years and just after attaining the age of 18 years, he made a representation for providing compassionate appointment to him in place of his father, considering the financial position. It is stated that the applicant received the terminal benefits of Rs.24,107.90 and Rs.1172/- per month as pension. No immovable property was held by the applicant. There was only one room made from Kachchi Mitti. Family of the applicant consists of five members. It has been established from the report that family of the deceased was indigent condition and hence applicant is entitled to be given compassionate appointment. A letter was issued on 07.06.2001 to the effect that as no vacancy exists in the year 2001, in order to give appointment to the applicant and the case of the applicant was recommended to other Ministries of Government of India for consideration. The applicant made several representations to the respondents in order to consider his case but to no avail and hence the O.A.

3. The respondents contested the case and filed Counter Affidavit. The respondents have admitted that there is a scheme for compassionate appointment applicable to the dependent



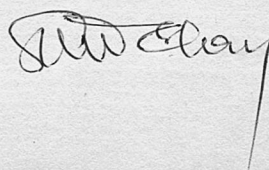
family members of the Government servant who died while in service or retired on medical ground under Rule 2 of CCS (Medical Examination) Rules 1957. For consideration of appointment on compassionate ground, there is a committee known as Circle Relaxation Committee constituted in accordance with the directions of Department of Personnel and Training. The intention and purpose of the Committee is to consider the case of the applicant for compassionate appointment on the basis of financial status etc. The Hon'ble Apex Court in the case of *Umesh Kumar Nagpal vs. State of Haryana and others* held that for compassionate appointment, the limit is only 5% of the vacancies arises in the particular year. It has also been held that compassionate appointment cannot be granted after a lapse of reasonable time and it is not the vested right, which can be exercised at any time in future. The respondents have admitted in the counter affidavit that Late Satish Chandra Sharma was an employee of the respondents and he died on 29.03.1984 while in service leaving behind his widow, minor sons Krishna Kant, Giri Raj and Km. Sunita and Km. Parvesh, who were unmarried at that time. Terminal benefits were paid to the family. Provision was also made for family pension. Family is living in their own house and possesses no agricultural land. It is stated that the application of the applicant for giving appointment in Group 'D' Gramin Dak Sewak post was received belatedly and hence appointment could not be given to him in a Group 'D'. It has also been argued that in view of the Rules and Judgments of Hon'ble Apex Court, appointment is to be given in case of availability of vacancy of that year, and that only up to the limit of 5%. It has



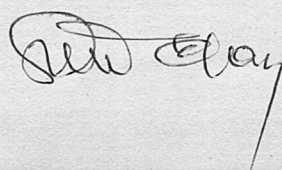
further been alleged that the scheme to offer Gramin Dak Sevak Post to the wait listed candidate was initially for one year and the same was extended for one more year i.e. till 24.07.2003, and the representation of the applicant was received by the department on 29.07.2004 after due date. Hence, the respondents are not responsible to offer GDS/Group D post to the applicant. It is wrong to allege that a waiting list is being prepared till it exhausts. It is further stated that the applicant was found fit for compassionate appointment in the year 2001 but he could not be given appointment due to non-availability of vacancy under compassionate ground in respective years, and applicant was not considered afterwards. ^Rof the terminal benefits were paid to the applicant's family after the death of his father. The department is not liable for repaying the loan taken by the deceased during his lifetime for expenses of his family. In view of the aforesaid facts, the respondents prayed for dismissal of the O.A.

4. I have heard Mr. M.K. Upadhyaya, Advocate for the applicant and Mr. Saurabh Srivastava, Advocate for the respondents, and perused the entire facts of the case.

5. It is an admitted fact by both the parties that as a consequence of death of father of the applicant namely Late Satish Chandra Sharma on 29.03.1984, application was moved by the applicant for compassionate appointment in the year 2001. It has also been alleged that at the time of death of father, the applicant was aged of only five years. Just after attaining the age



of 18 years, representation was made for providing compassionate appointment in place of his father in the department. It is a fact that father of the applicant worked in the department for few years only but even then terminal benefits as well as family pension were paid to the applicant. The respondents also considered the application of the applicant for compassionate appointment in the year 2001 after 16 or 17 years of the death. Learned counsel for the respondents argued that the compassionate appointment is not a matter of right but even then considering the financial condition of the applicant, application of the applicant was considered. Application was approved by the Committee but as no post was available in the year 2001 with the respondents hence case of the applicant was recommended to other Ministries of the Union of India for consideration. There was no provision to consider the case of applicant in the subsequent years. Learned counsel for the respondents on the strength of the Judgments of Hon'ble Apex Court rendered in the case of *Umesh Kumar Nagpal vs. State of Haryana and others J.T. 1994 (3) SC. Page 525* held that *compassionate appointment cannot be granted after lapse of reasonable time and it is not vested right which can be exercised at any time in future.* Learned counsel argued that the respondents were not bound to consider the case of the applicant so belatedly. The father of applicant died in the year 1984 whereas at the time of death, applicant was aged about only five years, and it is said that after attaining the age of 18 years, application was moved for compassionate appointment. But even then, the respondents considered the case of the applicant for



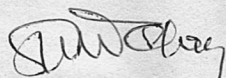
compassionate appointment so belatedly. Learned counsel argued that in view of the Judgment of Hon'ble Apex Court, it is not a vested right and one cannot say that he is entitled to be appointed on compassionate ground. He also argued that Hon'ble Apex Court in *Umesh Kumar Nagpal's case (supra)* held that "as a rule appointment in public service should be made strictly on the basis of open invitation of applications and merit and appointment on compassionate ground is an exception to the rule. Any such exception should, therefore, be made to the minimum possible extent say one or two percent or maximum of five percent. Under these circumstances, the respondents are justified in making appointment on compassionate ground up to the limit of 5%.

6. It has also been averred by the respondents' counsel and also alleged in the Counter Affidavit that in view of the Judgment of Hon'ble Apex Court it is not a vested right which can be exercised at any time in future. Father of the applicant died in the year 1984 and even up to 2001 the family of deceased survived, and now it is '2010' about 26 years had already lapsed since the death of applicant's father and through out this year, the family survives. The Hon'ble Apex Court also held that it is not a vested right which can be exercised at any time in future. The contention of the respondents might be justified that the right of claiming compassionate appointment is not a vested right which can be exercised at any time in future. There must be some limit for exercising the right of appointment on compassionate ground. After more than 25 years of death of Head of family, it cannot be presumed that even then the family's

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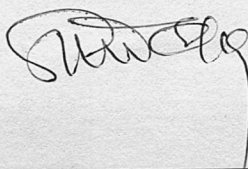
financial position is pitiable and it is difficult for the family to survive as the bread earner has died, 25 years is a very long period. Many ups and down might have been faced by the bereaved family during these years. Hence, it cannot be expected that after so much time of 25 years, that even now the family is in the same financial condition, which was just after the death of father of the applicant. I am of the opinion that now there appears no justification for considering the case of applicant for compassionate appointment. If within a long period of 25 years, family could not manage and arrange the affairs of family, then nothing can be done in this context and moreover it is not a vested right.

7. The respondents were kind enough to consider the case of the applicant for compassionate appointment after expiry of about 16 years. Annexure-4 is the order passed by respondents on 07.06.2001 in this connection. It has been mentioned in the letter that "As per the instructions of the Department of Personnel & Training, only 5% of the direct recruitment vacancies in the Group 'D' posts can be filled up on compassionate grounds. A duly constituted committee in Postal Directorate has found his case fit for compassionate appointment as no vacancy is presently available in this Ministry under 5% ceiling, the competent authority has recommended the name of Shri Krishna Kant Sharma be circulated to other Departments/Offices of Govt. of India to consider his case there in pursuance of the DOPT O.M. No. 140/4/6/94-Estt. (D) dated 09.10.1998 as amended from time to time. Accordingly, the bio data of Shri Krishna Kant



Sharma is circulated amongst the Department/office of Govt. of India in U.P. Hence the case of applicant was considered and found suitable but as no vacancy was available in the year 2001 hence the same was recommended to other Ministries. Learned counsel for the applicant argued that case of the applicant could have been ^{carried} ~~brought~~ forward to the subsequent years till the availability of vacancies in the department. But it has not been done and in spite of the fact that case of the applicant was found fit and hard for compassionate appointment, the respondents considered their responsibility fulfilled by recommending the name of the applicant to other Ministries. There appears no reason that as to why they have not carried forward applicant's case in subsequent years. In this connection, learned counsel for the respondents argued that in view of instructions of Department of Personnel and Training, name of the particular applicant has to be considered only during that year and thereafter it is to be closed. As in the Postal department, vacancy was not available hence no appointment was given to the applicant but it was recommended to other department.

8. In this connection, learned counsel for the applicant attracted my attention towards annexure-1, reply of the query made under Right to Information Act. In response of the query made by the applicant, reply was submitted by the respondents on dated 29.08.2006. Specific query was made by the applicant under Right to Information Act that how many cases since 2001 were recommended for compassionate appointment. Learned counsel argued that intentionally number of cases recommended



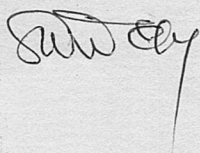
during the year 2001 has not been shown. In the year 2001-04, number of cases recommended for compassionate appointment have been mentioned. I have perused the annexure-1, although learned counsel for the respondents could not give proper reply of the arguments of learned counsel for the applicant. I have perused the query made by the applicant, and I am of the opinion that the respondents were justified in not giving the details of such cases of the year 2001. Query was made to the effect that how many cases were recommended during the year 2001 for compassionate appointment by the Committee. It is evident from annexure-4 that vide letter dated 07.06.2001, it has been alleged by the respondents that no vacancy exists in the year 2001 and case of the applicant was considered for compassionate appointment in the year 2001, and that is why case of the applicant was not recommended for appointment by the Committee and as no case was recommended, due to non-availability of vacancy in the year 2001, hence details have not been given of the year 2001. The case of the applicant was considered in the year 2001, and he was found fit for appointment. Case of the applicant was not recommended by the Committee for appointment in the department. Due to non-availability of vacancy, rather application of the applicant was recommended to other department/Ministry of Union of India for consideration of compassionate appointment. Hence, it cannot be said that intentionally reply was not given regarding year 2001.

9. It has also been submitted by the respondents that the Hon'ble Apex Court in *J.T. 1994 (2) SC 183 L.I.C. of India vs. Mrs.*

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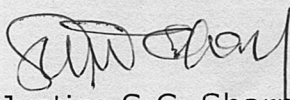
Asha Ramchandra Ambekar and others held that the High Court and Administrative Tribunals cannot give direction for appointment of a person on compassionate ground but can merely direct consideration of the claim for such an appointment. Hence, in view of Judgment of Hon'ble Apex Court, I cannot direct the respondents to appoint the applicant on compassionate ground especially in the circumstances when earlier in the year 2001, case of the applicant was found fit for appointment. At the most, the Tribunal can direct the respondents to consider the case of the applicant for compassionate appointment. But after such a long period, I am not inclined to give further direction to the respondents to reconsider the name of the applicant for compassionate appointment. It is an admitted fact that father of the applicant namely Late Satish Chandra Sharma died in harness on 29.03.1984 and we are now in October 2010, and after about 26 years, it is most unjustified to held that the applicant has got the case for compassionate appointment. Under these circumstances, it will not be justified to give any such direction for considering the case of the applicant for compassionate appointment.

10. For the reasons mentioned above, I am of the opinion that earlier in the year 2001, case of the applicant was considered for compassionate appointment but due to non-availability of the vacancy, appointment was not given in that year rather his name was recommended to other department/Ministries of Government of India, and in view of the Judgment of Hon'ble Apex Court, appointment is only to be given subject to availability of vacancies



under 5% quota, and if no vacancy is available, then the appointment cannot be given. There appears no justification for giving direction to the respondents in order to consider the case of the applicant in subsequent years. There is inordinate delay after the death of father of the applicant and in view of the Judgment of Hon'ble Apex Court, compassionate appointment is not a vested right to be exercised at any time in future. It was exercised in the year 2001, after expiry of about 16 years after the death of father of the applicant and now after expiry of more than 25 years, I do not find any justification for giving further direction to consider the case of the applicant for compassionate appointment. Under these circumstances, it appears most justified, in the circumstances of the case, that O.A. be dismissed.

11. O.A. is dismissed. No order as to cost.


{Justice S.C. Sharma}
Member - J

/M.M/