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Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

Original Application No. 1410 of 2006

_____ day, this the 19th day of **September** 2007

Hon'ble Mr. K.S. Menon, Member (A)

1. Smt. Kamla Devi W/o Late Shri Bhulloo, T.S. G.D.S. Mail Man.
2. Ram Milan S/o Late Shri Bhulloo.

Both Residents of – Village: Kusungur,
Post: Garapur, Sahnsho, District Allahabad.

Applicants

By Advocate Shri Satish Mandhyan

Versus

1. Union of India through Secretary, Ministry of Communication, D/o Posts, Dak Bhawan, Sansad Marg, New Delhi.
2. Chief Post Master General (U.P. Circle), Lucknow.
3. Post Master General, Allahabad Region, Allahabad.
4. Senior Superintendent, Railway Mail Service, Allahabad.

Respondents

By Advocate Shri Saumitra Singh

ORDER

By K.S. Menon, Member (A)

This O.A. has been filed challenging the Order dated 25.09.2006, in which the applicants' application for compassionate appointment in favour of applicant No.2 has been rejected by respondent No.4 i.e. Senior Superintendent, Railway Mail Service, Allahabad on the ground that dependents of Mail Man who have been granted temporary status are not eligible for compassionate appointment. The following reliefs have been sought in this O.A.: -

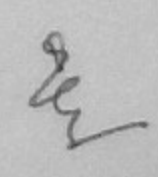
- (i) Direction to be issued quashing the order dated 25.09.2006;
- (ii) Direction to respondents not to give effect to the Order dated 25.09.2006;
- (iii) Consider the case of applicant No.2 for grant of compassionate appointment;
- (iv) Issue directions which this Tribunal may deem fit and proper.

2. The main arguments of Shri Satish Mandhyan-the applicants' counsel are that the applicants' father was recruited initially as GDS Mailman on casual basis in 1989. He was granted temporary status on 29.11.1990 and was regularised in 1992. The father of the applicant died in a road accident on 28.11.2000 leaving behind his widow, two minor daughters and three minor sons. He submits that besides the compassionate appointment issue, even retiral benefits of the deceased employee were not released, which added to extreme indigent condition of the family. The eldest son was already a major, hence the widow moved an application dated 02.04.2003 seeking compassionate appointment for her second son (Applicant). Despite fulfilling all the conditions, his request for compassionate appointment was rejected. The Counsel further contends that several representations were submitted to the respondents and there was no response from the respondents till the impugned order was ^{issued on} on 25.09.2006 on the ground that the applicant No.2's father was not a regular employee and hence dependents of non regular employee with only temporary status are not entitled to compassionate appointment. The Counsel submits that this plea of the respondents does not hold good as they have given appointment to several wards of temporary status employees of the Ministry of Railways. The applicants' counsel submits that despite lack of other source of livelihood, property worth the mention to tide away the present problems, the respondents have rejected the case purely on the grounds that dependents of temporary status employees are not entitled for compassionate appointment. Hence, the impugned order is without any legitimate basis and is liable to be set aside. Shri

Satish Mandhyan, learned counsel for the applicants has relied on the following Judgments: -

- (a) ESC (All.) 2003 (1) Smt. Naini Bai Vs. State of U.P. and others.
- (b) (2004) 2 SAC 55 Smt. Rita Devi Vs. State of U.P.
- (c) ESC (All.) 2001 (4) Santosh Kumar Mishra Vs. State of U.P.
- (d) (2003) 1 SAC 122 Sunil Kumar Vs. State of U.P. and others.

3. The learned counsel for the respondents Shri Saumitra Singh refuted these arguments. Shri Singh submits that the deceased employee was engaged on 29.11.1989 as a casual labour and temporary status was granted on 29.11.1990. Subsequently in accordance with Government (Directorate of Posts) Order dated 30.11.1992 he was granted temporary status equivalent to group 'D' on 08.10.1993 after completion of 3 years of temporary status. Shri Bhulloo died on 28.11.2000 at which point of time he was not a permanent Group 'D' employee. His services could not be regularised due to non-availability of vacancies of casual labourers with temporary status. Hence, in accordance with departmental rules Provident Fund and Insurance amounts were paid to the widow Smt. Kamla Devi (applicant No.1). The contention of the applicants that the deceased employee was regularised on 08.10.1993 as per Department Order dated 30.11.1992, is incorrect. The application of the applicant for compassionate appointment in respect of her son Shri Ram Milan (applicant No.2) was considered and processed in accordance with Department communication dated 02.10.1998 and accordingly rejected. In this communication it has been clearly laid down that grant of temporary status to casual labour is without reference to the availability of regular posts. The dependents of casual labourers/employees with temporary status are therefore not entitled to the benefit of compassionate appointments. In response to the applicants' contention that in paragraph No.4.13 of the O.A. that compassionate appointments have been given to



similarly placed candidates as per information obtained through the provisions of the RT I Act 2005 as under: -

1. Smt. Geeta Devi,
W/o Shri Brijendra Kumar Dwivedi,
Temporary status casual SRO, Varanasi.
2. Smt. Meera Devi, W/o Shri Ajai Kumar Shukla,
T.S., Mail Man, R.M.S. 'A' Division, Fatehpur.
3. Smt. Kalawati W/o Shri Chandrama Ram
Casual T.S., Varanasi.

The counsel for the respondents states that these appointments were made on 04.02.1993, 06.03.1995 and 16.08.1996 well before issue of the Department's communication dated 02.10.1998. The respondents further claim that all their actions are in conformity with the rules and regulations on the subject and hence there is no illegality in their actions. On the other hand the contention of the applicants is on the basis of surmises and conjectures and being devoid of merits deserves to be dismissed.

4. Heard, the Counsel for the parties and applied my mind to the arguments and the pleadings on record.

5. The deceased applicant Shri Bhulloo was appointed as a casual labourer on 29.11.1989, he was given temporary status after one year on 29.11.1990, as per rules and subsequently after 3 years he was given temporary status on par with temporary group "D" employees on 08.10.1993 as per departmental rules dated 30.11.1992, which stipulates that they will be entitled to benefits admissible to temporary Group 'D' employees such as: -

1. All kinds of leave admissible to temporary employees.
2. Holidays as admissible to regular employees.
3. Counting of service for the purpose of pension and terminal benefits as in the case of temporary employees appointed on regular basis for these temporary employees who are given temporary status and who complete 3 years of service in that

status while granting them pension and retirement benefits after their regularisation.

4. Central Government Employees Insurance Scheme.
5. G.P.F.
6. Medical aid.
7. L.T.C.
8. All advances admissible to temporary Group 'D' employees.
9. Bonus.

The applicants appear to be confused with the above stipulation and have misconstrued the grant of temporary status on par with temporary Group 'D' employees as having been regularised. Respondents' counsel confirms that the deceased official was not regularised prior to his death on 28.11.2000 due to non-availability of vacancies for casual labour with temporary status. This cannot be construed as a delay on the part of the respondents in not regularizing the deceased official prior to his death.

6. On the point of temporary status, the applicants have relied heavily on certain Judgments pronounced in ESC (All.) 2003 (1) Smt. Naini Bai Vs. State of U.P. and others, dated 28th November 2002. The facts and circumstances of Smt. Naini Bai's case is that after being given compassionate appointment her services were terminated for non-performance. The respondents in that case while terminating her services also held that her appointment on compassionate grounds lacked in validity ab initio. The Allahabad High Court held as follows: -

"If a person who has put in more than 3 years service even if in temporary capacity dies in harness, it furnishes grounds for heirs/dependents to seek compassionate appointment. [Dying in harness Rules]."

From the above, it appears that the applicants are entitled to seek compassionate appointment. However, in paragraph No.5 of the said Judgment it has been mentioned that the husband of the petitioner was working against a sanctioned post and the petitioner was also appointed against a sanctioned post

in accordance with law. In the present case, the respondents have confirmed that the deceased official's appointment as casual labourer is without reference to the availability of a regular post.

In Rita Devi Vs. State of U.P. and others (supra), it was held that the petitioner's husband had worked for more than 15 years and died before regularisation leaving behind the petitioner/widow, the benefit of appointment on compassionate ground could be extended to her provided the vacancy is available and the petitioner is in possession of minimum qualification and age as required for appointment to the post of Class IV category. "...In this case there was no vacancy available for casual labourer with temporary status as such the applicants' case was rejected. The present case of the applicants, therefore, fails on the ground of entitlement and availability of vacancy for the specified category. The main object of the dying in harness rules is to provide employment to the family of the person who died in harness. The appointment being on compassionate ground, the heirs of the deceased are entitled to get benefit of Dying in harness Rules, 1974. The respondents have duly considered the applicants' case and in accordance with the departmental rules have rejected the case as the deceased official was not appointed against a regular vacant post besides the non availability of a clear vacancy for the specified category covering the applicants' case.

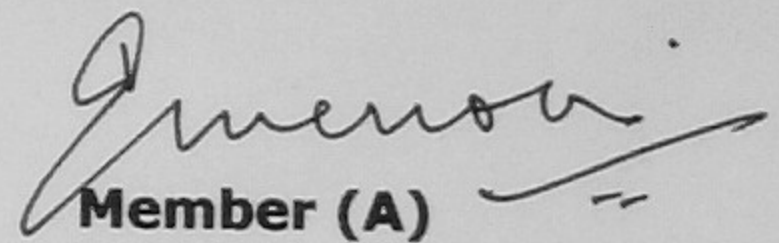
7. I would in addition to the above draw reference to settled cases of the Apex Court in this matter while coming to a decision.

(i) In the case of L.I.C. of India Vs. Mrs. Asha Ramachandra Ambekar and others (J.T. 1994[2] SC 183) it was held that High Courts and Tribunals cannot give direction for appointing a person on compassionate grounds but can merely direct consideration of the claim of such an appointment.

(ii) In the case of Himanchal Road Transport Corporation Vs. Dinesh Kumar (J.T. 1995 (5) SC 319) and Hindustan Aeronautics Ltd Vs. Smt. A. Radhika Thirumalai (J.T. 1996 [9] S.C.646) held that appointment on compassionate grounds can be made only if a vacancy is available for the purpose.

(iii) State of Haryana & Others Vs. Rani Devi and others (J.T. 1996 [6] SC 646) held that if the scheme regarding appointment on compassionate ground is extended to all sorts of casual, ad hoc employees including those who are working as Apprentices, then such a scheme cannot be justified on Constitutional grounds.

8. In view of the above, the action of the respondents being in accordance with the rules and settled case laws is correct and does not warrant any interference by this Court. The O.A. is therefore without any merit and is accordingly dismissed. No order as to costs.


Member (A)

/M.M./