

Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
BENCH, ALLAHABAD

(This the 08th Day of February, 2012

Hon'ble Mr. Shashi Prakash- AM

Original Application No. 1500 of 2006
(U/S 19, Administrative Tribunal Act, 1985)

Naresh Chandra, Son of Late Shri Dori Lal, R/o Village/ Post
Bijamau, Tahsil Nawabganj, District Bareilly.

..... Applicant

By Advocate: Shri S.K. Srivastava

Versus

1. Union of India, through Secretary Ministry of Communication
Dept. of Post, Dak Bhawan, Sansad Marg, New Delhi.
2. The Chief Post Master General, U.P. Circle, Lucknow.
3. Pravar Superintendent, Post Office Bareilly Prakhand,
Bareilly.

..... Respondents

By Advocate: Shri Saurabh Srivastava

O R D E R

Shri S.K. Srivastava, learned counsel for the applicant and
Shri Saurabh Srivastava, learned counsel for the Respondents.

2. The facts which lie in a narrow campus are that the applicant is the son of late Shri Dori Lal, who had been appointed as Class IV in 1968 and subsequently, acting as Post Master in Kasba Senthal

Post Office, District Bareilly. The father of the Applicant died in a road accident on 05.05.2000 during the course of his service, leaving behind his widow, five sons (out of which 04 were married) and three daughters (all married), however, none of his sons were alleged to have been in any employment. Subsequent, to the death of his father, the applicant applied for appointment under Die-in-harness Scheme by an application dated 18.08.2000 due to financial difficulty of the family. On not getting any immediate response, the Applicant also managed to get his case forwarded to the Department by Shri Santosh Gangwar, Minister of State for Petroleum and Parliamentary Affairs for consideration.

3. By a letter dated 04.03.2002, the Chief Post Master General, U.P. Circle, Lucknow informed Shri Santosh Gangwar, Minister of State for Petroleum and Parliamentary Affairs that having regard to the fact that an amount of Rs.3.52 Lacs had been paid to the widow as the part of the terminal benefit of late Shri Dori Lal and that family pension of Rs.2500 + applicable DAR per month is being paid to her and also that the family has its own house, the case of the applicant cannot be considered particularly in the context that only there are limited 5% of the vacancies of direct recruitment being filled under the Die-in-harness Scheme. It has been averred by the applicant that the amount of terminal benefit paid to the widow of late Shri Dori Lal was being expended for the marriage of three daughters and the financial condition of the

family continued to be precarious. A formal communication regarding the rejection of the applicant's application was issued by SSPO Bareilly on 25.07.2002. After receipt of the letter of SSPO, Bareilly Division, the applicant filed a Civil Misc. Writ Petition No.32872 of 2002 before the Hon'ble High Court at Allahabad, which was disposed of vide order dated 01.12.2006 stating that the writ petition filed by the applicant is not maintainable as it is cognizable by Central Administrative Tribunal. The Hon'ble High Court, however, ordered that the time spent by the petitioner in the High Court in persuading the remedy may be condoned in case he files an application before the Tribunal within next one month.

4. The present Original Application has been filed by the applicant in pursuance of the above order of the Hon'ble High Court for seeking following main relief/s:-

- "(a) an order, direction or writ in the nature of certiorari quashing the impugned order dated 25.7.2002 (annexure no.2.7) passed by respondent No.3 rejecting the request of the applicant to employ him under dying in harness scheme.
- (b) an order, direction or writ in the nature of mandamus commanding respondents to provide job and employ the Applicant in the office of the Respondent No.3, Sr. Superintendent of Post Office Bareilly Division Bareilly under dying in harness scheme."

Learned counsel for the applicant submitted that the above reliefs have been sought based upon the facts as have been already brought out in the foregoing paragraphs.

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5. Learned counsel for the applicant in the Rejoinder Affidavit also cited the judgment of the Hon'ble High Court in Writ Petition No.19362 of 2001, in which the Hon'ble High Court has quoted a clause of the Scheme, which reads as follows:-

“..... Financial benefits received need not necessary be a ground for rejecting the proposal vis-à-vis other adverse factors urging acceptance.....”

Learned counsel stated that the Hon'ble High Court had taken this clause into account while deciding a case of the same nature. In view of the finding of the judgment the learned counsel argued that the case of the applicant for compassionate appointment deserves for consideration.

6. Shri Saurabh Srivastava, learned counsel for the respondents argued that the order dated 25.07.2002 passed by the respondents is quite detailed and specific in terms of stating the reasons for the rejection of the applicant's application. The financial status of the family which has been clearly outlined in the order goes to show that the family does not strictly fall in the category of indigent condition and there is no liability upon the widow of the deceased employee. In the order it is also mentioned that the appointment under companionate quota is only to 5% of the vacancies on direct recruitment and therefore, very limited number of appointments can be made under it and that the appointments are considered which meet the requirement of the various conditions provided in the Scheme. Under these circumstances,

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learned counsel submitted that there is no merit in the O.A. and is deserved to be dismissed.

7. Heard Shri S.K. Srivastava, learned counsel for the applicant and Shri Saurabh Srivastava, learned counsel for the Respondents. A perusal of the order dated 25.07.2002 passed by the respondents rejecting the application of the Applicant is a speaking order. It is plain from the contents of the order that the widow of late Shri Dori Lal had received 3.52 Lacs as terminal benefit and was drawing a family pension of Rs.2500/- + DAR per month. It is also seen that the Applicant's mother is the owner of a house and that late Shri Dori Lal had not left behind any unmarried daughter or minor son and such was free from any liability. It is also stated in the order that due restriction of only 5% of vacancies of direct recruitment for compassionate appointment, only the most deserving candidates in terms of the requirements of the scheme can be considered for appointment. It is also observed from the order that the case of the Applicant was considered by the Circle Relaxation Committee which arrived at the view that the case of the Applicant could not be considered. It is presumed that the Committee would have taken into account all the factors as per the provisions of the scheme. In this regard it would be relevant to cite the judgment of the Hon'ble Apex Court in the case of *State Bank of India & Ors. V. Jaspal Kaur reported in (2007) 9 Supreme Court Cases 571*, wherein it has been observed

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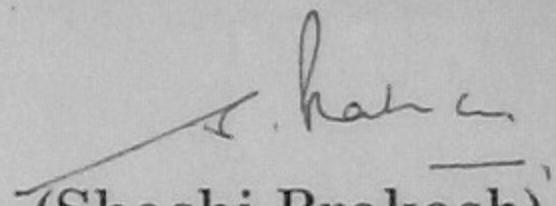
that " *The High Court also failed to appreciate that the appointment under the scheme of compassionate appointment was at the discretion of the authority which was to be exercised keeping in view the scheme and the object/rationale behind it. It was submitted that compassionate appointment cannot be claimed as a matter of right. Moreover, the public office is not heritable.* The Court further went on to observe that "..... we are of the view that the specially constituted authorities in the rules or regulations like the competent authority in this case are better equipped to decide the cases on facts of the case and their objective finding arrived on the appreciation of the full facts should not be disturbed. Both the Benches of the High Court that heard this present matter have erred in entertaining the claim of the respondent and allowing the claim of the respondent. This was the view taken in a recent decision of this Court in *Union Bank of India v. M.T. Latheesh.....*" :

In the aforesaid order which involved almost identical nature of facts, the Apex Court held a clear view that the Competent Authority which determined the basis of financial status of the family which had been paid terminal benefits and drawing pension, rightly came to the conclusion that the financial condition of the family is not penurious and that the family earns sufficient income to sustain itself. The Hon'ble Court upheld the order of the

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Competent Authority rejecting the appointment of the applicant of compassionate ground.

8. Having regard to the above facts and circumstances of the case and the aforesaid decision of the Apex Court, I do not feel any necessity to interfere with the order of the respondents. Accordingly, the O.A. is **dismissed**. No costs.


(Shashi Prakash)
Member-A

Sushil