

(Reserved)

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD**

ORIGINAL APPLICATION NO. 310 OF 2006

Dated this *Tuesday* the 19th day of April, 2011

CORAM:

HON'BLE MR. SANJEEV KAUSHIK, MEMBER- J

1. Km. Asha D/o Late Shri Pal Singh
R/o Bhimsain Wali Gali,
Khalasi Line,
Saharanpur.

.....Applicant.

By Advocate : None

VERSUS

1. Union of India through
the Secretary,
Ministry of Communication,
Department of Posts,
Dak Tar Bhavan, Parliament Street,
Govt. of India at New Delhi.
2. The Chief Post Master General,
U.P. Circle,
Lucknow.
3. The Post Master General, Bareilly
4. The Senior Superintendent of post Offices
Saharanpur.

.....Respondents

By Advocate : Shri G.K. Singh, Counsel for the Union of India

ORDER

The applicant herein, Kum. Asha, daughter of Late Shri Pal Singh who was working as Postal Assistant in Head Post Office,

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Saharanpur died on 20.10.2001. Immediately thereafter mother of the applicant Smt. Uma moved an application to Senior Superintendent, Post Office, Saharanpur for giving appointment to the applicant (Annexure A.III) which was received in the office of respondent on 1.1.2003 (Annexure A.3). Thereafter on 28.8.2003 respondent No.4, deputed public relation Inspector (Mail) to make inquiry and to submit report (Annexure A.4). In pursuance to the above stated order the verification was conducted by one Shri Raj Kumar Sharma, P.R.I. who submitted report on 24.11.2003 (Annexure A.5). It is further submitted that again on 29.3.2004, respondent No.4 again sought some explanation on 28.6.2004 (Annexure A/6). The Post Master General, Bareilly Region, i.e. Respondent No.3 recommended the case of the applicant for compassionate appointment (Annexure A.7). On 10.8.2004 the applicant submitted the certificate asked by respondent No.4 vide their letter dated 21.7.2004 Annexure A.9. He, thereafter again represented the respondents to consider his case as the financial condition of the applicant is not good and they are facing financial hardship (Annexure A.11 & A.12). The applicant was surprised, when they received an order dated 4th May, 2005 by which the claim of the applicant has been rejected (Annexure A.1). Hence the instant Original Application.

2. Upon notice, the respondents filed Counter Affidavit and contested the claim of the applicant. The respondents has submitted that the claim of the applicant has been considered in terms of the various O.Ms. issued by the nodal agency i.e. Ministry of Personnel and Training (for brevity **DOPT**). The Circle Relaxation Committee

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considered the case of the applicant but she could not be offered appointment as her case was not found indigent vis-à-vis whose names were considered for appointment. Accordingly the applicant was informed by the impugned order dated 4.5.2005.

3. None appeared on behalf of the applicant on the date of hearing and the O.A. was taken up for hearing and final disposal by invoking the provisions of Rule 15 of the C.A.T. (Procedure) Rules 1987 after hearing the learned counsel for the respondents.

4. I have heard the learned counsel for the respondents who has reiterated what has been stated in the Counter Affidavit. He argued that the case of the applicant has been considered by the Circle Relaxation Committee within the four corners of the OMs issued by the D.O.P.T. and they did not recommend the case of the applicant as she did not secure marks more than the last candidate who was recommended. He referred to para (i) of the Counter Affidavit and submitted that the family of the applicant is also getting family pension at the rate of Rs. 3,450/-. He placed reliance upon the judgements of the Hon'ble Supreme Court in the case of *U.K. Nagpal vs. State of Haryana and Ors. JT 1994 (3) SC 525*, *Himachal Road Transport Corporation vs. Dinesh Kumar (JT 1996 (5) SC 319)*, *Hindustan Aeraunautics Ltd. Vs. Radhika Thirumalalal (JT 1996 (9) SC 97)* and *LIC of India vs. Mrs. Asha Ram Chandra Ambekar and Ors (JT 1994 (2) SC 183)* and argued that this Tribunal cannot direct the respondents to offer him the appointment. The limited power with the Tribunal is to direct the respondents to consider her case as per the instructions. The applicant has also filed rejoinder and supplementary

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rejoinder. In the rejoinder nothing new has been stated and only the averments made by the respondents in Counter Affidavit has been denied.

5. I have considered the submission made by the counsel for the respondents and perused the averments made in the Original Application. Admittedly, the respondents have considered the case of the applicant under the O.M. issued by the DOPT. As clear from the impugned order Annexure A.I that the case of the applicant was rejected as she did not secure higher marks than the last candidate. The relevant part of the order reads as under:

"Your appointment on compassionate grounds was considered by Circle Relaxation Committee in its meeting held on 10.11 and 12.3.2005 under the provisions of DOPT OM No. 14014/6/95-ESTT(D) dated 26.9.1995, 14014/6/94-Estt-DA dated 9.10.1998 and 14014/23/99 Estt-(D) dated 3.12.1999 and other instructions issued from time to time on the subject and also instructions issued vide Postal Directorate No.66-59/2004-SPB-I dated 29.9.2004. This case was not recommended for appointment by the committee taking into account the inter-se-merit of all the cases in terms of assets and liability and indigence of the families like total number of dependents, minor children, marriage of daughters, responsibility of aged parents, prolonged and major ailment of a member availability of dependable and secure shelter and financial condition and other relevant factors.

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Sr. Supdt. of Post Offices
Saharanpur Division,
Saharanpur 247001

In the case in hand it is not the case of applicant that the Circle Relaxation Committee is biased against her or she has not been awarded marks under the particular heading.

6. The Hon'ble Supreme Court has repeatedly held that compassionate appointment is to be made to the available vacancy, that too within the 5% quota of the direct recruitment. Further it cannot be claimed as a matter of right and it depends upon the family conditions of the deceased employee.

7. In case "*Umesh Kumar Nagpal versus State of Haryana, (1994) 4 SCC 138*", their Lordships of the Supreme Court held as under:-

"The whole object of grant of compassionate employment is, thus to enable the family to tide over the sudden crises. The object is not to give member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or public authority concerned has to examine the financial condition of the family of the deceased and it is only if it is satisfied that but for the provisions of employment, the family will not be able to meet the crisis that job is to be offered to the eligible member of the family.

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The object being to enable the family to get over the financial crisis which it faces at the time of death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over.

8. In *Steel Authority of India Ltd. v. Madhusudan Das and Ors. [2008 (15) SCALE 39]*, the Hon'ble Court held:-

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"...This Court in a large number of decisions has held that the appointment on compassionate ground cannot be claimed as a matter of right. It must be provided for in the rules. The criteria laid down therefore, viz., that the death of the sole bread earner of the family, must be established. It is meant to provide for a minimum relief. When such contentions are raised, the constitutional philosophy of equality behind making such a scheme be taken into consideration. Articles 14 and 16 of the Constitution of India mandate that all eligible candidates should be considered for appointment in the posts which have fallen vacant. Appointment on compassionate ground offered to a dependant of a deceased employee is an exception to the said rule. It is a concession, not a right."

9. As has been held by Hon'ble the Supreme Court in the cases of *National Hydro Electric Power Corpn. Vs. Nanak Chand*, (2004) 12 SCC 487 and *Hindustan Aeronautics Ltd.* (supra). Such an appointment cannot be secured as a matter of right as it is an exception to Articles 14 and 16(1) of the Constitution.

10. The similar view has been taken in the case of *State of J & K and others Vs. Sajad Ahmed Mir* (2006 (5) SCC 766 wherein the Hon'ble Apex Court observed as under:-

11. It is that such an appointment is an exception to the general rule. Normally, an employment in the Government or other public sectors should be open to all eligible candidates who can come forward to apply and compete with each other. It is in consonance with Article 14 of the Constitution. On the basis of competitive merits, an appointment should be made to public office. This general rule should not be departed from except where compelling circumstances demand, such as, death of the sole breadwinner and likelihood of the family suffering because of the set back. Once it is proved that in spite of the death of the bread winner, the family survived and substantial period is over, there is no necessity to say goodbye to the normal rule of appointment and to show favour to one at the cost of

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the interests of several others ignoring the mandate of Article 14 of the Constitution.

11. The Apex Court in *I.G. (Karmik) v. Prahalad Mani Tripathi [(2007) 6 SCC162]* carved out an exception to the ordinary rule of recruitment, stating:-

"6. An employee of a State enjoys a status. Recruitment of employees of the State is governed by the rules framed under a statute or the proviso appended to Article 309 of the Constitution of India. In the matter of appointment, the State is obligated to give effect to the constitutional scheme of equality as adumbrated under Articles 14 and 16 of the Constitution of India. All appointments, therefore, must conform to the said constitutional scheme. This Court, however, while laying emphasis on the said proposition carved out an exception in favour of the children or other relatives of the officer who dies or who becomes incapacitated while rendering services in the Police Department.

7. Public employment is considered to be a wealth. It in terms of the constitutional scheme cannot be given on descent. When such an exception has been carved out by this Court, the same must be strictly complied with. Appointment on compassionate ground is given only for meeting the immediate hardship which is faced by the family by reason of the death of the bread earner. When an appointment is made on compassionate ground, it should be kept confined only to the purpose it seeks to achieve, the idea being not to provide for endless compassion."

12. In view of the above, at this belated stage, no relief can be granted to the applicant. The same view is again reiterated by the Hon'ble Supreme Court in recent decision in *Civil Appeal NO. 3242 OF 2009 titled as State of Chhatisgarh & Ors Vs Dhirjo Kumar Sengar decided on 5.5.2010 reported as 2010(1) Recent Service Judgment*

22. The Hon'ble Apex Court in number of cases has repeatedly held that the compassionate appointment is not a mode for appointment.

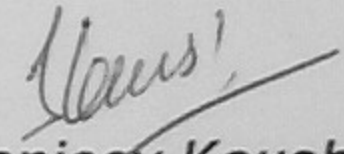
Not only this it is further lay down by the Hon'ble Apex Court that the

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vacancy under the said quota is referred from the quota of direct recruitment. Therefore, especially in these circumstances the appointment cannot be made casually as right of general public in seeking appointment in public employment has been affected. Since the Committee has already considered the case of the applicant and awarded marks, therefore, this Tribunal cannot struck down the recommendation and assume the role of Committee and to evaluate each case. Even no *malafide* has been alleged in the selection process.

13. In view of the above stated facts coupled with the judicial pronouncements which are authoritative law on the subject, I find no reason to interfere with the impugned order. Hence the instant Original Application is dismissed. No order as to costs.


(Sanjeev Kaushik)
Member (J)

Sj*