

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

Original Application No. 835 of 2006

Wednesday, this the 5th day of December, 2007

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

Aditya Narain S/o Shri Jagdish Prasad, Resident of Village/Post
Jamalpur, District Banda.

Applicant

By Advocate Sri Rishikesh Tripathi

Versus

1. Union of India through Secretary (Postal) Ministry of Communication, Dak Bhawan, Sansad Marg, New Delhi.
2. Post Master General, Kanpur Region, Kanpur.
3. Superintendent of Post Office, Banda Division, Banda.
4. Nirikshak Dakghar Banda, Uttari, Up-Khand, Banda, District-Banda.

Respondents

By Advocate Sri Saumitra Singh

O R D E R

By K.S. Menon, Member (A)

This O.A. has been filed against the Order dated 18.02.2005 passed by respondent No. 2 and the reply dated 30.09.2006 given by the Minister of Communication and Information Technology, New Delhi in response to a reference received from a Member of Parliament by which the applicants claim for appointment on compassionate grounds in place of his father who was invalidated from service on 20.04.2001 was rejected. The applicant has sought by way of relief that the above two orders be quashed and direct the respondents to appoint the applicant to the post of E.D.M.C. (redesignated as G.D.S.M.) in village Post Office, Jamalpur in District Banda, pay arrears of salary from May 2002 and award costs to the applicant.

2. The case of the applicant in brief is that his father who was working as E.D.M.C. at Jamalpur Village Post Office, District Banda fell ill in 1997. The ailment was diagnosed as Cervical Spondylosis and he was advised complete bed rest. The applicant's father was sanctioned three months leave initially and a further two months thereafter as

there was no improvement in his condition as certified by the Doctor. The father of the applicant moved an application in May 1997 requesting the respondents to appoint his son and dependent (The present applicant) as EDMC in Jamalpur Village Post Office, in his place. As directed by the respondents, the applicant furnished the medical documents issued by the Chief Medical Officer in support of his disability. The applicant states that the respondents appointed him on 24.11.1997 on the post of E.D.M.C. at Village Post Office Jamalpur, District Banda. After many breaks his services were finally dispensed with on 11.10.2000, which was communicated to him verbally. Applicant submitted several representations, which were not heeded by the respondents so he filed an O.A. No. 389 of 2001 before this Tribunal. A similar case was heard by the Full Bench at Ernakulam Bench of Central Administrative Tribunal wherein they had set aside the Circular of the department dated 29.05.1992 denying benefits to dependents/near relatives of medically invalidated ED Agents. This Tribunal in its Judgment dated 08.05.2002 in the above O.A. relying on the above Full Bench Judgment observed that on the same analogy the applicant is entitled for relief and hence allowed the O.A. and directed the respondents to consider the claim of the applicant for grant of compassionate appointment. The respondents challenged this order vide a Writ Petition No. 28208 of 2002 in the High Court of Allahabad. The High Court disposed of the Writ Petition vide Order dated 26.08.2004 with an observation that they were not inclined to interfere with the Order of this Tribunal dated 08.05.2002. The respondents however decided the matter and passed the impugned order dated 18.02.2005 wherein they held that the applicant's father was retired on being invalidated on 02.04.2001 and as per rules dependents of such ED Agents are not eligible for compassionate appointment. The applicant being aggrieved by the said order which he states amounts to contempt of this Tribunal and High Court Orders, represented to the Ministry of Communication and Information Technology, which was also rejected by the Ministry vide Ministry of Communication and Information Technology's letter dated 30.09.2005 (Annexure-8 of the O.A.). Hence, he filed this O.A. The learned counsel for the applicant has relied on the following Judgments in support of his arguments: CAT Ernakulam (Full Bench) Order dated 08.11.2001 in O.A. No. 220 of 1998 K. Jayaraghavan Vs. U.O.I. and others, and 2006 All CJ 1153 Employees State Insurance Corporation Vs. U.O.I. & Others.

3. The learned counsel for the respondents Sri Saumitra Singh refutes the arguments of the applicant counsel. He submits that the father of the applicant Shri Jagdish Prasad Shukla was working as E.D.M.C./E.D.D.A. Jamalpur Branch Office under Banda Head Office since 15.12.1961. The applicant was engaged by his father w.e.f. 03.08.1999 (and not 24.11.1997 as stated in the O.A.) on his own risk and responsibility during his illness period. The applicant it appears worked for intermittent periods upto 09.10.2000. During the illness of the applicant's father he filed O.A. No. 389 of 2001 before this Tribunal seeking the Court's direction for his appointment as GDS MP in place of his father. The Tribunal disposed off the O.A. vide it's order dated 08.05.2002 observing that the applicant is entitled to relief and directing the respondents to consider the claim of the applicant for appointment as GDS MP on compassionate grounds within a period of three months. The respondents challenged this order vide Writ Petition No. 28208 of 2002 before the Allahabad High Court. The High Court disposed of the Writ Petition vide order dated 26.08.2004 with the direction to the contesting respondent to file a representation before the P.M.G., Kanpur who shall pass a speaking order within three months. The respondents contend that in pursuance of this Tribunal's and the High Court's order the P.M.G., Kanpur considered the applicant's representation and communicated to the applicant vide his memo dated 26.02.2005 that he is not entitled for grant of compassionate appointment due to non-fulfillment of required conditions and hence his claim was rejected. Since the action of the respondents is in pursuance of the order of this Tribunal and the High Court's Order and in accordance with the Department's policy on the subject hence there is no illegality in its order on the other hand the applicant's claim is without any merit, the respondents submit that the O.A. is liable to be rejected.

4. Heard the counsels Shri R. Tripathi for the applicant and Shri Saumitra Singh for the respondents and perused the pleadings on record.

5. The whole case appears to hinge on the departments circulars dated 16.12.1991 and 29.05.1992 based on which the applicant's claim has been rejected. Relevant extract of the said circulars is reproduced below:

"16.12.1991 2. You will kindly observe that the contents of this office letter under reference imply that for purpose of compassionate appointment the dependents/near relatives of invalidated ED Agents are

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also eligible alongwith the dependents/near relatives of those EDAs who die in harness. This concession was not available earlier. Therefore, the question whether the dependents/near relatives of invalidated ED Agents may continue to be considered for compassionate appointment subject to certain conditions, has been reexamined in this office. Having regard to all the relevant considerations, it is felt that it would be desirable to extend the scope for compassionate appointments to cover the dependents/near relatives of the invalidated EDAs."

"29.05.1992 *Having regard to all the relevant considerations, it is felt that it would not be desirable to extend the scope for compassionate appointments to cover the dependents/near relatives of the invalidated EDAs."*

These Circulars were considered by the Full Bench of C.A.T. Ernakulam Bench in the case of K. Jayaraghavan Vs. U.O.I. & Others 2002 (1) A.T.J. Pg. 205. The questions referred to the Full Bench were:

- "{i} Whether the benefit of the scheme of employment assistance on compassionate grounds is available to the dependents/near relatives of ED agents discharged prematurely on medical invalidation; and
- {ii} Whether letter No. 14-25/91-ED & TRG dated 29.5.92 of the Assistant Director General (Trg), Dak Bhavan, New Delhi is liable to be set aside as arbitrary and unreasonable."

The Full Bench took note of the fact that the respondents vide their communication dated 16.12.1991 had made grant of compassionate appointments available to the dependents/near relatives of both deceased and invalidated EDA's. However vide their circular dated 29.05.1992 this benefit for dependents/near relatives of invalidated EDAs was withdrawn by the respondents without assigning any valid reason. In view of this, the Full Bench answered the above two questions in the affirmative and set aside the department's circular dated 29.05.1992 and held that the applicant is entitled to be appointed as EDA on compassionate grounds and accordingly directed the respondents to appoint the applicant as an EDA on compassionate grounds. This Judgment of the Ernakulam Full Bench was relied upon by this Tribunal in the present applicant's case in O.A. No. 389 of 2001. In its Judgment dated 08.05.2002 (Annexure No. 5) this Tribunal held that in view of the Ernakulam Full Bench Judgment the benefit of the scheme of employment assistance on compassionate ground is available to dependents/near relatives of EDA's discharged prematurely or medically invalidated, the applicant is therefore, entitled to relief. They therefore directed the respondents to consider the applicant's claim for appointment of E.D.M.C. on compassionate grounds expeditiously within a period of three months. The respondents challenged this in the High Court vide Writ Petition No. 28208 of 2002. It is seen that the High

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Court in its Judgment dated 26.08.2004 have not referred to the Ernakulam Full Bench's Judgment which was the basis for this Tribunal allowing the O.A. and observing that the applicant is entitled to relief. They have, however, observed as under: -

"Para-3- It is not disputed that father of the contesting respondent was EDMC with the petitioners. It is also not disputed that he was ill and during his illness the contesting respondent was permitted to work in his place. Sri Jagdish Prasad also died on 2.6.2003. The Tribunal below has not directed to appoint the contesting respondent but merely requested the petitioners to consider the question of his appointment. In the circumstances of the case we see no justification to interfere with the order. The contesting respondent in this regard may file a representation before the Post Master General, Kanpur Region, Kanpur through Superintendent of Post Offices, Banda Division, Banda. In case any representation is filed, that may be decided by the Post Master General by a speaking order, if possible, within three months from the date of receipt of the representation. The contesting respondent will file certified copy of this order; other necessary documents and duly stamped self-addressed envelope along with his representation. The Post Master General after taking decision will communicate the same to the contesting respondent."

6. The learned counsel for the applicant has relied on Supreme Court Judgment reported in 2006 AII CJ 1153 Employee's State Insurance Corporation Vs. All India ITDC Employees Union & others, wherein it has been held that

"High Court instead of giving general direction should record its findings regarding entitlement to relief or whether the petition is disposed of without entering the merits of the case." It further held that "while disposing of Writ Petitions with a direction to 'consider' there is a need for the High Court to make the direction clear and specific. The order should clearly indicate where the High Court is recording any finding about the entitlement of the petitioner to the relief or whether the petition is being disposed of without examining the claim on merits."

It is the case of the applicant in this case that because of the direction of the High Court upholding the verdict of this Tribunal directing the respondents to consider the case of the applicant, the respondents have merely considered his case and rejected his claim. His contention is that the Judgments of this Tribunal quashing the departments' circular dated 29.05.1992 and the High Courts' Order upholding this Tribunals order are absolute and final. The respondents should have considered the facts and circumstances of the case and given him an appointment as E.D.M.C.

7. The Government of India's policy contained in D.O.P & T O.M. dated 16.03.2001 stipulated that there is no scope to extend the scheme of compassionate appointment to ED Agents who are prematurely retired/discharged on medical ground. It appears that this Tribunal and the High Court have not categorically directed that the

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departments circular dated 29.05.1992 be quashed and set aside. The respondents have therefore in compliance of the operative portion of the said order of this Tribunal and that of the High Court considered the representation of the applicant dated 08.09.2004 submitted in pursuance of the High Court's direction and passed a reasoned and speaking order rejecting his representation. The sum and substance of the said rejection order dated 18.02.2005 is that the applicant was working as a substitute and departmental instructions and various judicial pronouncements do not provide legal guarantee to a substitute for his permanent absorption against the post of EDA (GDS) hence the applicant cannot be absorbed against the post of GDS. On the issue of appointment of the applicant against the post of GDS on compassionate ground due to the invalidation from service of his father, the respondents contend that as per D.O.P & T O.M. F. No. 14014/3/2001/Estt.(D) dated 16.03.2001 there is no scope to extend the scheme of compassionate appointment to EDA (GDS) who are permanently retired/discharged on medical ground.

8. In view of the above analysis, I find that the applicant has not been able to make out a case for being appointed to the post of EDMC in Post Office Village Jamalpur, District Banda. I am also conscious of the fact that this Tribunal cannot direct the respondents to appointment the applicant on compassionate grounds but can only direct them to consider his case and dispose of the same with a reasoned and speaking order, which is what they have done vide their order/letter dated 18.02.2005 and 30.09.2006 respectively. I therefore do not find adequate grounds to interfere with the said order.

9. The O.A. therefore does not succeed and is accordingly dismissed. No order as to costs.

J. Munro
Member (A)

/M.M/