

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 28th day of Aug 2009

Original Application No. 248 of 2007

Hon'ble Mr. S.N. Shukla, Member (A)

Hari Pratap, S/o late Sri Gopi Nath Yadav, R/o Village Maksudana, P.O., Chaka, Saidabad, Distt: Allahabad.

. . . Applicant

By Adv: Shri R.K. Singh Sri R.C. Srivastava

V E R S U S

1. Union of India through Ministry of Communication, Department of Post Dak Bhawan, Sansad Marg, New Delhi.
2. Chief Post Master General, UP Circle, Lucknow.
3. Senior Superintendent of Post Offices, Allahabad.
4. Post Master General, Allahabad Region, Allahabad.

. . . Respondents

By Adv: Shri S.C. Mishra

O R D E R

This is a second round of litigation in this case. The matter relates to compassionate appointment. Earlier an OA 785/05 was decided by this Tribunal vide order dated 09.05.2006. For the sake of convenience the facts of the case and certain other discussions made in the order are being reproduced from that order itself.

"6. The facts of the case are

(a) The applicant's father Gopi Nath Yadav, a sub post Master died in harness on 26.10.2000

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leaving behind him his mother Abhiraji Devi, mother of the applicant and four sons and one daughter.

- (b) The deceased first son Lal Pratap was living separately while other three sons are unemployed. The applicant's sister was married. However, during the course of pregnancy, applicant's sister became and ultimately her husband divorced her. The applicant's sister alongwith minor son Rajnish aged about 5 years is living with her mother Sita Devi.
- (c) After the death of applicant's father, the applicant's mother has received a sum of Rs. 5,33,504/-, but on account of financial scarcity on prolonged and major ailment of daughter, the amount has been spent till the date. There is only 2 Biswa 10 dhoor agricultural land in the applicant's family.
- (d) The applicant's mother is receiving Rs. 4909/- way of pension. Expect this, there is no other source of income. The applicant has Kachcha residential house in the village.
- (e) The applicant in prescribed proforma has moved an application for getting compassionate appointment. Subsequently, the respondents have issued letter dated 6.3.2003 and 7.4.2004 requiring the applicant to submit income certificate issued by the competent authority, list of dependent of the deceased's family including major and minor, certificate about residential house.
- (f) The entire documents as required by respondents have been submitted. The respondents passed the orders dated 25.4.2005 refusing to give compassionate appointment to the applicant."

2. The reasons for rejection of the case by the concerned department are as under:-

"7. The reasons for rejection of the case of the applicant by the department are as under:-

- (a) Compassionate appointment cases are considered by the Circle Relaxation Committee (in short CRC) as per the scheme circulated by the Department of Personnel & Training O.M. dated 9.10.1998. The compassionate appointment can be made up to 5% vacancies fallen under direct recruitment quota in Group 'C' and 'D' posts.
- (b) The grounds which can justify compassionate appointment are primarily condition of the family and it should be offered as relief against the destitution. In addition, the objective of the scheme which is indigent and deserves immediate assistance.
- (c) The limit of 5% has been fixed in pursuance of order of Apex Court in the case of U.K. Nagpal

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Vs. State of Haryana & Others reported in JT 1994 (3) SC 525 in which Hon'ble Supreme has 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 grounds 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. Hon'ble Supreme Court has further held that the compassionate appointment cannot be granted after lapse of reasonable time.

- (d) Hon'ble Supreme Court in Himachal Road Transport Corporation Vs. Dinesh Kumar reported in JT 1996 (5) SC 319 and Hindustan Aeronautics Limited Vs. Smt. A. Radhika Thirumalai JT 1996 (9) SC 197 has held that appointment on compassionate grounds can be made only if a vacancy for that purpose.
- (e) Vide O.M. dated 3.12.1999, it was further clarified by the DOPT that the committee should also take into account the position regarding availability of vacancy for such appointment.
- (f) However, the case of the applicant was not recommended for appointment by the CRC, Lucknow taking into account the inter se merit of all cases in terms of assets and liabilities and indigence of the family like total number of dependents minor children marriage of daughters, aged parents with prolonged ailments financial condition and other relevant factors."

3. The Tribunal had made certain observations relating to what was perceived as inconsistencies and inappropriate prepositions in the policy of grant of compassionate appointments, specially with reference to the yardstick to ascertain, what is called, under "more deserving" cases. The observations were:-

- (a) The larger the number of family members the greater is the prospect of Compassionate appointment.

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(b) The larger the quantum of terminal benefits, the bleaker the prospect of compassionate appointment.

(c) The larger the area of landed properties in possession of the family the less the prospect of compassionate appointment to the family member of the deceased government servant.

(d) If there is any earning member in the family, irrespective of whether he is with the family and maintains the family or living separately and neglects the family, the same would be almost a bar for compassionate appointment for any other member.

4. The Tribunal after going into the details and after elaborating the stated inconsistencies and after perusing the facts of the applicant's case with regard to various parameters as required to be considered in the DOP&T Circular No. 14014/6/94-Estt(D) dated 09.10.1998 and a few decisions of the Apex Court in the connected matters passed an order which reads as under: -

"The OA is, therefore, disposed of with the direction to the respondents to take into account the decision of the Apex Court and make out a proper case to the Department of Personnel for their consideration and decision and have the decision of the Department of Personnel communicated to the applicant and if the applicant is eligible for compassionate appointment, he be, subject to availability of vacancies given the appointment. In case of rejection of

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the case, the detailed reasons, as may be communicated by the Department of Personnel, be conveyed to the applicant.

5. The respondents in compliance of the order of this Tribunal referred the matter to the Department of Personnel for their comments and opinion in this regard and passed a fresh order as directed by the Tribunal. The opinion of the DOP&T and the order are reproduced below:

"3. In compliance of Hon'ble CAT's order, the matter was taken up with Department of Personnel and their comments/opinion in this regard are given as under:-

The consolidated scheme, on compassionate appointment contained in this department's OM dt 9th October 1998 as modified by a few OMs subsequently issued, is a fairly comprehensive document, which was prepared with due care covering various relevant aspects. This scheme nowhere indicates that the family of deceased Government employee will become ineligible for consideration for compassionate appointment on account of terminal benefits alone. The basic criteria that should decide whether a case qualifies for consideration for appointment under the scheme is that the family should be indigent and deserves immediate assistance for relief from financial destitutions. Para 16 (c) of the scheme contains the requisite guidelines that should be kept in view for taking a decision for recommending a case (or otherwise) for compassionate appointment. It is indicated therein that while considering a request for appointment on compassionate grounds' a balanced and objective assessment of the financial condition of the family has to be made taking into account its assets and liabilities (including the benefits received under the various welfare schemes mentioned above) and all other relevant factor's such as presence of an earning member, size of family, ages of the children and the essential needs of the family, etc.' Under the scheme (Para-12 (c) and (d), the committee set up by the department for the purpose, is to consider an application for compassionate appointment in the light of the policy guidelines issued by DOP&T. The recommendations of the committee are to be placed before the competent authority and the Department, at the appropriate level, is vested with the authority to take a decision in a case.

In the instant case, If Department of Posts, after following the prescribed procedure, did not find the case of the Petitioner meriting grant of compassionate appointment, the same can not be questioned and has to be accepted as such."

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6. The instant OA is against the above quoted order and seeks appointment of the applicant on compassionate grounds with all consequential service benefits.

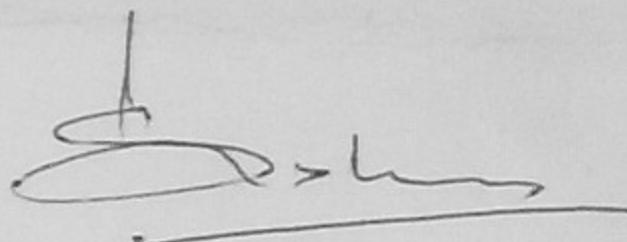
7. Heard learned counsel for the applicant and perused the pleadings on record. A perusal of this Tribunal's order in OA No. 785/05 will ordinarily reflect the concerns of most of the unsuccessful candidates who fail to make it in the merit list of the given number of vacancies during the consideration period. However, after considering these observations and concerns the Government through Department of Personnel has reiterated the instructions in OM dated 09.10.1998 as modified from time to time and has reemphasized that the recommendation of the Committee appointed for the purposes for recommending suitable candidates are to be placed before the Competent Authority and the Department at their appropriate level is vested to the authority to take its own decision. Further, in the instant case, if Department of Post after following the prescribed procedure did not find the case of the applicant meriting grant of compassionate appointment, the same cannot be questioned and has to be accepted as such.

8. Having considered the rival positions it would appear that unless a case is made out for brazen

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discrimination, perversity and total disregard of rules/instructions in this regard, the Tribunal is in no position to call in question the selection process. The authorities having come to the same conclusion again after complying with the recommendations of this Tribunal to consult the DOP&T, this Tribunal has no jurisdiction to direct the authorities to appoint the applicant. It is a settled law that Tribunal should not assume the role of either of Selection Committee or the Government.

9. With these observations the OA stands dismissed.
No cost.



Member (A)

/pc/