

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

(THIS THE 29th DAY OF August, 2012)

PRESENT:

HON'BLE MR. D.C.LAKHA, MEMBER-A

ORIGINAL APPLICATION NO. 774 OF 2007

(U/s, 19 Administrative Tribunal Act. 1985)

Amit Kumar Raikwar adopted son of late Smt. Savitri Devi Ex-Group D
Banda Degree College Banda R/o Kalu Kunwa Baberu Road Banda.

.....Applicant

By Advocate: Shri Chandrika Prasad.

Versus

1. Union of India through Secretary Ministry of Communication
Department of Dak and Post New Delhi.
2. Chief Post Master General U.P. Circle Lucknow.
3. Post Master General Kanpur.
4. Superintendent of Post Offices Banda.

..... Respondents

By Advocate: Shri Dharmendra Tiwari holding brief of Shri R.K.
Srivastava.

ORDER

(DELIVERED BY:- HON'BLE MR. D.C.LAKHA, MEMBER-A

This application has been instituted for the following relief(s) :-

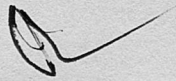
"(i) to issue a order or direction to quashing the
order dated 28.03.2007 passed by C.P.M.G. U.P. circle
Lucknow and order/letter dated 10.04.2007 passed by
Superintendent of Post Offices Banda.

(ii) to issue a order or direction directing
respondents to consider for the compassionate appointment
of the petitioner on any post."


2. Facts in brief, as stated in the O.A. are that the applicant is the
adopted son of Smt. Savitri Devi, Ex. Group D Banda Degree
College, Banda. Smt. Savitri Devi expired on 22.8.2002 at the age of
49 years and at that time more than 15 years service was left for

superannuation. As required by Superintendent of Post Offices, Banda vide letter dated 12.9.2003, the applicant submitted income certificate on 3.11.2003 to S.P.O. Banda, issued by Tehsildar Banda on 28.10.2003 showing monthly income of applicant as Rs. 1200/- per month. The applicant made various representations for compassionate appointment, the first being on 5.4.2003 to respondent No 2 and the last on 4.7.2006. The applicant received Rs. 61,464/- as DCRG, out of which Rs. 35,000 was paid against the loan taken by applicant's mother. Vide letter dated 10.4.2007 applicant was intimated that his case was rejected as it was not recommended by Circle Relaxation Committee for compassionate appointment. The applicant has challenged the impugned order on the ground that his case has not been considered properly by the Circle Relaxation Committee for compassionate appointment as per DOP&T circular dated 9.10.98 and 3.12.99; that he has no moveable or immoveable property, he has one dependant, one minor children and applicant's mother's was left with more than 15 years of service to her credit. It is further submitted that he is residing with his father and deposited Rs. 8300/- balance loan amount of his mother. The case of the applicant should have been considered three times, but it has been considered only once and that 100 merit point system was not followed; and the case of the applicant was arbitrarily rejected by the respondents. Hence the O.A.

3. The OA filed by the applicant has been contested by the respondents by means of filing detailed counter affidavit. It has



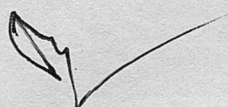
been stated on behalf of the respondents that the scheme for compassionate appointment does not mean employment generation. As per the scheme, existing policy does not give guaranteed appointment in case of every deceased employee. The objective assessment of the family has to be taken into account. Only 5% vacancies under direct Recruitment quota are meant for such cases. It has also been held by the Hon'ble Supreme Court that compassionate appointment cannot be claimed as a matter of right and it is only a privilege granted to tide over the sudden crisis arising after the death of sole earning member and cannot be granted after lapse of reasonable time and it is not a vested right, which can be exercised at any time in future. As per the law laid down by the Hon'ble Supreme Court in Umesh Kumar Nagpal Vs. State of Haryana & Others vide Judgment dated 04.03.1994 the following principles have been laid down:-

- (1) *Only dependents of an employee dying in harness leaving his family in penury and without any means of livelihood can be appointed on compassionate grounds.*
 - (2) *The whole object of granting compassionate appointment is to enable the family to tide over the sudden crisis and to relieve the family of the deceased from financial destitution and to help it get over the emergency.*
 - (3) *Offering compassionate appointment as a matter of course irrespective of the financial condition of the family of the deceased on medically retired government servant is legally impermissible.*
 - (4) *The 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 provision 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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- (5) *Compassionate appointment cannot be granted after lapse of a reasonable period and it is not a vested right, which can be exercised at any time in future.*
- (6) *As a rule, appointment in public services should be made strictly on the basis of open invitation of application and merit. However, to the general rule, there are some exceptions carved out in the interest of justice and one such exception is in favour of the dependent of the employees dying in harness and leaving his family in penury and without any means of livelihood.*

4. Other Judgments relied upon in the counter reply are Himanchal Road Transport Corporation Vs. Dinesh Kumar [JT 1996 (5) SC 319] dated 07.05.1996 and Hindustan Aeronautics Limited Vs. Smt. A Radhika Thirumalai [JT 1996 (9) SC 197] decided on 09.10.1996 in which it has been held that appointment on compassionate ground can be made only if a vacancy is available for that purpose within 5% of the total vacancies for direct recruitment in Group C and D.

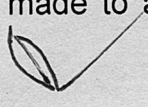
5. The instructions of the DOP&T issued after the Judgment of the Hon'ble Supreme Court are clear to decide such cases providing that this kind of compassionate appointment is a special dispensation only to enable the family to tide over the sudden crisis at the time of death of the sole bread earner. It is not a matter of right and can be provided only after a balanced and objective assessment of the total circumstances of each case. Accordingly, the case of the Applicant has been well considered by the Circle Relaxation Committee and the impugned order has been passed by reasoned and speaking order taking into view all the circumstances of the case, the assets and liabilities etc. of the family.



6. Rejoinder Affidavit has been filed by the applicant denying the allegations made in the Counter and reiterating the averments made in the O.A.


7. In the Supplementary Counter Affidavit filed on behalf of the respondents, besides reiterating their stand taken in the Counter, it has been stated that the applicant was paid Rs. 1,79,457, total amount and family pension of Rs. 3513/- per month and that the last installment of Rs. 8300/- was paid out of loan and not Rs. 35000/- and not Rs. 35,000/- as stated . By means of another Supplementary Counter Affidavit the respondents have annexed minutes of CRC meetings dated 16.1.2007 and 18.1.2007 as SC A-1 and SCA-2 and a list of 236 candidates whose cases were not recommended by the Circle Relaxation Committee in which, the name of the applicant finds at serial No. 75.

8. On 8.8.2012, both the learned counsels, as per their request were granted one week time to file written arguments. But even after expiry of the time provided, no written argument has been submitted by the learned counsel for the applicant. However, the learned counsel for the respondents, has filed the certified copy of comparative chart of merit points prepared for all the candidates, after serving copy on the learned counsel for the applicant, alongwith written arguments. The O.A. is being disposed of on the basis of the material(O.A., C.A. and R.A. etc.) available on record. I have also perused the comparative chart produced by the respondents in which assessment has been made to arrive at the merit



points and am of the view that the case of the applicant vis-à-vis other candidates has been considered by the respondents objectively and in the proper perspective.

9. I have perused the impugned order and the facts and circumstances of the case and have also taken into view the points and counter points of both the parties and I am inclined to accept the view of the learned counsel for the respondents with respect to the counter reply and various Judgments of the Hon'ble Supreme Court and I am convinced that the case of the Applicant has been rightly considered and the case has rightly been rejected by the Respondents. The impugned order does not call for any intervention by the Tribunal. Accordingly, the OA is dismissed. No order as to costs.



Member (A)

s.a.