

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No.G.A.1181 of 1996

Present : Hon'ble Mr.D.Purkayastha, Judicial Member.

1. Amitava Roy Kanjilal S/o
Late Chitta R.Roy Kanjilal.
2. Smt.Helena Roy Kanjilal W/o
Late Chitta R.Roy Kanjilal,
residents of P.G. & Vill.
Kalyanpur, via Bagnan,
Dist.Howrah.

... Applicants

Vs.

1. Union of India through the Director
General of Posts, Dak Bhawan,
New Delhi-110 001.
2. The Chief Post Master General,
West Bengal Circle, Yogajog Bhawan,
Calcutta-12.
3. The Post Master General, South Bengal
Region, Yogajog Bhawan, Calcutta-12.
4. The Sr.Superintendent of Post Offices,
Howrah Division, Howrah-711001.

... Respondents

For the applicants : Mr.N.C.Chakraborty, counsel.

For the respondents : Mr.S.K.Dutta, counsel.

Heard on : 30.4.1998

Order on : 30.4.1998

O R D E R

Heard ld.counsel, Mr.N.C.Chakraborty, on behalf of applicant nos.1 and 2 who are the son and widow of the deceased EDBPM Chitta Ranjan Roy Kanjilal. In this application, the applicants have sought for appointment on compassionate ground of applicant no.1, Amitava Roy Kanjilal who is the ^{2nd} son of the deceased EDBPM. 2. According to the applicants, Chitta Ranjan Roy Kanjilal, died while in service at the age of 63 years on 21.2.1995 and he was due for retirement on superannuation at the age of 65 years. The applicants applied for compassionate appointment of applicant no.1 but the same was rejected by the authority by the letter dated 8.7.1996 (annexure 'A/1' to the application). Thereafter, applicant no.2 made another representation seeking compassionate

appointment of applicant no.1 but that prayer was also rejected by the authority by letter dated 4.9.1996 (annexure 'A/1(b)' of the application). Feeling aggrieved by the said rejection orders, the applicants have approached this Tribunal for a direction upon the respondents to consider the case of applicant no.1 afresh for the purpose of appointment on compassionate ground under the scheme annexed as annexure 'A/4' to the application.

3. The respondents have resisted the claim of the applicants by filing a reply stating inter alia that the case of applicant no.1 was duly considered by the authority and it was found that the case of the applicants does not come within the purview of 'exceptional circumstances' for the purpose of appointment on compassionate ground. It is also stated that the applicants were not found in "indigent circumstances" at the time of death of the deceased employee. It is further stated that the elder brother of applicant no.1 is working elsewhere gainfully and thereby the application for appointment of applicant no.1 on compassionate ground was rightly rejected by the authorities.

4. Ld.counsel, Mr.N.C.Chakraborty, appearing on behalf of the applicants has drawn my attention to the letter dated 21.3.1995 at annexure 'A/9' to the application, where the respondents directed the applicant no.2 to deposit Rs.4547/- towards overpaid amount of DA to the deceased employee, so that they could process the case of compassionate appointment of applicant no.1, under relaxation of rules. However, Mr.Chakraborty states that that commitment has not been fulfilled by the respondents and subsequently, the prayer for compassionate appointment has been rejected. Mr.Chakraborty states that applicant no.1 has passed B.Com and is now 29 years old and the elder son of applicant no.2 is employed elsewhere and is residing separately and not looking after her. In support of this contention, she has submitted an affidavit which is an annexure to this application. Ld.counsel for the applicants submits that in view of the aforesaid circumstances, the applicants can be said to be in indigent

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situation and the immediate appointment of applicant no.1 is required in order to save the family from distress.

5. Mr.S.K.Dutta, Id.counsel, appearing on behalf of the respondents, has produced the record before me that the case of applicant no.1 was duly considered and reasons have been disclosed for which it was found not appropriate on the part of the authority to consider his case since the applicants were not found in indigent situation. He has drawn my attention to the form of declaration submitted by applicant no.2 to the department which shows that the applicants cannot be said to be in indigent situation for the purpose of getting compassionate appointment in this case.

6. I have considered the submissions of the Id.counsel for both the parties. Now the scope of appointment on compassionate ground is circumscribed after passing of the judgment of the Hon'ble Apex Court in the constitutional bench in Umesh Chandra Nagpal case reported in 1994 SCC (L&S) 909 where their Lordship has held that as a rule the appointment in public service should be made strictly on the basis of open invitation of the applications and on merit - no other mode of appointment nor any other consideration is permissible. Neither the Govt. nor the public authorities are at liberty to follow any other procedure or rules for relaxing the qualification laid down in the rules or post. Their Lordship further held that the whole object of granting compassionate appointment is to enable the family to tide over the sudden crises.

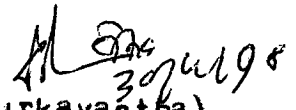
7. In view of the aforesaid judgment of the Hon'ble Apex Court it is now well settled that as a rule appointment in public service should be made strictly on the basis of invitation from the open market only. Only in exceptional cases where the authority is satisfied that the person is in indigent situation and has no means to survive without any appointment on compassionate ground, the scheme for compassionate appointment can be applied. Of course, in the scheme there is no definition of an "indigent person" and what is the "exceptional circumstances" for the purpose of exercise of power for appointment on

compassionate ground. But the Hon'ble Apex Court has specifically stated in the case of Umesh Chandra Nagpal that the whole object for granting compassionate appointment is to enable the family to tide over the sudden financial crises upon the death of the bread-earner of the family and that the applicant should be in indigent situation and should have no other source of income and for this reason, immediate appointment on compassionate ground to the dependant of the deceased employee is required.

8. In the instant case, on perusal of the relevant record, and the declaration given by applicant no.2 to the authorities, I am satisfied that the applicants were not found in indigent situation and, therefore, their case does not come within the purview of exceptional circumstances. The Tribunal should not interfere with the decision of the authorities unless it is found that the decision arrived at by the competent authority suffers from arbitrariness, mala fide and is based on no evidence. The Tribunal should not sit as an appellate authority in order to re-appreciate the evidence and in order to substitute its own reasoning for the purpose of compassionate appointment.

9. In view of the above circumstances, I find that the case of the applicants was considered by the respondents and found not to be in indigent situation and also does not come within the purview of exceptional circumstances. In order to bring the case within the purview of exceptional circumstances, the applicants have totally failed to show that they have no other source of income due to the death of the husband of applicant no.2. The application is, therefore, devoid of merit and is liable to be dismissed.

10. The application is dismissed without any order as to costs.


(D. Purkayastha)
Judicial Member