

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

DATE OF ORDER : 30.10.1998.

O.A.NO. 44/1997

Manga Ram S/o Shri (Late) Raja Ram, EDMC, Bheamthal, Son in Law of Late Shri Nimba Ram, By Caste Raika, R/o Village Bheemthal (Dhorimana), District Barmer.

.....APPLICANT

VERSUS

1. Union of India through Post Master General, Post and Telegraph, Department, Delhi.
2. Sub-Divisional Inspector, Post Office (North), Sub Division, Barmer

.....RESPONDENTS

.....
Mr. D.C.Sharma, Counsel for the applicant.
Mr. Vineet Mathur, counsel for the respondents.

CORAM :

HON'BLE MR. A.K.MISRA, JUDICIAL MEMBER

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BY THE COURT :

The applicant has filed this O.A. with the prayer that the respondents be directed to take the applicant on duty in pursuance of Annex.A/3 and thereafter regularise his service as EDMC on compassionate ground with all consequential benefits. He has also prayed that respondents be directed to issue appointment order afresh to the applicant on any post on compassionate ground in the E.D.cadre.

2. Notice of the O.A. was issued to the respondents who have filed their reply to which the applicant has also filed rejoinder.
3. I have heard the learned counsel for the parties and gone through the case file.

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4. From the pleadings of the parties, it appears that one Shri Nimba Ram was appointed on 26.7.1976 as EDMC of Bheemthal. Shri Nimba Ram continued to serve the department as EDMC until his death. It is alleged by the applicant that Shri Nimba Ram died in the last quarter of 1993 thereafter, the applicant was granted provisional appointment w.e.f. 1.12.1993 to 29.2.1994 or till regular appointment is made whichever period is shorter, vide letter dated 16.12.1993 (Annex.A/3). The applicant as per Annex.A/4 had taken the charge as EDMC at Bheemthal. It is further found out from the record that one Shri Ram Chandra has been appointed as a regular EDMC vide letter dated 11.1.1994 (Annex.R/1).

5. It is alleged by the applicant that he is entitled to appointment on compassionate ground being the dependant of the deceased Nimba Ram. He has also alleged that his provisional appointment cannot be terminated before expiry of the term. On the other hand, it was argued by the learned counsel for the respondents that a provisional appointee has no right to further continue in service if a regular candidate is appointed by the department. He has also argued that in view of Circular dated 9.12.1993 near relative cannot be appointed on compassionate grounds. The persons who are entitled to be appointed on compassionate ground are Widow or Son or Daughter or Adopted Son or Adopted Daughter. The applicant does not come in any of the categories of relatives as mentioned in the Circular. The applicant has alleged himself to be the Son of Daughter of the deceased who at the most can be categorised as near relative but appointment to the near relative has strictly been excluded in the Circular cited above, therefore, the applicant cannot get compassionate appointment. He has also argued that it is nowhere mentioned that dependant of the deceased would be given an appointment on compassionate ground, therefore also, the applicant cannot claim to be appointed on compassionate ground on the basis of being a dependant of the deceased.

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6. The learned counsel for the applicant has submitted that the applicant is the Grand Son (Dohita) of the deceased. The applicant's mother had become widow soon after the applicant was born and thus right from the begining she was living with her father and, therefore, the applicant is a rightful person to be appointed on compassionate ground being dependant as well as relation through blood.

7. I have considered the rival arguments. In my opinion, Daughter's Son cannot be termed as a dependant of the deceased whatever may be the circumstances in which he was forced to live with his maternal grand father. The Circular specifies five persons, either of whom can be appointed on compassionate grounds. Unfortunately, the applicant does not come in the category of these five persons, therefore, in my opinion, he is not entitled to compassionate appointment in the instant case.

6. The applicant also cannot get the relief of appointment on the basis of his earlier appointment which was a provisional appointment and a conditional one. The provisional appointee cannot be preferred over the regular appointee. In the instant case, a person Shri Ram Chandra has been appointed on regular basis vide order dated 11.1.1994 (Annex.R/1), therefore also the applicant cannot be directed to be further continued even on provisional basis.

7. In view of the discussion made above, I am of the opinion that the case of the applicant is devoid of any merits and deserves to be dismissed and is hereby dismissed with no orders as to cost.

Shaw

(A.K.MISRA)
Judicial Member