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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

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Date of Order : 15.2.2002.

O.A.NO. 82/2001

Sukh Dev S/o Late Shri Gurmukh Singh, Ex. Group 'D' employee of P.O. Anoopgarh, District Sriganganagar, resident of Ward No. 18, Anoopgarh, District Sriganganagar.

.....Applicant.

versus

1. The Union of India through its Secretary to the Government, Department of Post & Telegraphs, Dak Bhawan, New Delhi.

2. Chief Post Master Generalm, Department of Post & Telegraph, M.I.Road, Jaipur (Raj).

3. The Superintendent, Postal Department, Sriganganagar.

.....Respondents.

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Advocates Present :

Mr. S.N.Trivedi, Counsel for the applicant.

Mr. Vinit Mathur, Counsel for the respondents.

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C O R A M :

Honourable Mr. Gopal Singh
Administrative Member

Honourable Mr. J.K.Kaushik
Judicial Member

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PER HON'BLE MR.J.K.KAUSHIK, JUDICIAL MEMBER :

The applicant has filed this application under section 19 of the Administrative Tribunals Act, 1985, wherein following reliefs have been sought :-

"(A) That the impugned order dated 9.3.2001 passed by respondents may be quashed and set aside and accordingly case of applicant may be considered for appointment on the post in group 'D' on compassionate ground in the interest of justice;

(B) That the respondents may be directed to give appointment to the applicant from the date of filing his application with all consequential benefits ;

(C) That any other order or direction which this Hon'ble Tribunal deem fit and proper, in the facts and circumstances of the case, may be passed in favour of the applicant;

(D) That the costs of the original application may be awarded in favour of the applicant."



2. The facts as stated by the applicant are that the applicant is the son of Shri Gurmukh Singh. Shri Gurmukh Singh, was employed on a post of Group 'D' in the Post Office at Anoopgarh and served the department for about 26 years. Shri Gurmukh Singh expired on 23.3.1996 due to continuous illness. Late Shri Gurmukh Singh, was survived with his wife and five children, out of which, the applicant is the eldest and major. The applicant has studied up to IX standard. The wife of the deceased Shri Gurmukh Singh is an illiterate lady. The applicant submitted an application on the standard proforma along with the requisite documents on 14.5.1996 before the competent authority for consideration of his appointment on compassionate ground. The mother of the applicant gave her consent to give appointment to the applicant. The matter of consideration for appointment of the applicant on compassionate ground remained under constant consideration of the authorities under relaxation of Recruitment Rules

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and the same has been finally turned down vide order dated 9.3.2001, Annex. A/1, i.e. after a lapse of more than four and a half years from the date of the application.

3. Notices of this O.A. were issued for admission. The respondents have filed their reply to the O.A. The applicant has not filed any rejoinder to the reply of the respondents.

4. The respondents have opposed the claim of the applicant and have pleaded that the case of the applicant was duly considered as per the rules in force along with other candidates. The family has their house to live in and in possession of landed property of its share having a sizable income. The family has also received the terminal benefits and is drawing regular pension. The case was not found fit for grant of appointment on compassionate ground.

5. The case was listed for admission and counsel for both the parties have agreed for final disposal of the same at the stage of admission.

6. We have heard the learned counsel for the parties and have carefully examined the material on records.

57 7. The case of the applicant is that the family of the deceased is in an indigent condition and needed a bread winner for the family of the deceased. The case has not been objectively considered. The case has been rejected only on the ground that certain terminal benefits have been paid, family pension is being paid, there is income from agricultural land and the financial condition of the family does not appear to be indigent. Regarding the agriculture land, the applicant has pleaded that there is no irrigation facility and hardly there is any income from the same which solely depends on the rain. It has also

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been said that there is no ban or bar imposed upon in providing appointment on compassionate ground. The case of compassionate ground appointment cannot be rejected solely on the ground of grant of family pension and payment of terminal benefits. In support of this contention, the counsel for the applicant has drawn our attention towards the judgement delivered by Hon'ble the Supreme Court in the case of Balbir Kaur & Anr. etc. Versus Steel Authority of India Ltd. & Ors. reported in 2000 (4) Supreme 602. The relevant portion of para 13 is extracted as under :-

"Family Benefit Scheme cannot be in any way equated with the benefit of compassionate appointments. The sudden jerk in the family by reason of the death of the bread earner can only be absorbed by some lump sum amount being made available to the family - This is rather unfortunate but this is a reality. The feeling of security drops to zero on the death of the bread earner and insecurity thereafter reigns and it is at that juncture if some lump sum amount is made available with a compassionate appointment, the grief stricken family may find some solace to the mental agony and manage its affairs in the normal course of events. It is not that monetary benefit would be the replacement of the bread earner, but that would undoubtedly bring some solace to the situation."

Nextly, our attention was drawn towards the O.M. dated 9.10.1998, known as Revised Consolidated Instructions on the Scheme for Compassionate Appointments, published in Swamy News January, 1999 edition, at Page No. 64. The relevant portion of the O.M. dated 9.10.1998 is reproduced as under :-

16(c))The Scheme of compassionate appointments was conceived as far back as 1958. Since then a number of welfare measures have been introduced by the Government which have made a significant difference in the financial position of the families of the Government servants dying in harness/retired on medical grounds. An application for compassionate appointment should, however, not be rejected merely on the ground that the family of the Government

servant has received the benefits under the various welfare schemes. While considering a request for appointment on compassionate ground 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 factors, such as, the presence of an earning member, size of the family, ages of the children and the essential needs of the family, etc."

8. On the other hand, the respondents have opposed the claim of the applicant on various grounds i.e. the selection committee has considered applicant's case and rejected the same after due application of mind, there is no indigency in the case and compassionate appointment is not a right of the dependants. Further, there is an additional income, about 27 approved candidates are already waiting for appointment since 1993, there is no possibility of any appointment against 5% vacancies for direct recruitment in near future, there has been no vacancy during last four years, the court can not give a direction to give appointment on compassionate grounds and once, the matter has already been considered by the Circle Selection Committee, no interference of this Tribunal is called for in the matter.

9. It would be profitable to reproduce the exact reasons for rejection of the claim of the applicant from the impugned order Annex.

A/1 dated 9.3.2001 as under :-

"2. The widow is getting family pension amounting to Rs. 1712/- + D.R. per month.

3. Terminal benefits to the tune of Rs. 96,764/- has been paid to you.

4. You are in possession of residential agriculture land 1/3 Share 25 Bighas.



5. Hence the financial condition of your family does not appear to be indigent requiring immediate relief."

The counsel for respondents has laid immense emphasis on the other various reasons mentioned in the reply to the O.A. Before examining the matter further, it is seen that the impugned order is a cyclostyled order and makes mention of all the possible reasons / grounds on which the compassionate ground appointment could be refused. However, we cannot consider the general reasons once the specific reasons have been specified in the order as indicated above. In this connection, our attention was drawn towards a judgement of Hon'ble the Supreme Court in Mohinder Singh Gill and another Vs. The Chief Election Commissioner, New Delhi and others, reported in AIR 1978 SC 851 wherein in para 8 it has been held by Hon'ble the Supreme Court as under :-

"8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out."

From the aforesaid verdict of the Hon'ble Supreme Court, it would be clear that the reasons of rejection of the claim of the applicant other than the one which have been specified in the impugned order, cannot be given any consideration in the present case.

10. From the aforesaid discussions, it is clear that the claim of the applicant has been rejected only on the ground of regular payment of family pension and payment of terminal benefits inferring thereby that the family is not in an indigent condition. In view of the judgement in Balbir Kaur & Anr. etc. Versus Steel Authority of India Ltd. & Ors.



and O.M. dated 9.10.1998 (supra), the rejection of the claim of the applicant is not sustainable. Further, from the facts stated by the applicant, the family consists of a large number of members having no earning member, there is hardly any income from the agriculture land, the family does not have any other source of income except the meagre family pension of Rs. 1,712/- and there is no bread winner in the family. In such circumstances, it can not be said that the family is not in an indigent condition.

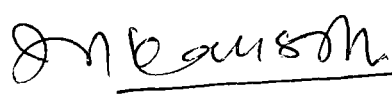
11. The claim of the applicant has been rejected by passing a mechanical order and the reasons given are not cogent and justified. Our attention was drawn towards the case of Kuldeep Singh Vs. State of Punjab decided by a Division Bench of Punjab and Haryana High Court in Civil Writ Petition No. 2510 of 1999 on 1.10.1999. The brief facts of this case were that the father of petitioner died in service. An application for appointment on ex-gratia or compassionate ground to the post of Assistant Sub Inspector was rejected by the authorities for the reason that he did not fulfill the eligibility condition. While the applications were submitted to the authorities the petitioner obtained the requisite qualification. The application was rejected by the authorities. But in the written statement filed in the writ petition the authorities stated that the application was rejected because at the time of death of his father there were other members in the family who were eligible for appointment on compassionate ground but who did not apply. The claim of the petitioner was rejected on the ground that at the time of application, he was not qualified for the post. The ground was not found as justified and the court held as under :-

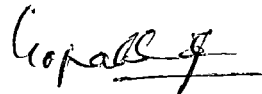
"The Court held that the reason stated by the authorities couldn't be said to be reasonable and justified. Appropriate directions given to the authority to consider the application of the petitioner for compassionate appointment. The order declining the appointment was quashed."

Similar is the position here and the ratio of above case, applies to the case in hand.

12. In view of the foregoing discussions, we have come to the conclusion that the impugned order dated 9.3.2001 (Annex.A/1), is not sustainable in law and deserves to be quashed. However, as regards the relief (B), no direction can be issued to give appointment on compassionate ground as has been held by Hon'ble the Supreme Court in its judgement dated February 28, 1995 in the case of Life Insurance Corporation of India Versus Mrs. Asha Ramachandra Ambekar and Others, reported in JT 1994 (2) SC 183. That was a Civil Appeal against the judgement of Bombay High Court wherein, Hon'ble the Bombay High Court directed the Life Insurance Corporation of India, to appoint the respondent No. 2, in the said appeal. The appeal was allowed with an observation that it should have merely directed consideration of the claim of the second respondent.

13. The O.A. is, therefore, partly allowed. The impugned order dated 9.3.2001 (Annex.A/1), is quashed and the respondents are directed to re-examine the matter and consider the case of applicant for compassionate ground appointment objectively and sympathetically. This direction shall be complied with within a period of three months from the date of receipt of a copy of this order. No order as to costs.


(J.K.Kaushik)
Judl.Member


(Gopal Singh)
Adm.Member

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Part II and III destroyed
in my presence on 3-7-02
under the supervision of
sec. officer (J) as per
order dated 14/5/02

Section officer (Records)

R/cm
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R/cm
14/5/02