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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH : JODHPUR

Date of order : 19th September, 2001

1. O.A. No. 15/2001
w i t h
2. M.A. No. 57/2001

Prem Prakash Sharma son of late Shri Narain Prasad Sharma aged about 26 years, resident of village and Post Khudiyala, Via - Teori, Tehsil Shergarh, District Jodhpur, Rajasthan, presently working on the post of Extra Departmental Branch Post Master (EDBPM) in Post Office Khudiyala, Tehsil Shergarh, District Jodhpur.

... Applicant.

v e r s u s

1. Union of India through the Secretary, Ministry of Communication, Department of Posts, Dak Bhawan, New Delhi.
2. The Post Master General, Western Region, Jodhpur (Rajasthan).
3. The Senior Superintendant of Post Offices, Post Office, Jodhpur (Rajasthan).

... Respondents.

Mr. S.K. Malik, Counsel for the applicant.

Mr. Dalip Singh Rajvi, Counsel for the respondents.

CORAM:

Hon'ble Mr. Justice B.S. Raikote, Vice Chairman

BY THE COURT

This application is filed by Shri Prem Prakash Sharma under Section 19 of the Administrative Tribunals Act, 1985, praying for direction to the respondents to consider his case for appointment on compassionate grounds.

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2. The learned counsel for the applicant by relying on the pleadings in the O.A., contended that the applicant's father, Shri Narain Prasad Sharma, died on 27.06.2000, and immediately thereafter, applicant's mother made an application for appointment of her son on compassionate ground. But by the impugned order vide Annexure A/1 dated 24.11.2000, the said application has been rejected. The applicant contended that the applicant's family consisted of his widowed mother, by name Smt. Devi, and 6 brothers and a sister. The elder sister married of about 20 years back, and his brothers are living separately from the family. There is no source of income to the family and the family is in indigent condition. The applicant contended that after the death of the father of the applicant, a sum of Rs. 30,000/- was paid by the respondent No. 3 on account of Gratuity/Severance amount plus an amount of Rs. 18,000/- on account of P.F. money. In all, the family had received Rs. 48,000/-. But the family of the applicant is in indigent circumstances, since there is no other source of income. The learned counsel for the applicant relying upon the judgement of Central Administrative Tribunal, Principal Bench, New Delhi, reported in 2001 (2) ATJ 387 [Smt. Anar Kali and Anr. vs. Union of India & Ors.], contended that while considering the case on compassionate ground, the authorities cannot take into consideration the retirement/terminal benefits given to the family members of the deceased employee. Therefore, the applicant is entitled for appointment on compassionate grounds. He also relied upon Section-X of Swamy's Compilation of Service Rules for Postal ED Staff (Eighth Edition) at page 145 under the heading "**Compassionate Appointments to Dependants of EDAs**", and contended that the applicant's case has not been considered in the light of these instructions. By relying upon Para (3) (4) of the clarifications found in the book, he submitted that when the other earning family members are living separately and are not providing any financial assistance to the main family, the request for compassionate appointment deserves to be allowed. He also contended



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that the applicant having passed 10th class, is eligible for the post he applied for. Therefore, the impugned order is liable to be set aside.

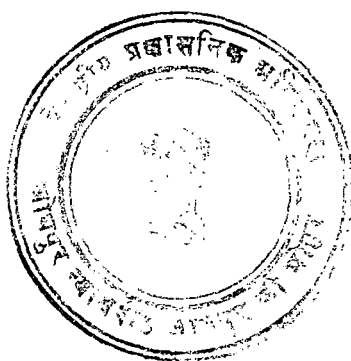
3. By filing reply, the respondents have denied the case of the applicant. It is stated in the counter that the department, as a matter of policy, calls for application from the family of the deceased employee to examine the case of the dependant for appointment on compassionate ground on the death of such employee during service. In these circumstances, the applicant's mother submitted an application for appointment of her son, but the same has been rejected on the valid grounds. The learned counsel appearing for the respondents submitted that the applicant's five brothers are living separately and independently and they are earning their livelihood, and are self employed even though they are not Matriculate. He also contended that the applicant being major and married, is not entitled for appointment as dependant of the deceased, and there is no dependant, except the said Smt. Devi, who is 55 years , and she had received a sum of Rs. 48,000/- in all. The monthly interest accruing thereon would be sufficient to her. He also submitted that the widow can subsist on the earnings of her five sons and with the interest accruing on the said amount of Rs. 48,000/- received by her towards pensionary benefits etc. of the deceased employee. He further contended that there is also a residential house for the family. The learned counsel inviting my attention to the averments made in the application, for compassionate appointment, pinpointing the column on the income, from agricultural land, showing of the applicant is in possession of 4 bigha agriculture land with annual income at Rs. 10,000/- and has a house valued at Rs. 20,000/-, contended that as per this averment in the application itself, it cannot be said that the applicant's family is in indigent condition. Having regard to all these factors only, he contended that,



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his application for appointment on compassionate grounds has been rejected by passing the impugned order. Therefore, the impugned order does not call for any interference. He further stated that the applicant's case has been considered by the appropriate Committee in terms of the Scheme for compasionate appointment issued by the Government of India, Ministry of Personnel, Public Grievances and Pension, New Delhi, dated 09.10.1998, and such consideration cannot be said to be illegal, as contended by the applicant's counsel. He also submitted that in terms of the Scheme, the compassionate appointment could be considered only under 5% of the vacancies earmarked for the purpose of compassionate appointment, and not as a matter of course. He stated that the applicant could contest for the appointment whenever the application is called for, but he is not entitled for appointment on compassionate ground, under the Scheme. He relied upon the judgements of Hon'ble the Supreme Court reported in (i) 1994 (4) SCC 138 - Umesh Kumar Nagpal vs. State of Haryana and Others, (ii) 1996 (1) SCC 301 - Jagdish Prasad vs. State of Bihar and (iii) 1996 (2) JT 542 - Haryana State Electricity Board vs. Naresh Tanwar and Another, and contended that the compassionate appointment could be provided, as per the law declared by Hon'ble the Suprrreme Court, only to relieve the family of the indigent conditions, and not as a method of recruitment or appointment. Therefore, the applicant is not entitled for appointment on compassionate ground. Accordingly, the application is liable to be dismissed.



4. After hearing the arguments, I also considered the records of the case.

5. From the reading of the impugned order, it is clear that it is only three lines order, stating that the case of the applicant was considered by the Divisional Selection Committee, and that Committee

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has rejected it. Therefore, the applicant could not be given compassionate appointment. Alongwith the reply statement, the respondents also have not produced any order said to have been passed by the Divisional Selection Committee, rejecting the case of the applicant on compassionate ground. By reading the impugned order, it is clear that the impugned order is a non-speaking order. No reasons are forthcoming in the Annexure A/1, except that the said Committee has rejected the claim of the applicant. On what ground the Committee has rejected, has also not been stated in the reply statement filed by the respondents. Having regard to these circumstances, it is not possible to ascertain the ground on which the applicant's case for compassionate ground, has been rejected. Therefore, in my opinion, the impugned order Annexure A/1 is passed without application of mind, and is a non-speaking order. I, therefore, propose to set aside the order Annexure A/1 only on this ground without expressing any opinion on the merits of the contentions raised on both the sides. The contentions of both the sides, that I have summarised above, are the matters to be considered by the authority and not by this Tribunal.



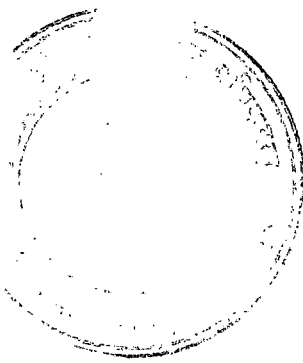
6. By filing M.A. No. 57/2001, though the applicant prays for regularisation as an alternate relief on the ground that he was appointed as EDBPM on provisional and temporary basis. But the contention of the respondents is that his appointment being wholly on provisional and temporary basis without following any rules, has been terminated with effect from 12.04.2001.

7. The fact that the applicant was appointed on provisional and temporary basis, is not disputed. If that is so, applicant's termination cannot be found fault with. But his case for appointment on compassionate ground requires to be considered ~~by the department~~ independently by the respondents in the light of the scheme


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applicable, and also in the light of the above judgements of Hon'ble the Supreme Court. Accordingly, I pass the order as under:-



"The O.A. is partly allowed. The impugned order vide Annexure A/1 dated 24.11.2000, is hereby quashed. The respondents are directed to consider the case of the applicant afresh for appointment on compassionate ground in the light of the Scheme/Rules applicable and also the judgements of Hon'ble the Supreme Court and the financial conditions of the applicant. This exercise shall be done within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, the M.A. No. 57/2001 is dismissed as not surviving."


(Justice B.S. Raikote)
Vice Chairman

cvr.