

क.प्र.अ. (प्रक्रिया) नियमावली के नियम १२ के कार्यालय निः युलक निः

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
Jodhpur Bench: Jodhpur

2/8/11

ORIGINAL APPLICATION NOS. 86,95,119 and 232/2003.

Date of decision: 30.06.2004

Shri Ravi Sagar & others Petitioners

Mr.S.K. Malik & Dayaram Advocate for the Petitioners
In O.A. No. 86/2003 & 119/2003

Mr. Kamal Dave Advocate for the petitioner in
O.A. No. 95/2003

Mr. R.S. Saluja & P.C. Verma Advocate for the petitioners
In O.A. No. 232/2003

Versus

Union of India and Others Respondents.

Mr. Vinit Mathur Advocate for Respondents. In O.A. Nos.
86/03,95/03, 232/03

Mr. Aravind Samadariya Advocate for the respondents in O.A.
No. 119/2003

CORAM:

Hon'ble Mr. J.K. Kaushik Judicial Member.



COMPILED &
CHECKED

1. Whether Reporters of local papers may be allowed to see the judgement? *yes*
2. To be referred to the Reporter or not? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *no*
4. Whether it needs to be circulated to other Benches of the Tribunal? *yes*

Sd/-

(J.K. KAUSHIK)
MEMBER (J)

**Central Administrative Tribunal
Jodhpur Bench: Jodhpur.**

**Original Application Nos.86/2003, 95/2003, 119/2003
& 232/2003**

Date of decision: 30.06.2004

The Hon'ble Mr J K Kaushik, Judicial Member.

O.A. No. 86/2003

Ravi Sagar, S/o late Shri Jagdish Ji aged about 18 1/2 years r/o House No. 10, Sargara Colony, Near Ship House, Nagori Gate, Jodhpur, (Rajasthan). **Applicant**

Rep. By Mr. S.K. Malik, & Dayaram : Counsel for the applicant.

Versus

1. Union of India through the Secretary, Ministry of Communications, Dak Bhawan, New Delhi.
2. Senior Superintendent of Post Offices, Jodhpur Division, Jodhpur (Rajasthan)
3. Chief Post Master General (CPMG), Rajasthan Circle, Jaipur, (Rajasthan).

Respondents.

Rep. By Mr. Vinit Mathur: Counsel for the respondents.

O.A. No. 95/2003

Smt. Aruna Chawada, W/o Late Shri Rajendra Singh Chawada, aged 36 years, r/o, C/o Shri Laxman Singh, Bal Vidhya Mandir School, Bagar Chowk, Near Khicheeyon Ki Hawali, Jodhpur.

:Applicant

Rep. By Mr. Kamal Dave : Counsel for the applicant.

versus

1. The Union of India through the Secretary, Ministry of Communication, Department of Post and Telegraph, Dak Bhawan, New Delhi.
2. The Chief Post Master, General, Rajasthan Circle, Jaipur.
3. Superintendent of Post Offices, Pali Division, Pali Marwar Pin: 306 401.

:Respondents

Rep. By Mr. Vinit Mathur : Counsel for the respondents.

O.A. No. 119/2003

Rajendra, S/o late Shri Bhanwar Lal Ji, aged about 23 years, r/o Village & P.O. Lohawat Jatawas, District, Jodhpur (Rajasthan)

:Applicant.

Rep. By Mr. S.K. Malik & Mr. Dayaram: Counsel for the Applicant.

Versus

1. Union of India through Secretary, Ministry of Communication, Dak Bhawan, New Delhi.
2. The Chief Post Master General, Rajasthan Circle, Jaipur (Rajasthan)
3. The Senior Superintendent of Post Offices, Jodhpur Division; Jodhpur (Rajasthan)

: Respondents

Rep. By Mr. Aravind Samadariya: Counsel for the respondents

O.A. No. 232/2003

Rajesh Kumar s/o late Shri Jugraj Ji, Aged 19 years, r/o House No. 9, Prithvipura, Rasala Road, Jodhpur.

Smt. Durga Devi, widow of late Shri Jugraj Ji, r/o House No. 9, Prithvipura, Rasala Road, Jodhpur.

:Applicants.



IARO/14

Rep. By Mr. R.S. Saluja, & P.C. Verma: Counsel for the Applicants.

Versus

1. Union of India, through the Secretary, Ministry of Communications, Dak Bhawan, New Delhi.
2. The Chief Post Master General, Rajasthan Circle, Sardar Patel Marg, C-Scheme, Jaipur (Rajasthan)
3. Senior Superintendent of Post Offices, Jodhpur Zone, Jodhpur.

:Respondents

Rep. By Mr. Vinit Mathur: Counsel for the respondents.

ORDER

Mr. J.K. Kaushik, Judicial Member,

S/Shri Ravi Sagar, Smt. Aruna Chawda, Rajendra, and Rajeshkumar and another, have filed Original Application Nos. 86/03, 95/03, 119/03 and 232/03, respectively. Identical issue of facts as well as law are involved and hence these OAs are being decided through this common order.

O.A.No. 86/2003:

2. The brief facts of this case are that the applicant is the son of Shri Jagdish, who was employed on the post of Postal Assistant under respondent No. 2. Shri Jagdish, expired while in service on 14.10.2001. Applicant's mother predeceased late Shri Jagdish on 16.06.93. The applicant belongs to SC community. Three sons and his old mother survived the deceased Government's servant, as dependent family members.

The applicant as per the advice of the department applied for



appointment on compassionate grounds on attaining the age of 18 years and completed the requisite formalities including no objection certificates from his brothers. But his case has been turned down by an order-dated 17.03.2003. The O.A has been filed on multiple grounds narrated in para 5 and its sub paras.

3. The respondents have resisted the claim of the applicant and have filed counter reply to the O.A. It has been averred that the case of the applicant was duly considered by the Circle Relaxation Committee in its meeting held on 21.01.2003, in the light of the instructions and guidelines issued by the Department of Personnel and Training, from time to time. Since there was no post of postman was available, the applicant's case was considered for Group 'D' Post, in which cadre only one post was vacant. Against that post 29 candidates including the applicant were considered, out of which one candidate who was in most indigent circumstance, was recommended for the same. Further the applicant has not indicated any liability in the application for consideration of his case for compassionate appointment, his case could not be recommended for want of vacancies. The case of compassionate appointment can be considered only if there is any vacancy for the same. A short rejoinder has been filed, wherein it has been averred that persons who are in the waiting list should be considered first and the case of the applicant has been rejected solely on the ground that, he has received terminal benefits. In case the vacancies are not available in the



particular department, the matter should be taken up with other ministries or departments. A reply to the rejoinder has also been filed, which is not provided in the rules and hence no cognisance to the same is required to be given.

O. A. No. 96/03:

4. Applicant is the legally wedded wife of Shri Rajendra Singh, who expired while working as Postal Assistant at Sojat Road Post Office on 20.01.2002. The deceased Government servant was survived with his wife, i.e. the applicant and one minor daughter of 14 years and one minor son of 10 years. Having no source of income, the applicant who possessed the qualification of 8th Standard, immediately applied for consideration of her case for appointment on compassionate grounds and completed the requisite formalities. The house owned by the late husband was constructed against the departmental loan and the outstanding amounts towards H.B.A., M.C.A. and other loans taken from the Bank and Postal Cooperative Society, were re-paid after the death of her husband, from the terminal benefits. Her case has been turned down on the ground that she has received terminal benefits and her case was not found in indigent. The O.A. has been filed on numerous grounds mentioned in para 5 and its sub-paras.

5. In the reply, the fact of vacancies constraint has been pleaded. The reply is followed by rejoinder, wherein it has been



submitted that the respondents have not disclosed as to what yardstick has been applied for finding most indigent candidate.

O.A.No. 119/03

6. Applicant is the son of late Shri Bhanwar Lal, who was working as Male peon in Group D category, who expired on 30.11.2000. He belongs to OBC category and his elder brother is illiterate. The applicant has passed 8th Standard. The applicant is said to be belonging to down trodden and his family is running its livelihood through begging. It does not have any landed property and his case has been turned down only on the ground that the deceased family is getting pension and has got retirement benefits. The O.A has been filed on a number of grounds mentioned in para 5 and its sub-paras.

7. The respondents have contested the case and have filed a detailed reply. The main constraint projected in the reply is that there was only one vacancy that that has been given to a person who was considered to be in most indigent circumstances. The list of candidates who were considered had also been annexed along with the policy for compassionate appointment. A short rejoinder has been filed. It has been averred that the cases of persons who are in the waiting list for compassionate appointment may required to be taken up with other Government offices, to provide early appointment on compassionate grounds but the same has not been done.



O.A. No. 232/03:

8. The applicant No. 1 is the son late Shri Jugraj and the applicant No. 2 is the widow of late Shri Jugraj. Late Shri Jugraj was employed as postal assistant in the Head Post Office at Jodhpur and he expired while in service on 24.01.2002, after prolonged illness. After the death, the second applicant moved an application for appointment on compassionate grounds to the 1st applicant, which rejected on the ground that the family of the deceased Government servant has sufficient means of livelihood and is getting Rs. 2562/- as pension + dearness relief (Sic. Dearness Allowance) per month. Besides the family has received terminal benefits to the tune of Rs. 3,37, 564/-. They also own a house. The deceased Government servant was survived by his widow two sons (including the first applicant) and two unmarried daughters. Further representation was made in the matter, but there has been no response, except that the same came to be rejected, by giving reference to the earlier rejection letter. The O.A has been filed on the ground that the claim of the applicants has been rejected by passing an order without application of mind and that too in a mechanical way.

9. A reply has been filed on behalf of the respondents, wherein it has been submitted that the case of the applicant has been considered on the basis of comparative assessment with the financial position, liabilities and other sources of income, the



terminal benefit and availability of vacancies. It was found that the case of the first applicant was found that it was not in indigent circumstances, in comparison to other cases. Therefore, the same was rejected and there is only right for consideration and no right for appointment on compassionate grounds.

10. The learned counsel for the applicants have submitted that the case of the applicants have not been considered as per the rules in force in as much as their claim have been rejected in a stereotyped manner without passing a speaking order. The reasons cannot be supplemented through affidavit and the order is to be read as it is as per the decision of Apex Court in case of

Mohinder Singh Gill Vs. Chief Election Commissioner [AIR

1978 SC 851]. It was next contended that claim has been rejected on the basis of terminal benefits in contravention of verdict of Apex Court in case of **Balbir Kaur & Ors. Vs. Steel Authority of India Ltd and others [2000 SCC (L&S) 767].**

11. The learned counsel for the applicants has also contended that the claim of the applicants couldn't be turned down on the ground of non-availability of vacancies. In support of same, numerous decisions with heavy stress on the latest decision of Apex Court in case of **Director Of Education (Secondary) &**

Anr. Vs. Pushpendra Kumar & Others [1998 SCC (L&S) 33]

have been quoted and it has been submitted that the supernumerary posts in such cases should be created in-group D



cadre, but such course has not been found expedient to the respondents. The other argument on behalf of the applicants was that the respondents have considered the cases of 150 candidates for compassionate ground appointment in one lot and there should have been at least 150 vacancies and thus the stand of the respondents get falsified. In most of the cases the indigence factor has been ignored. In one of the cases retiral dues were adjusted towards HBA and other advances but the same were not treated as a liability.

12. Per contra, the learned counsel for the respondents have vehemently countered the submissions made on behalf of the applicants. It has been contended that the rules, which applied to the applicants, do not envisage that there is any indefeasible right to compassionate appointment and in case there is no vacancy the supernumerary posts should be created. It has also been urged that the cases of the applicants were duly considered and after due application of mind only the whole exercise has been done for which the relevant records may be perused. Their cases have not been turned down only on the basis of terminal benefits but mainly due to the scarcity of vacancies, keeping view the comparative hardships.

13. It was next contended that there is no ground pleaded in any of the Original Application, like availability of vacancies due to demise of the 150 employees. However, it was submitted



that as per the scheme in force the compassionate appointment could be given only against 5% of the vacancies against direct recruitment for the particular year. No details as regards the posts held by the deceased government servant have been given and it cannot be known as to how many vacancies have arisen against said quota and therefore no such argument can be sustained. The respondents have considered the cases of all the applicants as per rules in force. Lastly, it was contended that the judgement cited on behalf of the applicants have no application to the cases in hand.

14. I have considered the rival submissions put forward on behalf of all the contesting parties. As regards the deciding the cases of applicants by passing a non-speaking order, is concerned, I find that the cases of all the applicants have been duly considered and the correct position is reflected in the impugned orders. The respondents have been very fair had have made available the complete records of the proceeding of the committee which considered the cases of candidates for compassionate appointment. The respondents are required to pass an order like that of a court of law and from the perusal of the impugned order; it is evident that there has been application of mind. It is not a case where the respondents have supplemented some different version in support of their stand in the reply. Thus I am not impressed with the submissions that



the impugned orders are non-speaking one and the plea has no legs to stand.

15. Now adverting to the other contentions, enormous stress has been laid on the ground that respondents were required to create group D post in case there is no vacancy. The case of **Director of Education (Secondary) & Anr. Vs. Pushpendra Kumar & Others** supra has been heavily relied upon in this respect. I find it expedient to extract the relevant portion for the same as under:

" With regard to appointment of dependents of teaching/non teaching staff of such institutions provision was made for the first time by Circular dated September 23, 1981 whereby it was directed that where any Teaching/non Teaching employee of the non-government aided Secondary Schools dies in harness untimely and who was appointed permanent/regularly in his post, one member of his family having qualifications prescribed for non teaching post, will be given employment as early as possible, if he so desires. It was further directed that the procedure prescribed for appointment for these posts shall not be strictly adhered to but it should be necessarily considered that the concerned person is qualified to be appointed on the non-teaching post under the relevant rules/orders for this purpose. In the said circular it was also laid down that a person to be appointed must have completed the age of 18 years at the time of his appointment and as far as possible the person shall be considered for the appointment in the same institution in which the employee at the time of his death was working and if difficulty is faced in giving appointment due to non-availability of vacancies in the non-teaching post then the appointment can be made in any other similar Secondary School, where such vacancy is available and the criteria will be that any one member of the family of the employee dying in harness and possessing



requisite qualifications is given employment without any delay. Subsequently by notification dated July 30, 1992, the State Government amended the Regulations made in exercise of the powers conferred on it under sub-section (4) of Section 9 of the U.P. Intermediate Education Act, 1921, and inserted Regulations 101 to 107 after Regulation 100 in Chapter III of the Regulations. Regulations 101 to 107 were in these terms: -

"103: In case an employee of teaching or non-teaching staff of a recognised aided institution who has been duly appointed in accordance with the prescribed procedure, dies in harness one member of his family not below the age of 18 years shall be given appointment to a non-teaching post notwithstanding anything contrary in the prescribed procedure for recruitment if such member possesses requisite educational qualifications prescribed for the post and is otherwise suitable for appointment.

106: The appointment of the family member of the deceased employee shall be made, as far as possible, in the same institution where the deceased employee was serving at the time of his death. If there is no vacancy in non-teaching cadre in such institution, the appointment shall be made in another recognised aided institution of the district where there is such vacancy; provided that if such vacancy for the time being does not exist in any recognised aided institution of the district concerned, the appointment shall be made against a supernumerary post in the institution where the deceased was working at the time of his death. Such supernumerary post shall be deemed to have been created for this purpose and be continued till a vacancy becomes available in that institution or in any other recognised aided institution in the district and in such case the service rendered by the incumbent of the supernumerary post shall be counted for the fixation of pay and retirement benefits."

16. The bare perusal of the aforesaid decision reveals that in that case, there was specific provision in the rules to the effect



that appointment has to be given in cases of death of the employee and in case there is no vacancy the same is required to be created. The apex Court only held that in such cases i.e. where the rule provide for creating of vacancies, the supernumerary post should be created only in-group D and not in-group C post. But the rules which applies to the cases in hand there no such provision under the rules for creating supernumerary posts; rather there is a specific restriction envisaging that such appointment can be given only upto the 5% of vacancies against direct recruitment quota for the particular year. Thus the vacancy must be there and then only the question of such appointment can be there. Thus the said decision does not have any application to the cases under adjudication.

17. It may be noticed that the specific issue has come up for adjudication before the Apex Court in number of cases one of such case is of **Hindustan Aeronautics LTD. Vs. Smt. A. Radhika Thirumalai** [(1996) 6 SCC 394] where the submission was that the High Court was in error in holding that even when there is no vacancy available and there is a ban on fresh recruitment it was incumbent on the appellant to give appointment on compassionate grounds to the respondent. Reliance was placed on the decisions of this Court in **Life Insurance Corporation of India vs. Asha Ramchandra Ambekar & Anr.**, [1994 (2) SCC 718]; **Umesh Kumar**



Nagpal vs. State of Haryana & Ors, [1994 (4) SCC 138];

State of Haryana vs Naresh Kumar Bali, [1994 (4) SCC

448] and Himachal Road Transport Corpn. vs. Shri

Dinesh Kumar, [1996 (4) SCALE 395]. The following portion

of the decision is relevant:

"In Umesh Kumar Nagpal [Supra] this Court has pointed out that appointment in public services on compassionate ground has been carved out as an exception, in the interest of justice, to the general rule that appointments in the public services should be made strictly on the basis of open invitation of applications and merit and no other mode of appointment nor any other consideration is permissible. A compassionate appointment is made out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided the family would not be able to make both ends meet and the whole object of granting such appointment is to enable the family to tide over the sudden crisis. This court has also laid down that an appointment on compassionate ground has to be given in accordance with the relevant rules and guidelines that have been framed by the concerned authority and no person can claim appointment on compassionate grounds in disregard of such rule or such guideline [see: **Life Insurance Corporation vs. Asha Ramchandra Ambekar** (supra)].

In **Sushma Gosain** [supra] at p.470:

"We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years.



If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant."

In **Umesh Kumar Nagpal** [supra] it has been indicated that the decision of **Sushma Gosain** [supra] has been misinterpreted to the point of distortion and that the decision does not justify compassionate appointment as a matter of course. The observations on which reliance has been placed by the learned Single Judge in **Sushma Gosain** [supra] have to be read in the light of the facts of that particular case."

18. The Central Administrative Tribunal directed the Himachal Road Transport Corporation to appoint both of them as Clerk on regular basis. Setting aside the said decision of the Tribunal their Lordships of Supreme Court in case of **Himachal Road Transport Corporation vs. Dinesh Kumar AIR 1996 SC 2226**, has observed as under:

".... In the absence of a vacancy, it is not open to the Corporation to appoint a person to any post. It will be a gross abuse of the powers of a public authority to appoint persons when vacancies are not available. If persons are so appointed and paid salaries, it will be mere misuse of public funds, which is totally unauthorised. Normally, even if the Tribunal finds that a person is qualified to be appointed to post under the kith and kin policy, the Tribunal should only give a direction to the appropriate authority to consider the case of the particular applicant, in the light of the relevant rules and subject to the availability of the post. It is not open to the Tribunal either to direct the appointment of any person to a post or direct the concerned authorities to create a supernumerary post and then appoint a person to such a post."

19. Testing the question involved in this case on the anvil of aforesaid touchstone, the position emerges out is otherwise and



the plea of the applicants that the requisite number of supernumerary group D posts ought to have been created turns out to be groundless. None of the decisions relied upon on behalf of the applicants has any application to their cases.

20. A feeble ground has also seems to have been developed during the arguments that there should have been at least 150 vacancies since these many candidates cases were considered for compassionate grounds and there could not have been shortage of vacancies. The plea though not taken in the pleading but is worth examining. The same looks plausible and laudable as well as attractive but is fact deceptive and misconceived. However, whether it is possible that all such post could be against direct recruitment is next to impossible to believe and no definite finding can be given on the basis of precarious assertion. The respondents also cannot be taken by surprise and in absence of any specific plea in the pleadings no details could be given by the respondents. Thus the said plea is only meant to be rejected.



21. No other point/ground was pressed/argued.

22. It may be noticed that the Circle relaxation committee has examined the cases of all the applicants including the other candidates and no illegality in the same has been pointed out. Otherwise also the scope of judicial review in regard to such

mater is very limited and the Tribunal cannot sit in appeal over the decision of such committee. One has only right to consideration and there is no indefeasible right to appointment as such. Thus I do not find that any illegality or arbitrariness could be said to be committed by the respondents and no interference is called for.

23. In the backdrop of the aforesaid analysis and the factual and legal position which has come to be crystallised, the inescapable conclusion is that all the Original Applications sans merits and stands dismissed, however with no order as to costs.

Sd/-

(J.K. KAUSHIK)
MEMBER (J)

Jsv.

अमानित सही प्रतिलिपि
०५१७०५.
धनुभाग भ्रष्टाचारी (भादिक)
कानूनी वक्तव्यालय अधिकारक
ओषधपद