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CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, **JODHPUR**

Original Application No. 160/2003
Date of Decision : This the 6th day of Nov., 2003

Hon'ble Mr. **J.K. Kaushik**, Judl. Member
Hon'ble Mr. **G.R. Patwardhan**, Admv. Member
.....

Kishore Kumar S/o Late Sh. Radhey Shyam
Swami By caste Swamy R/o Nr. Vill. Napasar,
District Bikaner.

(By Advocate Mr. B.P. Mathur, for applicant)

..... Applicant.

VERSUS

1. Union of India thr. its Secretary,
Ministry of Communication,
Dak Bhawan, New Delhi.
2. Post Master General (Western Rajasthan),
Jodhpur.
3. Superintendent of Post Office,
Bikaner Division, Bikaner.

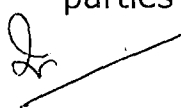
(By Advocate Mr. Vineet Mathur, for respondents).
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ORDER

[By J.K. Kaushik, Judl. Member]

Shri Kishore Kumar, applicant, has, in this application under Section 19 of the Administrative Tribunals Act, assailed the order dated 10.3.2003 (Annex.A/1) and sought a further direction to the respondents to grant employment to the applicant according to his qualification on compassionate grounds.

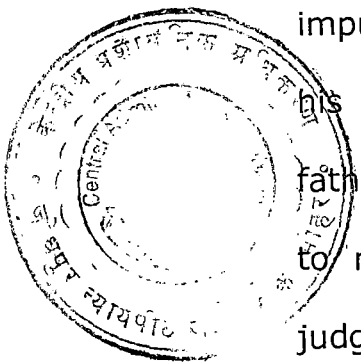
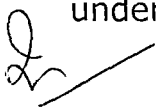
2. The brief facts of the case as per the pleadings of the parties are that the applicant is the son of the deceased



Government servant Shri Radhey Shyam Swamy. Late Shri Swamy was a permanent Government servant holding the post of Postman and expired on 5.10.95 while in service leaving his entire family in harness. At the time of death of the said Government servant, the applicant was minor and the moment he became major, an application was submitted to the respondents for grant of a suitable employment to the applicant. Other formalities regarding the details of movable and immovable properties were also furnished/completed. But, the case was turned down vide order dated 30.3.2003 (Annex.A/1).

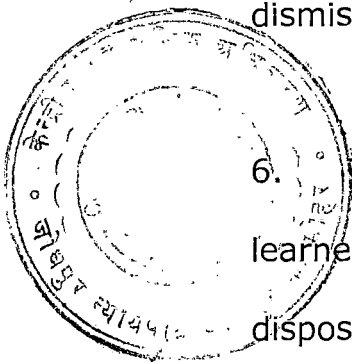
3. The salient grounds on which applicant has challenged the impugned order are that the action of the respondents in rejecting his candidature is arbitrary and without any sound reason. The father of the applicant was a low paid employee and it is difficult to maintain the family with meagre family pension. Certain judgements have been referred to in support of the claim of the applicant and made as part of the grounds.

4. The respondents have filed a detailed counter reply narrating the brief factual aspect and also reply to the facts and grounds enunciated in the O.A. It has been averred that the case of the applicant was considered in view of various office memorandums keeping in view the vacancy position. Due to paucity of the vacancies, he could not be provided with appointment, there being a ceiling of 5% of vacancies falling under the direct recruit quota. The case of the applicant was not



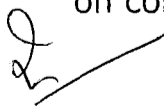
only rejected on the ground of payment of terminal benefits but also on the ground of non availability of the vacancy. There was only one vacancy and there were 20 candidates for consideration and one of the most indigent could only be given such an offer.

5. The facts relating to personal particulars of the applicant have been disputed. It has been submitted that applicant's date of birth is 2.9.1975 and he was above 20 years of age at the time of death of his father and cannot said to be a minor. An application was moved only after five years of the death of the deceased Government servant. In this way, there was no urgency and compassion in the case therefore, the O.A. deserves to be dismissed. No rejoinder has been filed on behalf of the applicant.

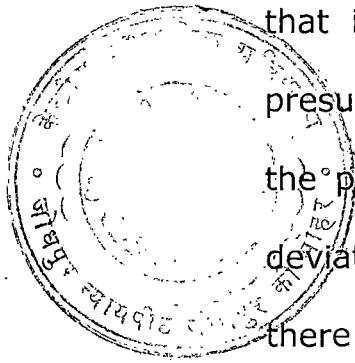


6. The O.A. was listed for admission and with the consent of learned counsel for both sides, we have heard them for final disposal. We have considered the submissions, pleadings and records of the case.

7. The learned counsel for applicant has reiterated the pleadings made on behalf of applicant. He has emphatically stressed that the candidature of the applicant has been rejected only on the ground. The family of the deceased has received certain terminal benefits and the widow is getting family pension. He has strived hard to show that the family is in great distress and the applicant ought to have been given suitable appointment on compassionate grounds.



8. On the contrary, the learned counsel for respondents has submitted that there were 20 candidates including that of applicant whose cases were considered by the Circle Selection Committee on 21.1.2003 and there was only one vacancy. The Committee has selected the most indigent person. He has submitted that the respondents have not committed any illegality at all and the compassionate appointment cannot be claimed as a matter of right. He has next submitted that the applicant has taken up the matter after lapse of about five years and by now, about eight years have passed, the family has been surviving. As per the very scheme of the year 1998, there is a presumption that if, a family has survived for over five years, it shall be presumed that the family had sufficient means of livelihood and in the present case, applicant has not shown any reason so as to deviate from the said presumption. He has also submitted that there is no explanation forthcoming as to why the applicant has been indicated to be a minor at the time of death of the Government servant and also as to what was the reason for submitting application after lapse of a period of about five years. As per the policy in vogue, case of an individual could be considered only against the vacancy which may arise during the period of one year from the date of death of the Government servant. In the present case, the respondents have been very sympathetic and despite a gap of about eight years, the case of the applicant was considered. He has also submitted that nothing arbitrary has been complained of and it is not the case of



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applicant that any one who is less indigent than him, has been given appointment or there were vacancies and his case has not been considered.

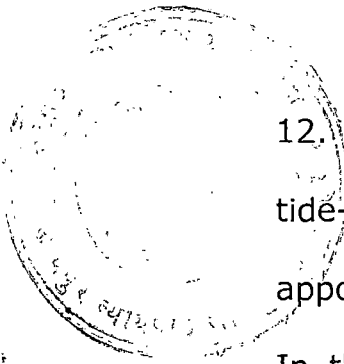
9. We have anxiously considered the rival contentions raised on behalf of both the parties.

10. As far as the basic facts are concerned, there is absolutely no dispute. It is true that applicant was major at the time of death of the Government servant. It is also true that the application was moved only after a lapse of about 5 years of the death. There is also no dispute as regards the vacancies. The main stress of the learned counsel for the applicant has been that the candidature of the applicant has been rejected primarily on the basis of terminal benefits received by the family of the deceased. This is not borne out from the impugned order. As per the impugned order, the case of the applicant has been considered in the light of various instructions keeping in view the vacancy position in the cadre and an objective assessment has been made. In reply, they have made a clean breast of the factual aspect which remains undisputed inasmuch as no rejoinder has been filed. Thus, we are not impressed with the submissions of the learned counsel for the applicant and this ground of attack is not well founded.

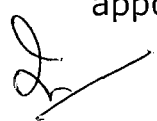
11. As regards the other legal submissions, there is hardly any quarrel on the question of law. It is true that the candidature on

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compassionate ground cannot be rejected only on the basis of financial benefits which has been received by the family of deceased Government servant in shape of terminal benefits and the other factors are also required to be considered. The judgement being relied upon by the learned counsel for applicant in the case of Balbir Kaur Vs. Steel Authority of India reported in 2000 SCC (L&S) 767 and also the judgement of Rajasthan High Court in Suresh Kumar Sharma Vs. UOI in DB Civil Writ Petition No. 2147 of 2002 decided on 31.1.2003 [WLC(Raj) UC) 317] lays down that appointment on compassionate grounds cannot be rejected only on the ground that certain terminal benefits have been received. None of these judgements apply to the facts of instant case for the reasons indicated above.

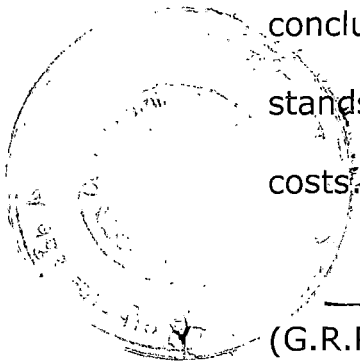


12. The very object of grant of compassionate appointment is to tide-over the immediate financial crises. The Rule of granting appointment on compassionate grounds is the rule of exception. In the present case, the family has survived for a period over eight years and there is no positive assertion or reason for not presuming that the family had some means of surviving and consequently, it cannot be said that crises still exist. Thus, we do not find that there has been any arbitrariness or illegality in the action of the respondents. The very judgement being relied upon by the applicant in Umesh Kumar Nagpal Vs. State of Haryana reported in JT 1994 (3) SC 525 envisages that compassionate appointment cannot be claimed and offered whatever the lapse of



time and after the crises is over, goes against the applicant and does not support his contention.

13. Having regard to the aforesaid discussions, the inescapable conclusion is that the O.A. sans merits and hence, the same stands dismissed. However, the parties are left to bear their own costs.



GR
(G.R.Patwardhan)
Admv. Member

J.K. Kaushik
(J.K.Kaushik)
Judl. Member

jrm

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Part II and III destroyed
in my presence on _____
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section officer () at _____
order dated _____

Section officer (Record)