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**CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR**

ORIGINAL APPLICATION NO: 180/2002 & M.A. No.85/2002.

DATE OF ORDER: June 6, 2003

Mohsin Ali S/o. Late Jangbahadur Ali, aged about 22 years R/o Village & Post – Roi, District Nagour (Rajasthan).

...Applicant

VERSUS

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



.....Respondents.

Mr. S.K.Malik & Mr.Daya Ram, counsel for the applicant
Mr. Kuldeep Mathur for Mr.Ravi Bhansali, counsel for the respondents.

CORAM:

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

ORDER

(Per J.K.Kaushik, Judicial Member).

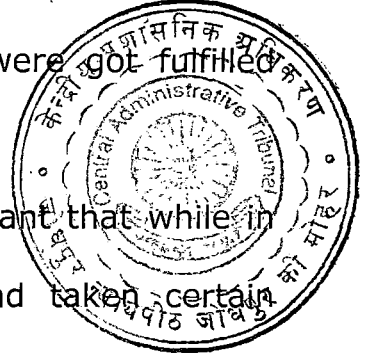
The applicant has filed this O.A. (viz. O.A. No.180/2002 along with M.A. No.85/2002) challenging the impugned order dt. 23.2.2001-(Annexure A-1) and has sought for exemplary costs

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on the respondents for causing unde harassment to the applicant.

2. The material fact leading to filing of this O.A. are that the applicant who is the son of Shri Jangbahadur Ali. Shri Jangbahadur Ali was in the employment of the Respondent and was holding the post of Postal Assistant at Nagour Head Office. Shri Jangbahadur Ali expired on 18.2.2000 while on active service. He was survived with widow, two sons and one daughter. At the time of death of the father of applicant, his brother and sister were studying in the School. The applicant has passed Senior Secondary School Examination in the year 2000. The mother of the applicant immediately submitted an application for grant of compassionate appointment to the applicant on 23.6.2000. Certain formalities were not fulfilled from her.

3. It has been further averred by the applicant that while in service the deceased government servant had taken certain loans for construction of house, cycle advance and festival advance and also from Postal Employees Credit Society. All these loans were recovered from the terminal dues. It is also stated that the financial position of the family of the deceased employee was very poor even prior to the death of Jangbahadur Ali. Certain expenses were also incurred on medicines and other medical expenses. Not only this, the sister of the applicant was got married in the childhood and the applicant had to perform the Muklava which is in fact the real marriage. But the same could not be done because of the poor financial condition of the



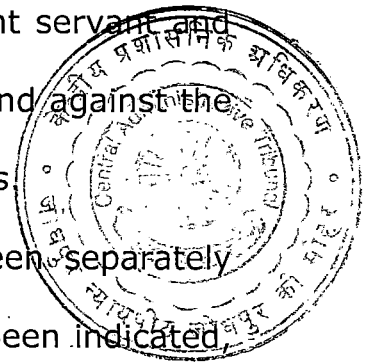
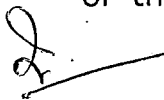
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family. But the case of the applicant has been turned down vide order dt. 23.2.2001 through a stereo-type and mechanical order.

4. The O.A. has been filed on number of grounds e.g. The terminal benefit and pension cannot be made a ground for rejection, the family of the deceased employee was in indigent condition but the same has not been considered, the impugned order has been passed in a stereo-type and mechanical way without application of mind, there is no bread earner in the family left behind after the demise of government servant and the action of the respondents is clearly arbitrary and against the scheme for appointment on compassionate grounds.

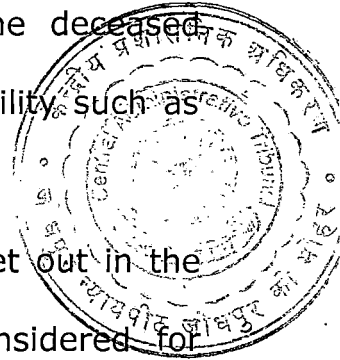
5. An application for condonation has also been separately filed even though no specific period of delay has been indicated but as per Section 21 of the Administrative Tribunals Act, the O.A. ought to have been filed by 22.2.2002; cause of action arose on issue of impugned order dt. 23.2.2001, but the O.A. has been filed only on 10.7.2002. Thus there is a delay of about four and a half months. The reason for the delay as mentioned in the Miscellaneous application are that the applicant had to arrange for money for marriage of his sister and the main reason has been the money crisis. It has been submitted that the applicant was not even having sufficient money to meet the expenses of typing charges etc and there have been bonafide for delay in filing this M.A.

6. The respondents have contested the case and have filed a detailed counter reply to the O.A. They have given the details of the various terminal benefits which have been paid to the



widow of the deceased government servant. The terminal benefits have been indicated to the tune of rs. 2,51,097/-. It has also been submitted that the widow of the deceased government servant is getting a regular family pension of Rs.2,509/- plus the dearness relief every month. The family is possessing more than 15 Bighas of landed property which is fetching an additional income. The family of the deceased employee is also not having any specific social liability such as marriage of daughter etc.

7. Further, the defence of the respondents as set out in the reply is that the case of the applicant was considered for compassionate appointment taking into account all the factors, including availability of vacancies in postal cadre. It has been found that neither financial condition of the family of the deceased employee deserved compassionate appointment nor there was any chance of availability of vacancy within a year for the purpose of appointing the applicant on compassionate ground. The case was considered in a fair and objective manner. The grounds mentioned in the O.A. have been refuted and denied. It has been submitted that an amount of Rs.69,638/- was voluntarily credited by the family of the deceased since the same was against the advance which the deceased government servant took during his service period. It has also been submitted that the department has dispensed with the waiting list and the case of deserving candidates are only considered, if the vacancy for the purpose is available within a year in the concerned Department and that too within ceiling of

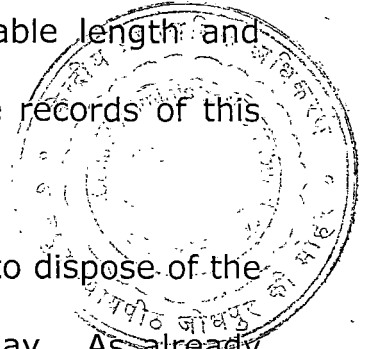


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5% of vacancies falling under the direct recruitment quota. They have also made a reference of one of the Judgment dt.4.10.2001 in similar case of Jayvir Singh Vs. Union of India & Ors. O.A. No.134/2001 (CAT Jaipur Bench) Hence, the O.A. deserves to be dismissed with costs. The respondents have not chosen to file any reply to the M.A. for condonation of delay. However, a short rejoinder has been filed to the main reply on behalf of the applicant.

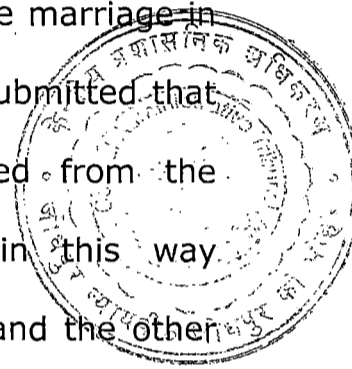
8. With the consent of the parties, the case was heard for final disposal at the stage of admission itself. I have heard the Learned Counsel for the parties at a considerable length and have carefully considered the pleadings and the records of this case.

9. At the very outset it would be appropriate to dispose of the Miscellaneous Application for condonation of delay. As already said in the aforesaid paragraph no reply has been filed on behalf of the Respondents to the Misc. Application. There is a delay of about four and a half months and it is a matter of compassionate appointment, the main reason asserted has been that of paucity of funds, keeping in view the Beacon Right Guides in the case of Collector Acquisition & Anr. vs. Smt. Kattiji & Ors. (AIR 1987 SC pg. 1353), wherein their Lordships have observed the desirability of deciding the cases on merits, I take resort to condoning the delay considering that there was good and sufficient grounds for the same and therefore, the M.A. for condonation of delay stands allowed and the delay condoned.

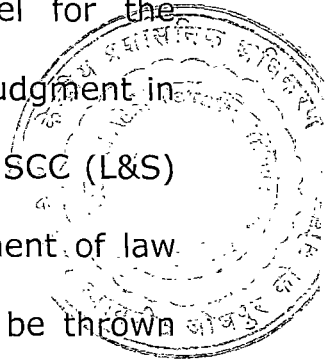


10. Now, advertent to the merits of this case, the learned counsel for the applicant has emphatically laid great emphasis on the ground that the case of the applicant has been turned down only on the basis of grant of terminal benefits and the competent authority has rejected the case without application of mind by passing a stereo-type and mechanical order. He has next submitted that the respondents having taken into consideration the fact that the real marriage of the daughter was to take place now in the shape of Muklava and the marriage in the childhood was only a formality. He has also submitted that an amount of about Rs.69,000/- was recovered from the terminal benefits towards the advances and in this way a substantial amount was recovered from the dues and the other amount had to be spent against the debts which were incurred by the deceased government servant himself. In this way, the family of the deceased government servant is in acute shortage of money and is in indigent condition. However, he was confronted with a very specific query as to whether the details given in the sub-paras of para 2 as regards the terminal benefit and the income etc. of Annexure A-1 are correct or not. The learned counsel did not dispute the same except the submission that about -Rs.69,000/- were recovered from the terminal benefits towards the debts against advances.

11. On the contrary, the learned counsel for the respondents has submitted that the case of the applicant was very sympathetically considered and due to the constraint of the vacancy, inasmuch as, practically there has been no vacancy

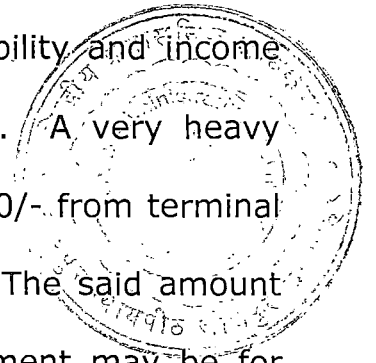


during the last three years. The case of the applicant could not come within the ceiling of 5% of the vacancies during one year after the death of the government servant. He has also submitted that all the factors have been taken into consideration and the case of the applicant has been fully considered and the detailed reason have been given in Annexure A-1 which is a speaking order, as well as, is a self-contained document. He has submitted that it is wrong to contend that the case has been turned down on a stereo-type manner. It is not that only the terminal benefits have been taken into consideration and other factors have been ignored. The Learned Counsel for the respondents has fairly submitted that as far as the Judgment in Balbir Kaur & Anr. Vs. Steel Authority of India (2000 SCC (L&S) 767) is concerned there is no quarrel on the statement of law and the case of compassionate appointment cannot be thrown out only on the basis of grant of terminal benefits. However, in the present case, all the factors have been taken into consideration including the house property, the income from other sources and also the liability left behind by the deceased government servant. He has submitted that as far as the actual marriage of the daughter is concerned the applicant did not project such a case before the competent authority and he should thank to himself and now no new matter can be developed. The selection committee has considered the case on the available material and have taken a decision. It is also submitted that it is not the case of the applicant that some one who is in less indigent condition than the applicant has been



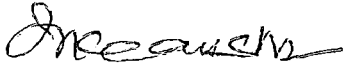
appointed or there are vacancies against the 5% of direct recruitment quota for compassionate appointment lying vacant. It is also not the case of the applicant that there has been any mala fide or arbitrariness in his case. Thus, no interference is warranted from this Tribunal.

12. I have considered the rival contentions raised on behalf of the parties. The mere perusal of the impugned order Annexure A-1 reveals that the case of the applicant has been duly considered and it has been very specifically indicated that for the last three years practically there have been no vacancies. As regards the financial position of the applicant the benefit extended to him and the details regarding liability and income including house property have been admitted. A very heavy stress was laid on deduction of about Rs.69,000/- from terminal benefit of the deceased government servant. The said amount was in fact taken as a loan from the department may be for construction of house or purchase of some other items. The same was meant to capitalize the property and in no way it can be construed as a liability and the deduction cannot be said to lead to family of the applicant into indigent condition. By now the law is well settled regarding the compassionate appointment. The competent authority can consider only against the available vacancy and that too vacancies should be available within a period of one year. This position has been clarified/prescribed in DOP & T O.M. dt. 9.10.1998 and 3.12.1999 which has been subsequently reiterated in DOP & T O.M. dt. 22.6.2001. The ceiling of the 5% quota prescribed for compassionate



appointment cannot be exceeded. In the present case, it is not the case of the applicant that there were vacancies available under 5% and still the case of the applicant was not considered. There has been specific assertion on behalf of the respondents that there was no chance of availability of vacancies within a year for the purpose of appointing the applicant on compassionate grounds. As far as the part relating to the indigent condition is concerned it has to be to the satisfaction of the competent authority who is required to apply its mind keeping in view the other comparative cases and in the absence of any mala fide, biasness or arbitrariness, this Tribunal would not sit in appeal over the decision of the Competent Authority.

13. From the aforesaid discussion it would be clear that the case of the applicant has been duly considered and the same has been decided by due application of mind keeping in view the provisions of the scheme meant for compassionate appointment. The contentions of the learned counsel for the applicant stands repelled and I am of the considered opinion that it is not a case where any interference is called for from this Tribunal. Therefore, there is no illegality or arbitrariness in the action of the Respondents. The result is inevitably unfortunate, the O.A. is devoid of any merit and the same stands dismissed with no order as to costs.


(J.K.KAUSHIK)
JUDICIAL MEMBER