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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

Original Application No. 333/2002
Date of decision : this the 23rd day of Oct, 2003.

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

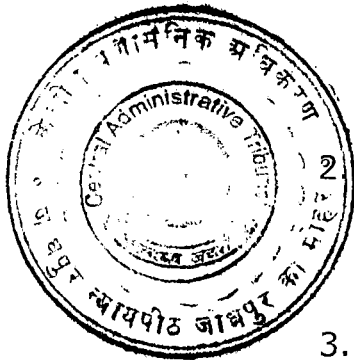
Sushil Swami S/o Late Shri Bhagirath Swami
Aged about 25 years, R/o C/o Suraj Mal Sharma,
Near National English School, Old Line,
Gangashahar, District Bikaner.

.....Applicant.

(By Shri Manoj Bhandari, for the applicant)

Versus

1. The Union of India through the Secretary,
Ministry of Communication,
Department of Posts, Sansad Marg, New Delhi.



2. The Principal Chief Post Master General,
Rajasthan Circle, Jaipur 302 007.

3. The Superintendent of Post Office,
Bikaner Division, Bikaner.

.....Respondents.

(By Shri Vineet Mathur, for the respondents)

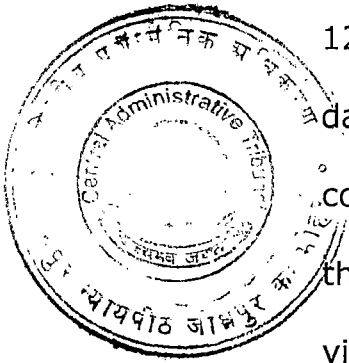
ORDER

BY THE COURT :

Shri Sushil Swami, has entered into the second round of litigation in the same matter and has assailed the order dated 18.11.2002 by which his case for grant of compassionate appointment has been turned down. He has made a further

prayer that respondents may be directed to consider his case for compassionate appointment on any available post.

2. A short recital of the facts shall be sufficient for resolving the controversy involved in the instant case. The applicant is the son of deceased Government servant namely Shri Bhagirath Swami, who was in service of the respondents and last posted as Postal Assistant at Gangashahar and expired on 11.10.2000. Late Shri Bhagirath was survived with his widow, two sons and daughter. The matter was taken up for compassionate appointment in respect of the applicant but, the same was turned down primarily on the ground that the family received the retrial benefits and family pension. A case was filed vide OA No. 12/2002 which came to be decided by this Bench vide its order dated 16.9.2002 with a direction to the respondents to re-consider applicant's case for compassionate appointment as per the legal position, however, the same has been turned down vide the impugned order on various grounds. The said order has been assailed on number of grounds mentioned in the application but, I would restrict examining the grounds which are stressed on behalf of the applicant during arguments as indicated in the later part of this order.



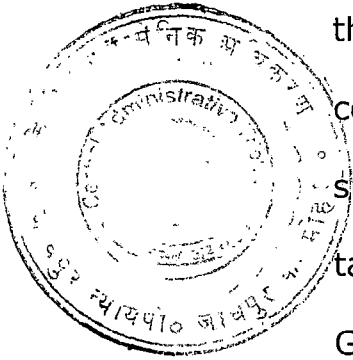
3. The respondents have contested the case and have filed an exhaustive reply mentioning that applicant's case has been duly considered by the committee but, the same has been rejected after due consideration. Compassionate appointment

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cannot be asked as a matter of right and there is a restraint of 5% of the direct recruitment posts. A detailed rejoinder has also been filed reiterating the facts and grounds taken in the O.A. itself and countering the contentions raised in the reply.

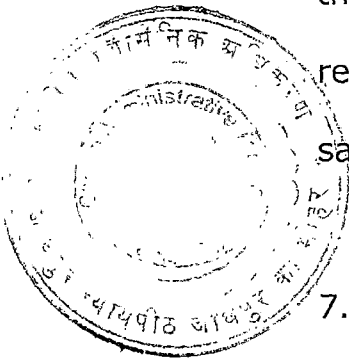
4. I have considered the arguments advanced by the learned counsel for the parties and have carefully perused the records and the pleadings of the case.

5. The learned counsel for the applicant has been very concise and brief in his arguments and has limited his submissions by stressing the non-consideration of the case of the applicant as per Paras 7 (e) & (f) of the Scheme for compassionate appointment at Annexure A/6. It has been submitted that the case of the applicant ought to have been taken up with other Ministries, Departments and the Government Offices of India for due consideration but, it has not been so considered. He has also submitted that while deciding the earlier OA, in Para 9 also this Bench of the Tribunal specifically took notice of the said rule position but, the same seems to have been lost sight by the respondents inasmuch as the impugned order does not make even a whisper regarding regarding such consideration. Thus, the matter deserves re-consideration on this point.



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6. On the contrary, the learned counsel for the respondents has endeavoured justifying the ground of defence set out in the reply and has submitted that for want of vacancies, the case of the applicant could not be considered. He has also submitted that it is not that the applicant's case has been turned down simply on the basis of the retrial benefits and family pension received by him but, there are other grounds as well. He has also submitted that as regards the consideration of the case by other Ministries/Departments/Offices of the Government is concerned, probably there has been change in the policy and now, there is no such requirement. However, he was directed to make available such instructions. The learned counsel for the respondents has been fair enough to make available the relevant instructions issued on 3.12.1999 and a copy of the same is taken on record as a record of this case.



7. I have considered the rival contentions raised on behalf of the parties. There is hardly any quarrel as regards the factual position in this case. Admittedly, there have not been sufficient vacancies with the Department so as to accommodate the applicant and give appointment on compassionate grounds. The respondents' have not considered it expedient to take up the matter with other Ministries in accordance with Para 7 (f) of the Scheme for compassionate appointment. It is also true that in earlier case also this Bench of the Tribunal had made an observation

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in this regard but, the impugned order does not contain any communication regarding the same and, therefore, the inescapable conclusion is that applicant's case has not been considered as per the said provisions.

8. Now, advertent to the rule position in the matter, it is considered expedient to extract below the relevant portion of the Scheme for Compassionate Appointment i.e. Paras (e) & (f) which are as under :-

"(e) Employment under the scheme is not confined to the Ministry/Department/Office in which deceased/medically retired Government servant had been working. Such an appointment can be given anywhere under the Government of India depending upon availability of a suitable vacancy meant for the purpose of compassionate appointment.

(f) If sufficient vacancies are not available in any particular office to accommodate the persons in the waiting list for compassionate appointment, it is open to the administrative Ministry/Department/Office to take up the matter with other Ministries/ Departments/Offices of the Government of India to provide at an early date appointment on compassionate grounds to those in the waiting list."



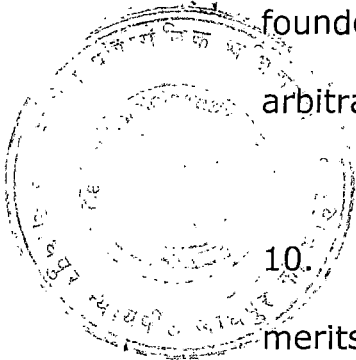
Further, relevant is the O.M. dated 3.12.1999, the relevant portion from the same is also extracted as under :-

" Accordingly, it has been decided that the Committee prescribed in paragraph 12 ibid for considering a request for appointment on compassionate grounds should take into account the position regarding availability of vacancy for such appointment and it should recommend appointment on compassionate grounds only in a really deserving case and only if vacancy meant for appointment on compassionate grounds will be available within a year, that too, within the ceiling of 5% mentioned above. This would ensure grant of compassionate appointment within a year. In respect of other really deserving cases the Committee should only

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recommend/taking up the matter with other Ministries/ Departments/Offices of the Government of India to consider those cases for appointment there as provided in paragraph 7 (f) *ibid.*"

9. A conjoint reading of the aforesaid provisions makes it evident that cases of persons who are in waiting list for compassionate appointment could be taken up with other Ministries, Department and the Offices of the Government of India. The OM being relied upon by the learned counsel for the respondents does not run counter to the main scheme and the case of the applicant ought to have been taken up with the other Ministries as per the *ibid* provisions. Thus, the grounds stressed by the learned counsel for the applicant are found to be well founded and, therefore, the impugned order would be illegal, arbitrary and inoperative.



10. The upshot of the aforesaid discussions is that the O.A. merits acceptance and the same stands allowed. The impugned order dated 18.11.2002 (Annexure A/1) stands quashed and the respondents are directed to consider the case of applicant afresh especially in the light of Para 7 (b) of the Scheme for Compassionate Appointments Annexure A/6, within a period of three months from the date of receipt of a copy of this order. No costs.


[J.K. Kaushik]
Judicial Member

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Paul W. J. O'Connell
28.10.03

Wm.
29/10/03