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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH : JODHPUR.

Date of Decision : 12.12.2002

O.A. No. 27/2002.

Lakh Singh son of Shri Padam Singh, aged 42 years, r/o
Village Nimba Ka Gaon, Tehsil Balesar District Jodhpur
Ex- EDBPM, Namba Ka Gaon, Tehsil Balesar, District
Jodhpur.

... APPLICANT.

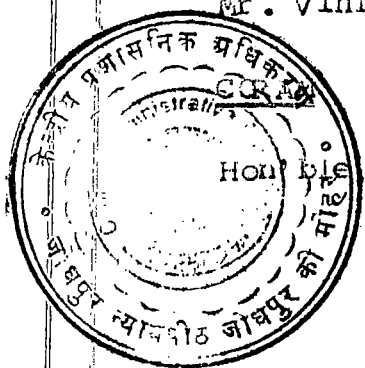
v e r s u s

1. Union of India through the Secretary to the Government,
Ministry of Communication (Dept. of Posts), Sanchar
Bhawan, New Delhi.

2. Post Master General, Western Region, Jodhpur.

... RESPONDENTS.

Mr. Vijay Mehta counsel for the applicant.
Mr. Mahendra Godara Adv. brief holder for
Mr. Vinit Mathur counsel for the respondents.



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

: O R D E R :
(per Hon'ble Mr. J. K. Kaushik)

The factual matrix of this case, necessary for
resolving the controversy is that the applicant is the
dependent son of Late Shri Padam Singh, who was ~~expired~~
Branch
Extra Departmental/Post~~al~~ Master (for bravery, EDBPM)
at Nimba Ka Gaon. Shri Padam Singh had expired on 27.12.97
leaving the family in destitute. The applicant was appointed
on 28.12.97 on the post which fell vacant due to demise
of his father. The services of the applicant came to be
terminated in xxxxxx May 2000 and he was relieved of his
duties on 12.05.2000. This termination was for the reason
that he did not possess the minimum educational qualifications
i.e. Matriculation, prescribed for the post of EDBPM.

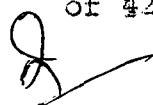
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2. The further case of the applicant is that the deceased government servant was survived with a widow and 3 sons. Two of the brothers of the applicant are leaving separately and do not support the family of the deceased. The applicant has also developed a family and has got one wife, 3 daughters and one son. It has also been averred that none of the family members is in the government employment. He filed an Original Application No. 151/2000 before this Tribunal in the same matter and the same was disposed of with a direction to the respondents to consider his case for appointment on a suitable post commensurating his educational qualification.

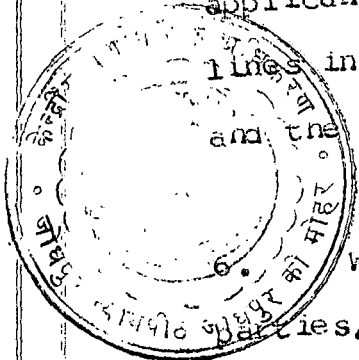
3. The applicant was asked to send his consent for the post of EDMC/EDDA for posting one of the place where the post was vacant. He submitted and indicated his choice for posting at Village Teena vide letter dated 08.08.2001 (Annexure A-5). His case has been turned down vide letter dated 04.01.2002 (Annexure A-1). It has been pleaded that his case was turned down due to, on the basis of factually incorrect, irrelevant and extraneous consideration.

4. The Original Application has been filed assailing the impugned order dated 04.01.2002 (Annexure A-1) on the ground that his case has not been objectively considered, his case has been rejected on extraneous and irrelevant grounds, the order is arbitrary and discriminatory and he is entitled to be appointed on compassionate ground.

5. The respondents have contested the matter and have filed a detailed reply to the Original Application. The defence set forth in the counter is that the applicant is of 42 years of age and getting an Army pension to the tune



of Rs.2300/- per month. His case has been duly considered by the Circle Relaxation Committee (for bravery, CRC). According to the respondents, it is not a case where there is any arbitrariness but it is a case where provisional appointment of the applicant was terminated on the ground that he was not approved for the post of EDEPM. It has been further submitted that the family of the deceased official is not in ~~xx~~ indigent ~~xxxx~~ condition inasmuch as the widow, ~~of~~ the mother of the applicant, has got one Pakka House and family has got 28 Bighas Agricultural Land with yearly income thereof to the tune of Rs.9,000/- in addition to the pension. There is no social or financial liabilities remains with the applicant. The case of the applicant has been considered, keeping in view, the guidelines in force. The impugned order is legally in order and the OA deserves to be dismissed.



With the consent of Learned counsel for both the parties, the case was heard for final disposal at the admission stage. I have considered the arguments advanced by the learned counsel for the parties and have bestowed my earnest consideration to the pleadings and documents placed on record.

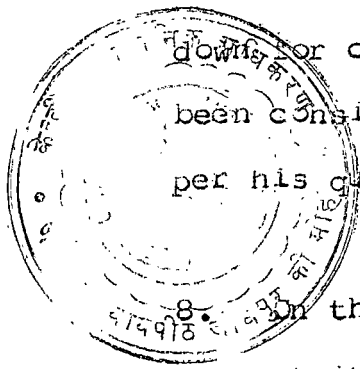
7. Learned counsel for the applicant has reiterated the facts and grounds mentioned in the Original Application and has drawn my attention to para 5 of the judgement dated 19.01.2003 (Annexure A-3) in the OA, which was earlier filed by the applicant wherein the respondents have shown inclination to consider the case of the applicant as per his educational qualification on compassionate ground and keeping in view the same, the direction was issue

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Learned counsel also drawn my attention to Para 1 of the Section X, Compassionate Appointments to Dependents of EDAs of Swamy's Compilation of Service Rules for Postal ED Staff, contents of the same are extracted as under :-

"(1) Instructions regarding Compassionate Appointment.- The question of providing some ED posts to dependants of ED Agents in case of death/infirmity or an ED Agent has been under consideration of the Government for quite some time past. It has now been decided that a suitable job in ED cadre may be offered to one dependant of an ED official who dies while in service leaving the family in indigent circumstances, subject to the conditions applicable to regular employees who die while in service or retire on invalid pension. Such employment to the dependant should, however, be given only in very hard and exceptional cases."

He has further submitted that his case ought to have been considered in view of the general policy laid down for compassionate ground and his case ought to have been considered for appointment on any suitable post as per his qualification.



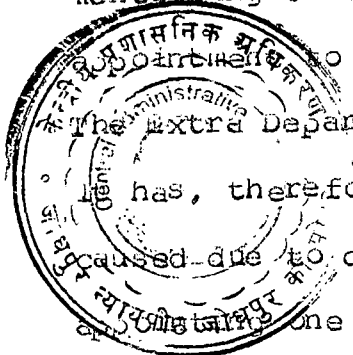
On the contrary, learned counsel for the respondents has submitted that the applicant is of 42 years of age and is also a pensioner getting an army pension to the tune of Rs.2300/- per month. ~~The~~ His case had been duly considered and this Tribunal would not like to appreciate the facts for arriving at different conclusion in the matter. He has submitted that the factum regarding the service ~~xxxx~~ pension has been concealed from the pleadings and it is also a case of concealment of facts. The applicant has not come ^{out} with clean hands and the Original Application deserves to be dismissed with costs. He has further stressed that the case of the applicant has been duly considered and there is no illegality, infirmity or arbitrariness in passing of the impugned order. He has also submitted that the position regarding grant of ^{service} pension

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to the applicant remains unrefuted inasmuch as no rejoinder to the reply has been filed.

9. From the aforesaid submissions of the parties, two primary question emerges out for examination namely one whether in the facts and circumstances of the case, the applicant is entitled for grant ~~xx~~ of compassionate appointment and secondly whether there was a concealment of material fact on the part of the applicant and what is the effect thereof.

10. Adverting to the first issue, it would be worth mentioning that the special instructions regarding compassionate appointment to the dependants of EDAs have been prescribed. The Extra Departmental posts are isolated and well spread out. It has, therefore, been prescribed that necessarily a vacancy caused due to death of an ED Agent is to be filled up by one of his/her dependants/near relatives on compassionate ground. If it is not done it would be quite difficult to give compassionate appointment in hard cases. This instruction makes it amply clear that compassionate appointment in respect of a person can be considered only against a post which was held by a deceased government servant. In another words, since the deceased government servant in the present case was admittedly employed on the post of EDBPM, the case of the applicant could be considered only for the post of EDBPM. The further admitted rule position is that the minimum educational requirement for this post is Matriculation. But the applicant is only 8th Pass and does not possess the minimum educational qualification.

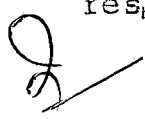


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Further no relaxation whatsoever, has been provided in the condition for Matriculation qualification for EDBPM, rather there is a positive direction that the matriculation qualification for the post of EDBPM should be insisted upon in cases where the death of the incumbent has taken place on or after 1-4-1993. In this view of the matter, the applicant's case could not have been considered for the post of EDBPM, and rightly so it was done which was duly considered in the earlier Original Application.

11. The ancillary question now arises as to whether the applicant's case could be considered for any other post where the qualification prescribed is 8th Pass or lesser. The answer is emphatically 'No' keeping in view with the provision of rules that be so, whether the concession which the respondents intended to extent to the applicant could give an indefeasible right to the applicant for grant of appointment. It is a settled position of law that no legal right can be created against rules, least to say, on basis of such concessions. In earlier judgement in OA No. 151/2000, Lekh Singh vs. U.O.I. & Ors. decided on 19.01.2001 (supra), the Tribunal disposed of the OA only on the concession of the respondents. In this view of the matter, I am of the firm opinion that the applicant is not even entitled for consideration of his case for compassionate appointment. Necessary corollary of this finding leads to an inescapable conclusion that the impugned order does not suffers from any infirmity or arbitrariness.

12. Here I deem it appropriate to mention that though the respondents have not taken any objection in regard to the



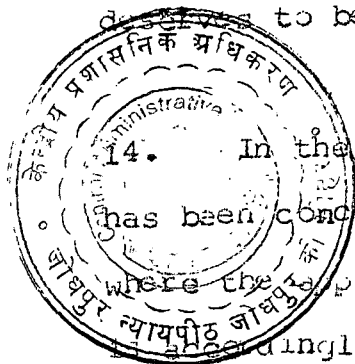
aspect as to whether the applicant could be said to be a dependant on the deceased government servant. The applicant is an Ex-serviceman and is getting a service pension of Rs.2300/- per month and is of 42 years of age. With no stretch of imagination or with any liberal interpretation of the rule, it could be said that the applicant was dependant on Late Shri Padam Singh. In this view of the matter also, the applicant was not entitled for consideration of compassionate appointment, since the very rule applied to the dependant of the EDAs which the applicant is not.




Mostly adverting to the second main issue that the applicant has concealed the material fact in this case. It is seen from the pleadings that the applicant has not disclosed the factum regarding his Military service and the pension. With an abandoned caution I called the case file of OA No. 151/2000 and found that this fact has not been disclosed there also. The significance of financial condition of the family of the deceased is a vital factor while considering the cases of appointment on compassionate grounds. Inasmuch as the very theme of such appointment of a dependant of the deceased employee who died in harness is to relieve unexpected immediate hardships and distress caused to the family by sudden demise of earning member of the family. Not only this, the applicant fully knew the consequences of disclosure of his military service as well as service pension inasmuch as the Original Application could have been thrown out at the very threshold at the admission

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stage. Thus the Court time has been misused. Such practice is required to be curbed and deprecated. In fact the OA ~~deserves~~ to be dismissed on this count alone.



14. In the premises, the OA is without any merit. There has been concealment of material facts and it is a fit case where the application should be dismissed with costs. It is accordingly dismissed with cost to the tune of Rs.1,000/- which shall be paid by the applicant to the respondents, within two months from the date of receipt of a copy of this order.


(J. K. KAUSHIK)
Judicial Member