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**Central Administrative Tribunal
Jodhpur Bench**

Original Application No. 11/2004

Date of Decision: 14.03.2005

Hon'ble Mr. G.R. PATWARDHAN, ADMINISTRATIVE MEMBER

Sushil Swami S/o Late Shri Bhagirath Swami aged about 26 years, Resident of C/o Suraj Mal Sharma, Near National English School, Old Line, Gangashahar, District Bikaner.

Applicant.

(Mr. Manoj Bhandari, Counsel for the applicant.)

VERSUS

1. Union of India through-the Secretary, Department of Posts, New Delhi.
2. The Principal Chief Post Master General, Rajasthan Circle, Jaipur-302007.
3. The Superintendent of Post Officer, Bikaner Division, Bikaner.

Respondents

(Mr. M. Godar, Brief holder for Mr. Vinit Mathur, counsel for respondents.)

ORDER(Oral)

G.R. Patwardhan, Adm. Member

 Late Shri Bhagirath Swami, while working in the Department of Posts as Postal Assistant at Gangashahar Post Office in Bikaner died on 11.10.2000. His widow Smt. Narayani Devi thereafter moved an application for appointment on compassionate ground in favour of younger son Mr. Sushil Swami (applicant in the present O.A.). This was turned down and O.A. No. 12/2002 was preferred before the Tribunal. It was disposed of on 16.09.2002 whereby respondents were directed to reconsider the case for compassionate appointment within a period three months afresh in the light of observations before the Hon'ble Apex Court and reproduced in an O.M. Dated 9.10.1998 (Annexure A/5).

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Incidentally, this O.M. Clarified that employment under the scheme was not confined to the Ministry/Department/Public office in which the deceased government servant had been working and such appointment could be taken anywhere under the Government of India depending upon the availability of a suitable vacancy meant for compassionate appointment. However, even on reconsideration, it appears that the applicant was not found fit and by an order dated 18.11.2002, the case of the applicant was again rejected (Annexure A/6). Another O.A. followed bearing No. 333/2002 in which by an order dated 23.10.2003, O.A. was allowed and respondents were directed to consider the case of the applicant afresh especially in the light of Para 7(b) of the Scheme for Compassionate Appointment (Annexure A/7).

2. The respondents again considered the matter but came to the conclusion that the applicant did not deserve compassionate appointment. This was on 09.12.2003 (Annexure A/1). However, the applicant having realized some type of typographical error in the order of the Tribunal dated 23.10.2003 moved M.A. 01/04 and RA 01/2004 in O.A. 333/2002 requesting for correction of the same. This was allowed and the order of 23.10.2003 was amended by referring to paragraphs 7 (e) and (f) of the scheme of compassionate appointment instead of Para 7 (B) as was originally done. Accordingly, respondents were also informed that the intention of the Tribunal was that the respondents shall consider the case of the applicant under Paragraph 7 (e) and (f). This was on 08.01.2004 but on 10.02.2004, the respondents again passed an order expressing their inability to recommend the case of the applicant for compassionate appointment. A part of the order which is as follows, is under challenge along with rejection of the case of the applicant in this O.A. filed by Sushil Swami.



(a) "The applicant was informed of the decision of the CRC on 09.12.2003. As per directions of the Hon'ble CAT in the amended order the CRC has reconsidered the case. In view of the above comparative chart the case of the applicant is not indigent. The provisions contained in para No. 7(e) and (f) of the scheme of Compassionate Appointment regarding giving of such appointment anywhere under the Govt. of India depending upon availability of a suitable vacancy meant for the purpose and also about taking up matter with other department of Govt. of India to provide appointment to those in waiting list, have been amended as per DOP&T OM No. 14014/18/2000-Estt. (D) dated 22.06.2001.

(b) The ACGSC did not apprise the Hon'ble Tribunal about DOP&T OM dated 26.06.2001 amending para 7 (e) and (f) of the scheme." (Emphasis supplied)

It has been urged through this O.A. that as the father of the applicant died in 2002 and the scheme underwent some changes in 2001 all that is needed is consideration of the case of the applicant on the basis of rules as they existed at the time of death of his father and the approach of the respondents in taking recourse to subsequent policy guidelines is wrong inasmuch as there cannot be retrospective application of a policy to the disadvantage of the applicant. It is therefore prayed that latest order in the series passed by respondent No. 2, the Assistant Post Master General for Principal Chief Postal Master General should be declared illegal and set aside as also the one dated 10.02.2002 (a part of which is quoted above). Prayer is also made for direction to the respondents to consider and grant the appointment to the applicant on compassionate grounds on any post available with the respondents in any cadre. There is additional prayer that office Memorandum of DOPT dated 22.06.2001 should also be declared illegal and

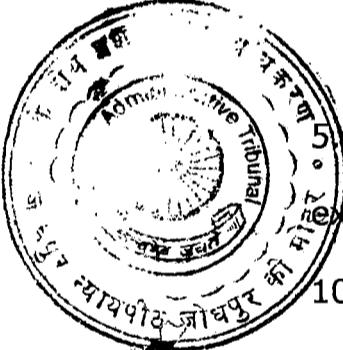


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quashed.

3. O.A. has been filed on 26.03.2004, and its reply on 28.01.2005 which is on record. A rejoinder has been filed on 14.03.2005. It is maintained that in obedience of the directions of the Tribunal, the case of the applicant was considered by the Circle Relaxation Committee where on considering the financial status of the family and comparing his case with other cases of the such nature, the respondents found it unable to recommend his case. It is also maintained that the applicant is repeatedly seeking the intervention of the Tribunal on same state of facts and so the present O.A. does not require any consideration.

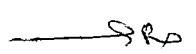
4. All along it has been maintained that the respondents have gone strictly as per the guidelines issued by different Ministries and that the O.A. should be dismissed.

 Before the merits of the case of the applicant are examined, it needs to be observed that part of the order dated 10.02.2004, and quoted in the para 2 above at (b) where respondent No. 2 hints that the Tribunal was not apprised by AGCSC about an O.M. dated 26.06.2001 of DOPT and so it came to issue directions for consideration of the case of the applicant is not justified. From the perusal of that order of the Tribunal, it is difficult to appreciate how the respondent has come to believe that it was not aware of this particular O.M. Moreover, if the respondent Authorities had any doubt about the correctness of the order they should have challenged it before a superior forum or applied for a review. The order has now attained finality. It therefore, does not stand to reason how this particular aspect of the matter is being agitated by respondents again in the present O.A. especially when

one finds that the right to compassionate appointment accrued in 2002 and the particular O.M. of the DOPT was issued only in 2001. To that extent the plea of the respondents lacks merit.

6. It goes without saying that the only right that the applicant has is of consideration. If only the respondents had taken into account the spirit of the orders passed by the Tribunal; their exercise would have brought not only satisfaction to the applicant but also perhaps an offer of appointment. But failure to take timely action on the directions of the Tribunal has led not only to filing of this third O.A but also to an avoidable situation where the directions passed earlier and which have become final are being reagitated. This should not have happened.

7. In the premises, the only course appropriate for the respondents would be to consider the case of the applicant strictly as per the directions given in earlier O.As. This exercise should be completed in the next ninety days and the applicant informed by a speaking order in another thirty days. O.A. is accordingly disposed of. No costs.


(G.R.Patwardhan)]
Adm. Member

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