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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No. 261/2004

Date of decision: this the 5th day of January 2007

CORAM:

**HON'BLE MR. J.K. KAUSHIK, JUDICIAL MEMBER
HON'BLE MR. R R BHANDARI, ADMINISTRATIVE MEMBER**

Chandu Kumari w/o late Shri Ram Dayal Purohit aged 22 years, r/o village Buchakala, Distt. Jodhpur. Late Shri Ram Dayal Ex- EDBPM, Buchkala, Distt. Jodhpur.

: Applicant.

Mr. Vijay Mehta : Counsel for the applicant.

VERSUS

1. Union of India through the Secretary to the Government, Ministry of Communication (Dept. of Posts) Sanchar Bhawan, New Delhi.
2. Senior Superintendent of Post Offices, Jodhpur.
3. Post Master General Western Circle, Rajasthan Jodhpur.

: Respondents.

Mr. Vinit Mathur & Mr. M. Godhara: Counsel for the respondents.

ORDER

Per Mr. J K Kaushik, Judicial Member.

Smt Chandu Kumari has questioned the validity of orders dated 3.03.2004 (A/1) and 30.6.2004 (A/2) and sought for quashing the same with a mandate to the respondents to give appointment to her on compassionate grounds.

2. With the consent of learned counsel for both the parties, this case was taken up for final disposal at the stage of admission itself; keeping in view the short controversy involved in it. We have accordingly heard the arguments advanced at the Bar and carefully perused the pleadings as well as records of this case.

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3. The brief facts as pleaded on behalf of the applicant are that applicant is the wife of Late Shri Ram Dayal Purohit. The said Shri Ram Dayal Purohit was in the employment of the respondent-department on the post of G.D.S.BPM (Erstwhile EDBPM) at Village Post Office Buchakala in Distt. Jodhpur and expired on 22.11.2002 while on active service. The deceased government servant was survived with his widow i.e. the applicant, one minor son of 4 years and his infirm parents. The family of the deceased government servant (for brevity "family") was left in indigent condition, without there being any bread-winner. The family had about 4.15-bigha barani land i.e. uncultivable, situated in famine ridden area with no facility of irrigation, fetching no income except sometimes one crop in rainy season. The terminal benefits to the tune of Rs. 7810/- was received by the family. It has further been averred that the case of the applicant was taken up for consideration for appointment on compassionate grounds but the same has been turned down. There is no basis of taking the annual income to the family as Rs. 12000/- p.a. from the agriculture land and no proof thereof has been disclosed in the impugned order. The OA has been preferred on numerous grounds enunciated in para 5 and its sub-paras, which we shall deal with in later part of this order.

4. The respondents have contested the case and filed an exhaustive reply. It has been averred that applicant's candidature was duly considered by the CRC and the same has been rejected contending that the family has 4 Bighas 9 biswa agriculture land and 1 and 1/3 bigha irrigated land from which there is an income of Rs. 12,000 per annum and on comparative assessment, applicant's case was not found most indigent. The father of deceased government was having about 38 bigha of agriculture land as well as 10 bigha of irrigated land. There

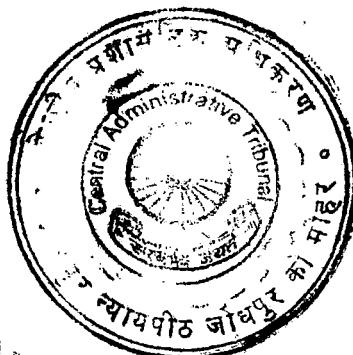


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were 52 candidates in consideration zone and the CRC did not find the case of applicant as indigent. The grounds raised in the O.A. have been generally denied.

5. Both the learned counsel for the parties reiterated the facts and grounds mentioned in their respective pleadings. The learned counsel for the applicant has tried to demonstrate that the candidature of the applicant has been turned down by taking extraneous material into consideration. It is patently wrong that the family is getting an income of Rs. 12,000/- p.a. from the agricultural land. There is no basis for the same and no proof to this effect has been placed on records despite specific averment made in the OA to this effect. Had the said wrong facts not been taken into consideration, the findings of the CRC would have been different. Her case has also not been considered as per the procedure envisaged in the relevant rules. Therefore, the case of the applicant needs to be reconsidered.

6. Per contra the learned counsel for the respondents has stressed on the defence version as set out in the reply and submitted that one has a right of consideration only and there is no right to appointment on compassionate ground as such. The case of the applicant has been duly considered and warrants no interference by this Bench of the Tribunal. He has lastly submitted that the relevant records of all the 52 candidates who were under consideration zone were ready with him and could be perused by this bench of tribunal for ascertaining the comparative hardships vis-à-vis other candidates. He was asked as to how the question of comparative merits arose once consideration was against an isolated post on which applicant's husband was last employed. He submitted that the cases of such candidates were



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considered on the basis of rules relating to the grant of compassionate appointments to other government servants.

7. We have anxiously considered rival submissions put forth on behalf of the parties. As far as the factual aspect of the matter is concerned, respondents have not been able to submit any proof in regard to their version that the family is deriving an income of Rs. 12,000/- from agriculture land. There is also no other material in support of the same. If that were so, rejection of the applicant's claim primarily on the ground of income from agricultural land to the tune of Rs. 12,000/- becomes extraneous/ irrelevant consideration.

8. As far as the legal aspect is concerned, the ED Agents now known as GDS have a special type of employment status. They have been held to be civil servant and their employment has got a trapping of contractual appointment inasmuch as they are almost part time workers and required to perform duties for lesser period than other full-fledged government servants. The normal scheme for grant of compassionate appointment to the dependents does not apply to their case. Separate instructions have been issued under Section 10 of the Service Rules for Postal Gramin Dak Sevak by Swamy's, for regulating such appointments. The scheme provides that such employment to the dependent should be given only in very hard and exceptional cases. It has been specified that the ED Posts are isolated and spread out; therefore, it is necessary that a vacancy caused due to death of ED Agent is filled up by his or her near relative on compassionate grounds. If it were not done, it would be quite difficult to give appointment in hard cases. Certain relaxations in qualification have been provided for the widow. In any case, the applicant has passed VIII standard and there is a provision for relaxation of educational qualification in such

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cases especially that of a widow but the minimum qualification cannot be less than VIII standard where the requisite qualification for the post is Matriculation like that of GDSBPM. It is surprising as to how question of comparative merit has been introduced by the respondents. The compassionate appointment can be considered only against the particular post and it is the dependent family member of the deceased government servant (who was holding a particular post (isolated post)), who could be considered for the same. It seems, the respondents have mechanically adduced the reasons for rejecting the claim of the applicant and her case has not been considered in true spirits of the scheme. As a matter of fact in cases relating to GDS i.e. Extra Departmental Agents, the compassionate appointment may not have multiple constraint like that of vacancy constraint and comparative hardship constraint and the primary requirement is the fulfilment of eligibility conditions of the candidate and the indigence of the family. In the instance case, the position is quite clear and there is no definite or regular source of income to the family. Even if the version of the respondents is taken as true that the family gets income of Rs. 12000/- per annum from agriculture land, it is hardly anything in the present days of price spiral. The family pension is also not admissible in case of Extra Departmental Agents. Therefore, the indigence of the family can hardly be over emphasized.

9. It is expected from the administrative authorities that they would act fairly and shall not be misguided by extraneous or irrelevant consideration. The Apex Court has lucidly explained the same in case of **Management of M/s M.S. Nally B. Co. Limited Vs. State of Bihar** reported in JT 1990 (2) 96 wherein, their Lordships have observed as under :-

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"What is important in the modern administration is the fairness of procedure with elimination of element of arbitrariness, for fairness is a fundamental principle of good administration. It is a rule to ensure that vast power in the modern State is not abused but properly exercised. The State power is used for proper and not for improper purposes. The authority is not misguided by extraneous or irrelevant consideration. Fairness is also a principle to ensure that statutory authority arrives at a just decision either in promoting the interest or affecting the rights of persons. The concept that 'justice should not only be done but be seen to be done' is the essence of fairness and is equally applicable to administrative authorities."

In the celebrated judgment in the case of **Tata Cellular v. U.O.I.** AIR 1996 SC 11, the Hon'ble Supreme Court having made reference to a catena of judicial pronouncements on the question of judicial interference in the administrative decision observed that since the Court does not sit in appeal over such decision but merely reviews the manner in which it was made, the Court must exercise utmost restraint while exercising the power of review, else it would be guilty of usurping power. Therefore, if the authority takes a decision on the basis of some materials, which a reasonable person could have taken, in that case judicial review is not permissible. On the other hand, if the decision is based on no legitimate reasons and is actuated by bad faith then judicial interference would be the proper remedy to undo the wrong.

10. Applying the aforesaid principles of law to the facts of instant case, we find that the case of the applicant has not been duly considered inasmuch as certain extraneous material was taken into consideration, which has resulted into turning down the legitimate claim of the applicant. She has not been give fair treatment and there has been failure of justice. The decision making process was totally inconsistent with the provisions of scheme of compassionate ground appointments meant for dependent family members of deceased GDS in as much as the concept of comparative assessment has been wrongly applied. The impugned orders, therefore, cannot be sustained and shall have to be declared as inoperative and illegal.



11. The upshot of the aforesaid discussion leads us to an inescapable conclusion that there is ample force in the O.A. The impugned orders dated 3.03.2004 (A/1) and 30.6.2004 (A/2) are hereby quashed. The Respondents are directed to re-consider the case of applicant for grant of compassionate appointment in accordance with the rules keeping in view the observations made hereinabove, within a period of three months from today. The OA stands disposed of accordingly. However, the parties are directed to bear their own costs.

R R Bhandari
(R R BHANDARI)
ADMINISTRATIVE MEMBER

J.K. Kaushik
[J.K. KAUSHIK]
JUDICIAL MEMBER

jsv

Part II and III destroyed
in my presence on 23/3/14
under the supervision of
Section Officer 23/3/14 per
order dated 23/3/14

Section Officer (Record)

RS

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